

**REFUGEE REPATRIATION IN LIBERIA:
LEGAL RIGHTS, BEST PRACTICES, AND
LESSONS FROM OTHER COUNTRIES**

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I. INTRODUCTION

During the 1989-2003 civil war, as many as 350,000 Liberians left their country to escape violence and adverse economic conditions, with most fleeing to the neighboring countries of Côte D'Ivoire, Ghana, Guinea, Nigeria, and Sierra Leone. Another 200,000 to 270,000 Liberians are thought to have died in the conflict,¹ and some 500,000 to 800,000 were internally displaced.² Given that the total population of the country is no greater than 3.5 million,³ it is clear that Liberia's long civil war produced a tremendous amount of displacement and violence relative to the overall population.⁴

As of October 2004, when UNHCR-organized voluntary repatriation began, there were 233,364 Liberians living in asylum countries who were officially registered as refugees.⁵ In the years since then, many of these refugees have returned, either spontaneously (that is, on their own) or through a voluntary repatriation program funded and orchestrated by the United Nations High Commissioner for Refugees (UNHCR). Likewise, within Liberia, the UNHCR assisted approximately 320,000 internally displaced persons (IDPs) who had been living in 35 officially recognized IDP camps to return to their places of origin or preference within the country.⁶

¹ Sarah F. Brownell, *UNHCR Ends Liberian Operation After Helping More than 100,000 Go Home*, UNHCR.ORG, July 2, 2007, available at <http://www.unhcr.org/news/NEWS/4689259d2.html>; REPUBLIC OF LIBERIA, POVERTY REDUCTION STRATEGY ¶ 1.2.4 (2008), available at <http://www.imf.org/external/pubs/ft/scr/2008/cr08219.pdf> [hereinafter POVERTY REDUCTION STRATEGY] (reporting an estimated 270,000 deaths).

² Brownell, *supra* note 1; POVERTY REDUCTION STRATEGY ¶ 6.1.7, *supra* note 1 (reporting 500,000 internally displaced persons, of whom only 300,000 were registered residents of 35 recognized IDP camps).

³ REPUBLIC OF LIBERIA, NATIONAL SOCIAL WELFARE POLICY 5 (2008), available at http://www.liberiamohsw.org/Reports_and_Publications_files/08MAY13_SOCIALWELFAREPOLICYOFLIBERIA.doc [hereinafter NATIONAL SOCIAL WELFARE POLICY].

⁴ For a very brief overview of Liberian political history, with a focus on the Civil War and post-2003 developments, see Peter Dennis, Int'l Ctr. for Transitional Justice, *A Brief History of Liberia* (2006), available at <http://www.ictj.org/static/Africa/Liberia/BriefHistory.pdf>.

⁵ POVERTY REDUCTION STRATEGY ¶ 6.1.7, *supra* note 1.

⁶ The estimates of assisted IDPs vary somewhat. See U.N. High Commissioner for Refugees [UNHCR], *More than 100,000 Liberians Repatriated with UNHCR Help*, UNHCR.ORG, June 5, 2007, <http://www.unhcr.org/news/NEWS/466587694.html> (reporting 314,000 assisted IDPs); LRRRC, *Our Future*, available at <http://lrrrc.org/content.php?sub=44&related=21> (last visited Jan. 26, 2009) (reporting 325,000 registered IDPs); POVERTY REDUCTION STRATEGY ¶ 6.1.7, *supra* note 1 (reporting that 326,990 IDPs were assisted to return and resettle in counties of origin or preference through an inter-agency operation); U.N. SECRETARY-GENERAL, HUMANITARIAN

Nevertheless, today—five years after the end of the civil war—somewhere between 70,000 and 100,000 Liberian refugees remain living in countries of refuge.⁷ The rate of repatriation from Ghana has been particularly low, with the Liberian Refugee Repatriation and Resettlement Commission (LRRRC) estimating that between October 2004 and July 2007, only 7,021 (15%) of 47,450 Liberian refugees in Ghana participated in voluntary repatriation.⁸ Other countries, by contrast, had significantly higher rates of return.⁹

ASSISTANCE AND RECONSTRUCTION OF LIBERIA: REPORT OF THE SECRETARY-GENERAL, ¶ 9, U.N. Doc. A/63/295 (Aug. 15, 2008) [hereinafter REPORT OF THE SECRETARY-GENERAL 2008] (reporting that “more than 314,000 internally displaced persons were returned to their places of origin” between November 2004 and April 2006).

However, Henry Snyder of the Niaple Project has reported that “about 8000 to 9000” people have remained living in “deplorable conditions” in old IDP camps around the country because they were not registered by the LRRRC or the UNHCR and, presumably, therefore are not eligible for assisted resettlement. Memorandum to Lowenstein Clinic from Mr. Henry Snyder, ¶ 6, Nov. 13, 2008 (on file with Lowenstein Clinic) [hereinafter Snyder Memorandum #1]. Snyder also notes that these displaced persons may have misplaced their ration cards, which had been provided by the World Food Programme. Memorandum to Lowenstein Clinic from Mr. Henry Snyder, ¶ 3, Nov. 21, 2008 (on file with Lowenstein Clinic) [hereinafter Snyder Memorandum #2].

⁷ The available figures for the number of Liberian refugees still living abroad vary somewhat. According to figures supplied by the LRRRC on November 2, 2008, the LRRRC and UNHCR have assisted 120,939 Liberian refugees to return, and another 45,954 refugees returned spontaneously without assistance, yielding a total of 166,893 returnees since the formal return process started in October 2004. *Liberia Refugee Repatriation and Resettlement Commission*, WORLD INVESTMENT NEWS (WINNE), <http://www.winne.com/ssa/liberia/reports/2008/cp/lrrrc/index.php> (last visited Jan. 26, 2009) [hereinafter WINNE Profile].

According to the UNHCR’s 2008 Global Appeal for Liberia, more than 160,000 Liberian refugees have returned home from neighboring countries, while around 72,000 Liberia refugees remain living in asylum countries in the West Africa region. See UNHCR, *Liberia*, in UNHCR GLOBAL APPEAL 2008-2009, at 177, available at <http://www.unhcr.org/publ/PUBL/474ac8d40.pdf> [hereinafter UNHCR Liberia Appeal 2008].

According to the 2008 World Refugee Survey conducted by the U.S. Committee for Refugees and Immigrants (USCRI), as of December 31, 2007, 98,300 Liberians remain in asylum countries, including 28,000 in Ghana, 24,200 in Côte D’Ivoire, 17,000 in Sierra Leone, 16,000 in Guinea, 6,900 in the United States, and 6,200 in Nigeria. See U.S. COMM. FOR REFUGEES AND IMMIGRANTS (USCRI), *Refugees and Asylum Seekers Worldwide (as of December 31, 2007)*, in 2008 WORLD REFUGEE SURVEY, at 30, 30-31 (2008) [hereinafter USCRI WORLD REFUGEE SURVEY 2008].

⁸ Press Release, LRRRC, Pilot Land Convoy for Liberian Refugees Arrives, Sept. 25, 2008, http://lrrrc.org/press.php?news_id=23. News reports from early 2008 reported consistently that there were 42,034 Liberian refugees registered as living in Ghana. See, e.g., *Ghana: Refugees Protest Repatriation*, ALLAFRICA.COM, Mar. 13, 2008, available at <http://allafrica.com/stories/200803130546.html>.

⁹ We have not confirmed whether the repatriation assistance provided by the UNHCR to Liberians returning from Ghana was the same as that given to Liberian refugees returning from other countries. Whatever the case, the financial assistance provided to Liberian refugees returning from Ghana was quite modest. Before October 2007, Liberian refugees returning from Ghana were given a \$5 stipend upon their arrival in Monrovia. Following complaints to the UNHCR, this amount was eventually increased to \$100 per person in 2008. See Kwamena Bartels, Minister for the Interior (Ghana), Statement on Demonstration by Liberian Refugees at the Buduburam Settlement, Apr. 1, 2008, available at http://mint.gov.gh/index.php?option=com_content&task=view&id=38&Itemid=53.

In her January 2006 inaugural address, Liberian President Ellen Johnson Sirleaf declared that the prompt repatriation of the “thousands of [Liberian] citizens who continue to live in refugee camps throughout the sub-region” was a “national imperative for [the country’s] renewal and development.”¹⁰ As of early 2009, however, this national imperative has yet to be fully realized.¹¹

In this memorandum, we provide an overview of the Liberian government’s and the UNHCR’s policies and practices concerning repatriation assistance in Liberia (Part II); discuss the rights of repatriating refugees under Liberian law (Part III) and under regional and international human rights and refugee law (Part IV); and identify best practices from refugee repatriation scenarios in other post-conflict situations in Africa and around the world (Part V). We then offer some brief conclusions in Part VI and suggest possible steps that the Niapele Project might consider taking to advocate on behalf of Liberians returning from Ghana.

II. CURRENT STATUS OF REPATRIATION AND REINTEGRATION IN LIBERIA

A. Recent History

The UNHCR’s organized program of voluntary repatriation for Liberian refugees officially ended in June 2007. Thereafter, it was assumed that the Liberian refugees who had not chosen to repatriate would undergo “local integration” into their countries of refuge in a process jointly supervised by UNHCR and the host country governments. That is, such refugees would either become naturalized citizens of their asylum country or be granted permanent resident

¹⁰ Ellen Johnson Sirleaf, Inaugural Address, Jan. 16, 2006, at 4, *available at* http://www.emansion.gov.lr/doc/inaugural_add_1.pdf.

¹¹ *See, e.g.,* Scott Stearns, *Returning Refugees Face Challenges in Liberia*, VOANEWS.COM, Jan. 22, 2009, <http://www.voanews.com/english/2009-01-22-voa21.cfm> (providing anecdotes of skilled returnees struggling to find work in Liberia).

status while retaining Liberian citizenship.¹²

However, following a large-scale protest by Liberian refugees at the Buduburam settlement in Ghana from February through late March 2008, a Tripartite Commission comprising the UNHCR and the Governments of Liberia and Ghana was formed. The voluntary repatriation process then began anew, predicated on the assumption that the vast majority of Liberian refugees then living in Ghana would not remain there. The mid-April 2008 inaugural meeting of the Tripartite Commission concluded that “voluntary repatriation remains the preferred option for Liberian refugees in Ghana,” as opposed to local integration or third-country resettlement.¹³

The Liberian government had not expected a second voluntary repatriation program. The government’s official Poverty Reduction Strategy (PRS), published in mid-2008 after the need for a second program had become apparent, noted that “[t]he Government is currently preparing itself for large numbers of refugees being repatriated from the West Africa sub-region, including approximately 40,000 who were hosted in Ghana,”¹⁴ and cautioned that their “sudden, unanticipated return . . . presents a significant challenge.”¹⁵ Nevertheless, the Government declared its intent “to conclude the process of refugee repatriation and reintegration during the PRS period [which runs from April 1, 2008 to June 30, 2011]” and to “ensure that basic social services are available through community empowerment and assistance programs, including services relating to income generation, education, agriculture and temporary shelter.”¹⁶

Beginning in April 2008 and through the end of the calendar year, the UNHCR and the

¹² Sulaiman Momodu, *Time for Local Integration*, UNMIL FOCUS, Mar.-May. 2008, at 30, 30-31.

¹³ Press Release, LRRRC, Liberia: Repatriation from Ghana Gains Momentum, Aug. 18, 2008, *available at* <http://allafrica.com/stories/200808180168.html>.

¹⁴ POVERTY REDUCTION STRATEGY ¶ 1.3.15, *supra* note 1.

¹⁵ *Id.* ¶ 6.4.33.

¹⁶ *Id.*

LRRRC facilitated the return of another 9,645 Liberian refugees, including 8,795 from Ghana, 337 from Nigeria, 281 from Guinea, 195 from Sierra Leone, 20 from the Gambia, 14 from Côte D'Ivoire, and 3 from Senegal.¹⁷ The LRRRC has reported that UNHCR-Ghana has worked to register Liberian refugees at Buduburam who are “non-UN-identification card holders” so that these previously unregistered populations could be repatriated.¹⁸ Throughout the summer and autumn months, approximately 200 Liberian refugees returned home from Ghana each week on two flights sponsored by the United Nations Mission in Liberia (UNMIL). In September 2008, a series of land convoys from Ghana to Liberia began, which had the benefit of enabling returnees to take with them many more belongings than were permitted on the flights.¹⁹

The third tripartite meeting was held in October 2008.²⁰ Its outcome document, the “Joint Statement on the 3rd Meeting of the Tripartite Committee for the Voluntary Repatriation of Liberian Refugees in Ghana,” included the following recommendations:

- The three parties committed to continue to support the organized repatriation of Liberian refugees from Ghana to Liberia until 31 March 2009.
- Acknowledging the need for refugees to take more of their belongings, the Tripartite Committee (TC) agreed to actively pursue identifying a sea-worthy vessel to use in addition to already existing modes of transportation.
- That a verification exercise be conducted mid-January 2009 to ascertain their numbers, determine those with Ghanaian family links, update their profile, as well as refugee's intentions vis-à-vis to Liberia or remaining in Ghana.
- The Government of Liberia will continue to make efforts towards creating an enabling environment to receive returnees, through development initiatives as part of the Poverty Reduction Strategy.

¹⁷ UNMIL, Liberia: UNMIL Humanitarian Situation Report No. 158, Dec. 23, 2008-Jan. 12, 2009, *available at* <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-7N8QWW?OpenDocument>. This figure is about 4,000 persons short of the tripartite committee's earlier goal of repatriating 12,000 Liberians from Buduburam by the end of October 2008. *See* Press Release, LRRRC, Liberia: Repatriation from Ghana Gains Momentum, Aug. 18, 2008, *available at* <http://allafrica.com/stories/200808180168.html>.

¹⁸ Press Release, LRRRC, Transit Manager Explains Importance of Transit Center as More Liberian Refugees Return, Nov. 14, 2008, *available at* http://lrrrc.org/press.php?news_id=31&related=28.

¹⁹ Press Release, LRRRC, Voluntary Repatriation Update 2008, Oct. 8, 2008, *available at* http://lrrrc.org/press.php?news_id=25; *see also* LRRRC, Briefing Notes, July 17, 2008, *available at* <http://www.lrrrc.org/doc/Briefing%20Notes.pdf>.

²⁰ Lowenstein Clinic Interview with Ms. Chara Itoka, former Scott Family Liberia Fellow at the LRRRC, December 21, 2008 [hereinafter Itoka Interview].

- Reintegration opportunities particularly in the area of skills training, micro-grants and micro finance will be available to returnees who fulfill the criteria set by these programs.
- Following the verification exercise, the Government of Ghana and UNHCR are encourage to conduct an information campaign to inform the Liberian refugees opting to remain in Ghana of processes and procedures.
- The TC noted the Government of Ghana's plan to relocate refugees from Buduburam to other parts of Ghana upon completion of the organized voluntary repatriation. Their status will be in accordance with national and regional instruments in force in Ghana.²¹

A January 12, 2009 UNMIL humanitarian update reported that “UNHCR offices in Accra and Monrovia will continue to work together to assist the refugees who are willing to return to Liberia from January to March 2009,” with a tripartite meeting to evaluate the progress of the “overall voluntary repatriation” program planned for “sometime in April 2009.”²²

Meanwhile, in light of the increasing potential for political instability in the neighboring countries of Côte D’Ivoire and Guinea, the LRRRC has become involved in an urgent effort to update the Liberian government’s “Inter-Agency Contingency Plans” for the possible influx of refugees, third-country nationals, and returnees from neighboring countries.²³

B. The Repatriation Process

Within the Liberian government, the LRRRC is the lead agency tasked with, among other duties, working with the UNHCR and other international organizations to facilitate the repatriation of Liberian citizens from their countries of refuge back to their “counties of origin or choice.”²⁴ The LRRRC was established by the Liberian Refugee Act of 1993²⁵ and is led by an

²¹ Joint Statement on the 3rd Meeting of the Tripartite Committee for the Voluntary Repatriation of Liberian Refugees in Ghana, *quoted in* Lowenstein Clinic Correspondence with Chara Itoka, Dec. 21, 2008.

²² UNMIL Humanitarian Situation Report No. 158, *supra* note 17.

²³ UNMIL, Liberia: UNMIL Humanitarian Situation Report No. 155, Oct. 28-Nov. 10, 2008, *available at* <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-7L9Q2N?OpenDocument&rc=1 &cc=lbr>.

²⁴ The LRRRC is also the agency charged with refugee protection, status determination, and local integration with respect to non-Liberian refugees currently residing inside Liberia. For a full summary of the statutory mandate of the LRRRC, see LRRRC, Statutory Mandate, <http://lrrrc.org/content.php?sub=41&related=21> (last visited Jan. 26,

Executive Director, currently Councillor Wheatonia Y. Dixon Barnes.²⁶ The statutory mandates of the Commission are broad. They include “formulat[ing] policy on matter [sic] in the country”; “assist[ing] the Secretariat in soliciting local and international assistance for refugee related activities in the country”; and “exercis[ing] any other powers . . . that may be assigned to the commission by or in terms of this Act or by Executive directive.”²⁷ The Executive Director (and by extension, the Secretariat staff) is further directed to, among other things, “assist UNHCR in finding durable solutions for refugees, including voluntary repatriation, local integration, and resettlement where applicable.”²⁸ The LRRRC has a total staff of more than 200 employees, with the majority of those acting as field workers spread across seven regional “reintegration” offices and fifteen field offices within the fifteen counties of Liberia.²⁹ The Government of Liberia supports the LRRRC with an annual budget of U.S. \$569,000, nearly all of which is used to pay for salary, rent, equipment, and the purchase and maintenance of vehicles.³⁰

Liberians returning on UNMIL flights from Ghana first arrive at Roberts International

2009). For the LRRRC’s strategic plan for 2006-08, see LRRRC Roadmap and Vision (2006-08), <http://lrrrc.org/content.php?sub=44&related=21> (last visited Jan. 26, 2009). Useful information about the LRRRC is also available on the website of World Investment News (WINNE); see WINNE Profile, *supra* note 7; Interview with Cllr. Wheatonia Y. Dixon Barnes, Exec. Dir., LRRRC, Oct. 22, 2008, available at <http://www.winne.com/dninterview.php?intervid=2240> [hereinafter Dixon Barnes WINNE Interview].

²⁵ Act to Make Provision for Refugees and To Establish the Liberian Refugee Repatriation and Resettlement Commission, § 4, *approved* Nov. 1, 1993, *published* Jan. 19, 1994, available at <http://www.unhcr.org/refworld/country,,NATLEGBOD,,LBR,456d621e2,3ae6b4f31c,0.html> [hereinafter Refugee Act of 1993] (establishing the Liberian Refugee Repatriation and Resettlement Commission). The Refugee Act provides that the Commission will include the Minister for Internal Affairs of State (chairperson), the Minister for Planning and Economic Affairs (vice chairperson), the Executive Director, and representatives of the Ministry of Foreign Affairs, the Ministry for Police and Immigration, and the UNHCR. *Id.* §§ 4(1), 4(3). The Act also establishes a Secretariat, run by the Executive Director, to carry out the Commission’s implementation functions. *Id.* § 6(1). Commission meetings must occur “not less than one time every 30 days.” *Id.* § 4(4)(a).

²⁶ Press Release, LRRRC, Liberia: Repatriation from Ghana Gains Momentum, Aug. 18, 2008, available at <http://allafrica.com/stories/200808180168.html>.

²⁷ Refugee Act of 1993, *supra* note 25, § 5(1).

²⁸ *Id.* § 6(3).

²⁹ LRRRC, Structure of the Commission, <http://lrrrc.org/content.php?sub=43&related=21> (last visited Jan. 26, 2009).

³⁰ Dixon Barnes WINNE Interview, *supra* note 24.

Airport in Monrovia, where they are received by officials from the LRRRC, the UNHCR, and the Liberian Bureau of Immigration and Nationalization (BIN). The Logistics Services of Liberia (LSL)³¹ transports them to the newly reconstructed Transit/Reception Center in Shefflin Town, Margibi County,³² which is managed by the Liberian government with UNHCR funding and on-site assistance.³³ At the Center, the returnees present their documentation (usually a UNHCR-issued “Voluntary Repatriation Form” or VRF),³⁴ undergo screening by the BIN to verify their nationality,³⁵ receive a medical checkup and treatment for minor illnesses from Medical Emergency Relief International (MERICI),³⁶ and are provided with a hot meal.³⁷ The Center also contains a waiting area, a luggage storage center, two “transit halls” where returnees sleep (one for males and one for females), and latrines.³⁸ Following the screening process, the returnees are then either transported to their “respective areas of origin or preference” or are provided an additional allowance of between US \$5 and \$35 by UNHCR-Liberia staff to

³¹ LSL is a subsidiary of the German Technical Corporation (GTZ).

³² Press Release, LRRRC, Liberia: Repatriation from Ghana Gains Momentum, Aug. 18, 2008, *available at* <http://allafrica.com/stories/200808180168.html>.

³³ During the previous phase of voluntary repatriation, the Norwegian Refugee Council had managed the Transit Center. The transfer of day-to-day control to the LRRRC has been heralded as a milestone of the government’s increased capacity and competence to assist its citizens. Itoka Interview, *supra* note 20.

³⁴ All UNHCR-assisted returnees are issued VRFs in a registration process in the country of refuge prior to departure; this document allows these persons to avail themselves of UNHCR transit assistance. Itoka Interview, *supra* note 20. Many spontaneous (unassisted) returnees also acquire VRFs and use them as a form of identification when passing back into Liberia. This form of identification is useful because it proves that its holder is a Liberian, and returning Liberian citizens are allowed to bring back household goods, automobiles, and the like without paying any customs duties. (Many or most spontaneous refugees—unlike assisted refugees who fly home on UNMIL flights—are able to return with most of their material possessions in tow.) VRFs also expedite the process of applying for microgrant or employment referral assistance. *Id.*

³⁵ According to Itoka, returnees possessing VRFs are presumptively treated as Liberians. Where any question arises as to a person’s nationality, however (such as when the VRF has been lost), the BIN officer asks a series of questions about the returnee’s family background and hometown to discern whether he or she is truly Liberian, and may consult with UNHCR staff in the country in which the returnee had resided to see if he or she can be located in a database. When a government official is unable to confirm that an individual is Liberian, the returnee may be asked to secure a copy of his or her birth certificate from the Ministry of Health or to go to the BIN headquarters on Broad Street in Monrovia to file an appeal. (There is no Liberian national identification card.) Itoka Interview, *supra* note 20.

³⁶ MERICI, a Liberian NGO, is one of UNHCR’s official implementation partners. Itoka Interview, *supra* note 20.

³⁷ *Id.*; see also LRRRC, Voluntary Repatriation Update September 14, 2008, *available at* <http://www.lrrrc.org/doc/Voluntary%20Repatriation%20Update%20September%2010%202008.pdf>.

³⁸ Itoka interview, *supra* note 20.

purchase their own onward transportation.³⁹ Returnees who have had difficulty making contact with their relatives usually stay overnight at the Center, where accommodations are available for up to 150 persons, and are permitted to remain there for up to 72 hours.⁴⁰ The Niapele Project's Program Manager in Liberia, Henry Snyder, reports that "[t]here is no alternative accommodation arranged for returnees who do not have [a] home to return to at all" and that "plans . . . for shelter accommodation" are underway but not complete.⁴¹ However, at least one LRRRC press release reported that some returnees who overstayed at the Center were resettled by the UNHCR in collaboration with the LRRRC and LSL.⁴²

The LRRRC and UNHCR provide a basic reintegration assistance package to each returnee. First, before leaving Ghana, UNHCR provides a cash stipend of U.S. \$100 per adult and U.S. \$50 per child (under 18 years old) to each repatriating refugee. Upon arriving at the Transit/Reception Center in Liberia, returnees are given food and various basic "non-food items" (NFIs), which are funded by the UNHCR and distributed by LSL under LRRRC supervision.⁴³ In July 2008, mattresses were also distributed to a group of 53 returnees after they made a personal appeal to President Johnson-Sirleaf.⁴⁴

In an effort to encourage Liberian refugees to return home from abroad, the LRRRC has

³⁹ Press Release, LRRRC, Voluntary Repatriation Update 2008, Oct. 8, 2008, *available at* http://lrrrc.org/press.php?news_id=25; UNHCR, *More than 100,000 Liberians Repatriated with UNHCR Help*, *supra* note 6.

⁴⁰ Press Release, LRRRC, Voluntary Repatriation Update 2008, Oct. 8, 2008, *available at* http://lrrrc.org/press.php?news_id=25; Press Release, LRRRC, Transit Manager Explains Importance of Transit Center as More Liberian Refugees Return, Nov. 14, 2008, *available at* http://lrrrc.org/press.php?news_id=31&related=28.

⁴¹ Snyder Memorandum #2, *supra* note 6, ¶ 2.

⁴² Press Release, LRRRC, Liberia: Repatriation from Ghana Gains Momentum, Aug. 18, 2008, *available at* <http://allafrica.com/stories/200808180168.html>.

⁴³ Snyder Memorandum #1, *supra* note 6, ¶ 3. These NFIs were at first not provided upon resumption of the voluntary repatriation program in April 2008. This is because the \$100 stipend offered by the UNHCR—an increase from \$5 during the previous process of voluntary repatriation from 2004-07—had been meant to replace all forms of in-kind assistance. However, in June 2008, the distribution of NFIs resumed following a personal appeal by a group of returnees to the President of Liberia, who in turn requested the UNHCR to resume distribution. The UNHCR continues to maintain responsibility for acquiring and distributing the NFIs through its implementing partner, LSL. Itoka Interview, *supra* note 20.

⁴⁴ Briefing Notes, July 17, 2008, *available at* <http://www.lrrrc.org/doc/Briefing%20Notes.pdf>.

undertaken several kinds of outreach programs. Two travel-oriented programs include “GO AND TELL,” which sends LRRRC staff to Liberian refugee settlements in other countries to inform the refugees about developments back home, and “COME AND SEE,” a program that brings small groups of refugee leaders to Liberia for visits of up to ten days to “see for themselves” how the country is doing.⁴⁵ An LRRRC radio program called “Home Sweet Home” is broadcast throughout West Africa on Saturday mornings over a short-wave radio station (Star Radio) and features general news about events in Liberia as well as stories about specific repatriation and reintegration experiences.⁴⁶ A similar radio program, “Starting Over,” is broadcast on UNMIL Radio in both Liberia and countries of refuge.⁴⁷

The LRRRC reports periodically on its repatriation and resettlement activities to the International Contact Group on Liberia (ICGL). The ICGL’s members include UNMIL, the Economic Community on West African States (ECOWAS), the European Union (EU), the African Union (AU), the World Bank, and the governments of Ghana, Nigeria, the United States, United Kingdom, Spain, and Germany.⁴⁸

C. The Reintegration of Returnees

1. LRRRC

In addition to overseeing the process of repatriation, the LRRRC is also the lead authority within the Liberian government in charge of reintegration assistance for returnees once they are

⁴⁵ Dixon Barnes WINNE interview, *supra* note 24.

⁴⁶ Press Release, LRRRC, Voluntary Repatriation Update 2008, Oct. 8, 2008, *available at* http://lrrrc.org/press.php?news_id=25; *see also* Snyder Memorandum #2, *supra* note 6, ¶ 1.

⁴⁷ Dixon Barnes WINNE interview, *supra* note 24.

⁴⁸ Press Release, LRRRC, Liberia: Repatriation from Ghana Gains Momentum, Aug. 18, 2008, *available at* <http://allafrica.com/stories/200808180168.html>.

back in Liberia.⁴⁹ Given the scarcity of government resources, however, the LRRRC is heavily dependent on donor agencies for financial and logistical support.⁵⁰

Within the government, the LRRRC is tasked with monitoring and facilitating a kaleidoscope of various reintegration initiatives and aid programs sponsored by UNHCR, the U.N. Development Programme (UNDP), the World Food Programme (WFP), and a host of international NGOs.⁵¹ As part of this facilitative function, LRRRC convenes quarterly coordination meetings at which participants discuss how best to collaborate, align, and avoid duplication in their various efforts.⁵²

The LRRRC also provides various forms of direct assistance to returnees. The Executive Director has stated that the LRRRC works to “link[] [returnees] to available reintegration programmes throughout the country”⁵³ and also partners with NGOs to carry out discrete projects, such as “identify[ing] vacant land to be used as settlements for refugees, internally displaced persons, and other war-affected people in Liberia.”⁵⁴ However, Chara Itoka, a former Scott Family Liberia Fellow at the LRRRC, stresses that the LRRRC takes a “community-based approach” to reintegration activities, meaning that the government’s reintegration initiatives assist not only returnees, but also those who live in the same target community.⁵⁵

One of the LRRRC’s primary priorities has been to assist “vulnerable people,” including widows, single parent female-headed households, children, and disabled people. Within each

⁴⁹ Although “reintegration” is not one of the “R’s” in the LRRRC’s name—it was not one of the core purposes of the organization at the time of its foundation—LRRRC does work on reintegration activities. Itoka Interview, *supra* note 20. Itoka claims that “[the LRRRC] has more staff coverage of the country than the UNHCR,” oftentimes the “[LRRRC’s] reintegration officers have good relationships” with the leaders of each county, and the LRRRC sometimes leads the “coordination teams” that manage the reintegration activities in each county. *Id.*

⁵⁰ Snyder Memorandum #1, *supra* note 6, ¶ 1.

⁵¹ Sulaiman Momodu, *Back Home for Good*, UNMIL FOCUS, Mar.-May 2007, at 16, 17. For a list of NGOs, see *infra* note 108 and accompanying text.

⁵² Itoka Interview, *supra* note 20.

⁵³ Press Release, LRRRC Executive Director, Cllr. Wheatonia Y. Dixon Barnes’s Message to Liberian Refugees, Community Members and Liberians in the Diaspora, Oct. 20, 2008, http://lrrrc.org/press.php?news_id=30.

⁵⁴ Snyder Memorandum #1, *supra* note 6, ¶ 1.

⁵⁵ Itoka Interview, *supra* note 20.

group of UNHCR-assisted returning refugees, the LRRRC keeps track of how many “vulnerables” there are, and the LRRRC makes an effort to ensure that those persons’ needs are satisfied first.⁵⁶ In 2008, the Ministry of Internal Affairs and the LRRRC wrote an \$8.1 million grant proposal to support vulnerable returnees, which was supposed to be presented at the Liberia Poverty Reduction Forum in Berlin, Germany, but according to Itoka, this proposal was unfortunately not presented.⁵⁷

The LRRRC has also made it a priority to assist returnees with finding employment, with a special focus on the problem of youth unemployment.⁵⁸ The LRRRC has established an Office of Employment Referral to “link[] returnees with available job opportunities at public and private institutions and scholarship donors.”⁵⁹ The LRRRC claims that it has helped to make available a variety of skills training programs for returnees, including “computer training, driver’s education, soap-making, animal rearing, masonry, carpentry, pastry, interior and exterior decoration, tailoring, hair dressing, and cosmetology,”⁶⁰ plumbing and electricity,⁶¹ and baking, sewing, and tie-dying.⁶² The LRRRC has also worked to place returnees with business knowledge into loan and grant schemes administered by the National Investment Commission (NIC) and other organizations.⁶³

The LRRRC is perhaps best known for maintaining a public database of returning

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Press Release, LRRRC, Liberia: Repatriation from Ghana Gains Momentum, Aug. 18, 2008, *available at* <http://allafrica.com/stories/200808180168.html>.

⁵⁹ Briefing Notes, July 17, 2008, *available at* <http://www.lrrrc.org/doc/Briefing%20Notes.pdf>.

⁶⁰ Press Release, LRRRC Executive Director, Cllr. Wheatonia Y. Dixon Barnes’s Message to Liberian Refugees, Community Members and Liberians in the Diaspora, Oct. 20, 2008, http://lrrrc.org/press.php?news_id=30.

⁶¹ Press Release, LRRRC, Reintegration: Returnee Comments on How Life Is Gradually Picking Up for Him, Oct. 14, 2008, *available at* http://lrrrc.org/press.php?news_id=29.

⁶² Appeal for Financial Support for the Liberia Reintegration Program, *available at* <http://www.lrrrc.org/doc/Donor%20Appeal%20for%20Website.pdf> (last visited Jan. 29, 2009) [hereinafter LRRRC Donor Appeal].

⁶³ Press Release, LRRRC Executive Director, Cllr. Wheatonia Y. Dixon Barnes’s Message to Liberian Refugees, Community Members and Liberians in the Diaspora, Oct. 20, 2008, http://lrrrc.org/press.php?news_id=30.

refugees processed through official points of entry.⁶⁴ Among other information, the database includes returnees' names, dates of birth, counties of origin, and skills or profession. This database is used by government ministries, UN agencies, and nongovernmental organizations for planning purposes.⁶⁵ The Ministry of Education has used the database to help recruit new teachers.⁶⁶ The LRRRC has also started a Refugee and Returnee Employment Referral Services (RRERS) program, which aims to link returnees up with various public- and private-sector jobs.⁶⁷ Many of those assisted through the program have been Liberians formerly living in Ghana.⁶⁸ As of December 2008, the database lists 6,784 individuals.

In addition to these initiatives, the LRRRC and the Liberian Ministry of Interior Affairs (MIA) have also developed preliminary plans for a supplemental “Liberia Reintegration Program,” which—resources permitting—would have several components, including:

- NFIs for returnees, including mattresses and household items;
- A program to construct 100 shelters for “extremely vulnerable returnees,” such as unaccompanied minors, widows, the disabled, elderly, and single mothers;
- An agriculture training program for 500 individuals and seed and tool donations to 500 other individuals;
- Skills training and small business starter kits for families;
- Employment referral services; and
- A microfinance grant/loan scheme.⁶⁹

Some of these components, such as the employment referral services and the NFI provisions, are already underway in limited form. Moreover, the microfinance scheme has recently begun with half-grant / half-loan awards worth \$200 each awarded to various small business owners returning from Ghana, including a pastry maker and a tailor, with some of the benefits provided

⁶⁴ See LRRRC, Returnees Data, Dec. 2008, available at <http://www.lrrrc.org/doc/Copy%20of%20DATA%20BASE%20edited-2008%20Dec.pdf>.

⁶⁵ Itoka Interview, *supra* note 20; Snyder Memorandum #2, *supra* note 6, ¶ 1.

⁶⁶ UNMIL, Liberia: UNMIL Humanitarian Situation Report No. 151, Aug. 11-24, 2008, available at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/LSGZ-7HVCQW?OpenDocument>; Itoka Interview, *supra* note 20.

⁶⁷ WINNE Profile, *supra* note 7.

⁶⁸ Itoka Interview, *supra* note 20.

⁶⁹ LRRRC Donor Appeal, *supra* note 62.

in in-kind form.⁷⁰ The LRRRC is currently trying to raise funds for this program through donor appeals.⁷¹

In general, the LRRRC seems to have garnered cautiously positive views among observers. Snyder noted that with the appointment of Cllr. Wheatonia Dixon Barnes as Executive Director of the LRRRC in March 2006, “there has been great improvement,” and he further observes that NGO and UN agencies have found the LRRRC database quite helpful for implementing various projects to assist war-affected people.⁷² Itoka echoed this conclusion; she acknowledged that the LRRRC was generally ineffective before 2006, but that the organization has greatly improved under its new leadership.⁷³ However, according to Snyder, “LRRRC does not have [the] logistics and man power to be more effective and efficient to cover the entire country in providing assistance to returnees.”⁷⁴ Thus, several commentators seemed to suggest that the largest problem with the LRRRC is its lack of resources rather than its organization, structure, or legal mandate.

2. Other Liberian Government Agencies

Over the past five years, the Liberian Government has undertaken several ambitious, comprehensive plans bearing on issues of social welfare, health, and economic development. An interim Poverty Reduction Strategy (iPRS) completed in December 2006, and a final Poverty Reduction Strategy (PRS, also known as “Lift Liberia”), which was introduced in August 2007 and made effective in July 2008, outline the government’s priorities for economic development for 2008-2011.⁷⁵ Given Liberia’s extraordinarily high rate of official unemployment—85

⁷⁰ Itoka Interview, *supra* note 20.

⁷¹ LRRRC Donor Appeal, *supra* note 62.

⁷² Snyder Memorandum #2, *supra* note 6, ¶ 1.

⁷³ Itoka Interview, *supra* note 20.

⁷⁴ Snyder Memorandum #2, *supra* note 6, ¶ 1.

⁷⁵ The PRS includes four “pillars”: Peace and Security, Economic Revitalization, Governance and the Rule of Law, and Infrastructure and Basic Services. UNHCR Liberia Appeal 2008, *supra* note 7, at 177; REPUBLIC OF

percent, according to one estimate—the leader of Liberia’s National Investment Commission has reported that “the essence of our poverty-reduction strategy . . . is job creation.”⁷⁶ Returnees, like all other Liberian citizens, stand to benefit from all development activities undertaken pursuant to the 2008-11 PRS.⁷⁷

A National Social Welfare Policy and Plan released in May 2008 aspires to “protect[] the rights of all vulnerable people, and empower[] them to obtain dignified living and participate fully in society through a cohesive social service delivery system.”⁷⁸ The Policy and Plan are “orient[ed] toward the equalization of opportunities, preventing discrimination, and promoting inclusion” and seek to “respond[] to the diverse needs of those whose marginalization, exclusion, and deprivation make them vulnerable to socioeconomic stressors and shocks and ultimately put them at-risk of destitution.”⁷⁹

The Liberian government also has a newly released National Health Policy and Plan coordinated by the Ministry of Health and Social Welfare (MOHSW) aimed at making Liberia “a model of post-conflict recovery in the health field.”⁸⁰ The Plan notes that “[t]he Ministry regards health as a basic human right, and as such has devoted itself to ensuring that every Liberian will have access to health and social welfare services regardless of economic status, origin, religion, gender or geographic location.”⁸¹ The Plan’s four components include: 1) delivering to

LIBERIA, INTERIM POVERTY REDUCTION STRATEGY (2006), available at <http://www.imf.org/external/pubs/ft/scr/2007/cr0760.pdf>; POVERTY REDUCTION STRATEGY, *supra* note 1.

⁷⁶ Stearns, *supra* note 11.

⁷⁷ Itoka Interview, *supra* note 20.

⁷⁸ NATIONAL SOCIAL WELFARE POLICY, *supra* note 3, at 2.

⁷⁹ *Id.*

⁸⁰ Executive Summary, National Health Plan 2007-2011, at 1, in NATIONAL HEALTH PLAN, available at http://www.liberiamohsw.org/Reports_and_Publications_files/National%20Health%20Policy%20and%20Plan%20-%2015MAY.pdf [hereinafter NATIONAL HEALTH PLAN]; see also Brochure, The National Health Plan of Liberia (2007-2011), available at http://www.liberiamohsw.org/Reports_and_Publications_files/National_Health_Plan_brochure_Jun_5_2008.pdf. An event to publicize the plan in the United States was held on October 23, 2007 at New York University; see <http://www.nyu.edu/public.affairs/releases/detail/1806>.

⁸¹ Executive Summary, National Health Policy—2007, at 1, in NATIONAL HEALTH POLICY, available at http://www.liberiamohsw.org/Reports_and_Publications_files/National%20Health%20Policy%20and%20Plan%20-

all Liberian citizens a “standard set of prevention, care and treatment services” known as the “Basic Package of Health Services” (BPHS);⁸² 2) strengthening the human resources of the health care field through better recruitment, planning, and management; 3) developing the health care infrastructure by building new health facilities and rehabilitating existing ones;⁸³ and 4) empowering County Health Teams to implement the Plan within each county and tasking them with developing and maintaining the support systems necessary for effective health care delivery.⁸⁴ The BPHS, the “cornerstone” of the whole strategy, is targeted to be implemented in at least 70% of Liberia’s health care facilities by the end of 2008.⁸⁵

The Government of Liberia has also declared that it will “strive to progressively increase its health spending” as a share of the national budget each year until it can reach the Abuja (pan-African) target of 15% of the national budget.⁸⁶ However, even factoring in this increase, the Liberian government’s health budget is still forecast to fall well short of the Millennium Development Goals’ recommended investment level of at least U.S. \$34 per capita annually.⁸⁷ Compounding the difficulty is the fact that as the situation in the country has stabilized,

%2015MAY.pdf [hereinafter NATIONAL HEALTH POLICY]; *see also* NATIONAL HEALTH PLAN, *supra* note 80, at 4 (“Access to health care is a basic human right as enshrined in the Constitution. Health is a precondition for individual and societal development. Recognizing the value of health care, the Government of Liberia is committed to invest adequate resources, capacity, and political capital in health sector development.”).

⁸² Executive Summary, National Health Policy—2007, at 2, *in* NATIONAL HEALTH POLICY, *supra* note 81; *see also* “Basic Package of Health Services,” NATIONAL HEALTH PLAN, at 6-9, *supra* note 80.

⁸³ “The Infrastructure Development component will improve geographic access to the BPHS. We are upgrading selected health facilities and planning longer-term major rehabilitation and new construction for those communities that need it. The health system includes 538 health facilities. Of those, 448 are functioning, but at a minimal or substandard level, e.g., 79% of functioning facilities lack lighting, 57% have no portable water supply, and 36% lack refrigeration for EPI service” (emphasis omitted). Brochure, The National Health Plan of Liberia (2007-2011), Dec. 24, 2007, <http://www.moh.gov.lr/doc/MOHSW%20Brochure.pdf>.

⁸⁴ Executive Summary, National Health Plan, 2007-2011, at 1, *in* NATIONAL HEALTH POLICY, *supra* note 81.

⁸⁵ The BPHS is oriented toward promoting six major health priorities: “maternal and newborn care, child health, reproductive and adolescent health, communicable disease control (including HIV and AIDS), mental health, and emergency care.” The BPHS is provided without cost. The government has a goal that 70% of health facilities in each county of Liberia be providing the BPHS by December 2010. *See* POVERTY REDUCTION STRATEGY ¶ 9.8.48 (2007), *supra* note 1; Executive Summary, National Health Plan, 2007-2011, at 1, *in* NATIONAL HEALTH POLICY, *supra* note 81.

⁸⁶ Policy Implementation, *in* NATIONAL HEALTH POLICY, at 26, *supra* note 81.

⁸⁷ Executive Summary, National Health Plan, 2007-2011, at 1, *in* NATIONAL HEALTH POLICY, *supra* note 81.

emergency assistance funding from humanitarian relief agencies and international NGOs has been drying up, even before development aid has started flowing, creating a gap that has “the potential to disrupt health care provision.”⁸⁸

3. UNHCR

According to Henry Snyder, the UNHCR remains “the biggest presence at the field level” among organizations working on reintegration activities in Liberia.⁸⁹ The UNHCR—represented in Liberia by 187 staff in six offices (as of early 2008) and led by Renata Dubini, the UNHCR Country Representative—is tasked with achieving the local integration of Sierra Leonean refugees; the care and maintenance of Ivorian refugees; and the repatriation and reintegration of Liberian IDPs and returnees.⁹⁰ The UNHCR has focused its attention on those “sectors where gaps have been identified” as determined by Liberia’s poverty reduction plans (i.e., the iPRS and the PRS) and the U.N. Development Assistance Framework, including ensuring that returns are “sustainable” by achieving the “restoration of basic services in health, education, water, and sanitation.”⁹¹ In particular, the UNHCR supports almost fifty health care facilities, and over the past three years has rehabilitated or built around 280 schools in areas of major population return.⁹² The UNHCR also supports weekly counseling/orientation sessions for recent returnees⁹³ and has carried out HIV awareness activities, employment referrals, and medical referrals.⁹⁴

However, UNHCR’s presence in Liberia has been steadily diminishing over the past year.

An anonymous LRRRC official observed that, in general, “as the Government of Liberia is

⁸⁸ Situation Analysis, *in* NATIONAL HEALTH POLICY, at 5, *supra* note 81.

⁸⁹ Snyder Memorandum #1, *supra* note 6, ¶ 2.

⁹⁰ U.N. Mission in Liberia (UNMIL), Press Kit, at 11 (2008), *available at* <http://unmil.org/documents/insideunmil/presskit2008.pdf> [hereinafter UNMIL Press Kit].

⁹¹ UNHCR Liberia Appeal 2008, *supra* note 7, at 180-81.

⁹² *Id.* at 181.

⁹³ Itoka Interview, *supra* note 20.

⁹⁴ *Id.*

stepping up, UNHCR is stepping down.”⁹⁵ Indeed, as of December 2008, UNHCR’s in-country staffing may have decreased to as few as six people.⁹⁶ Accordingly, UNHCR funding is scheduled to phase out during 2009 as the agency begins to focus its resources on current crisis areas such as Darfur and the Democratic Republic of Congo.⁹⁷

Several of the UNHCR’s past accomplishments in Liberia bear particular mention. The UNHCR closed 35 IDP camps in the country after resettling the camps’ 325,000 residents in 2006,⁹⁸ and the UNHCR built shelters for vulnerable returnees and former IDPs in Bomi, Lofa, Grand Cape Mount, and Bong counties.⁹⁹ The UNHCR has been particularly active in Lofa County, where over 62,000 refugees returned during the voluntary repatriation program.¹⁰⁰ The UNHCR’s partners in reintegration programming include, among others, the Norwegian Refugee Council (water and sanitation, shelter, returnee monitoring); Africa Humanitarian Action (health services); and Peace Winds Japan (shelter, water and sanitation, infrastructure rehabilitation).¹⁰¹

Since 2004, the UNHCR has implemented “Community Empowerment Projects” (CEPs) in which “communities identify [small-scale] projects in accordance with their needs,” which the UNHCR and its development partners then work to implement.¹⁰² A UNHCR release notes that the agency has “been repairing shelters, roads, wells, schools, and clinics,” as well as

⁹⁵ Interview with Anonymous LRRRC Official, *supra* note 35; *see also* WINNE Profile, *supra* note 7 (“As UNHCR’s activities in Liberia are scaling down, LRRRC is focusing on building its capacity to assume the duties and responsibilities of UNHCR as well as establish new programs to better meet the needs of refugees and returnees. The [LRRRC] is collaborating with UNHCR on the way forward in the assimilation of its duties and responsibilities in view of its pending exit strategy program.”).

⁹⁶ Interview with Anonymous LRRRC Official, *supra* note 35.

⁹⁷ *Id.*

⁹⁸ Momodu, *supra* note 51, at 16; LRRRC, Our Future, *available at* <http://lrrrc.org/content.php?sub=44&related=21> (last visited Jan. 26, 2009); *see also supra* note 6 and accompanying text.

⁹⁹ LRRRC Donor Appeal, *supra* note 62. The shelter program provides a two-room structure per family for vulnerable returnees. Momodu, *supra* note 51, at 17.

¹⁰⁰ UNMIL, Liberia: UNMIL Humanitarian Situation Report No. 110, June 25-July 1, 2007, *available at* <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-74QRSD?OpenDocument&query=lrrrc>.

¹⁰¹ Momodu, *supra* note 51, at 17.

¹⁰² *Id.*; *see also* Snyder Memorandum #1, *supra* note 6, ¶ 2.

administering skills training programs¹⁰³ and providing farmers with tools and seeds.¹⁰⁴ The UNHCR also established a \$30,000 grant scheme for returnees, with grants ranging from \$100 to \$500 for successful candidates.¹⁰⁵ Finally, it supported the Liberian Government's "Accelerated Learning Programme," which condensed six years of primary school into an intensive, three-year program in order to help students who had fallen behind on their schooling during the years of conflict.¹⁰⁶

Even as the UNHCR winds down its operations in Liberia, the UN Peacebuilding Fund, launched in 2007, may provide an independent source of funds for future shelter-building and employment efforts. The LRRRC has been working with the MIA and the United Nations Human Settlements Programme (UN-HABITAT) to put together grant proposals for this scheme.¹⁰⁷

Likewise, the UNHCR has begun a new microloan program (to replace its previous grant program) for 2008-09, which operates on a traditional microfinance model; groups of at least five borrowers with similar business objectives mutually guarantee one another's loans and receive a loan of between U.S. \$100 and \$500, payable in several disbursements. UNHCR and LRRRC field staff are assigned to monitor the groups and report on their progress.

A variety of organizations work as implementing partners alongside the UNHCR in Liberia, including Africa Concern International, Africa Humanitarian Action, American Refugee Committee, Christian Children's Fund, Cooperative Development Agency, Deutsche Gesellschaft für Technische Zusammenarbeit, International Alert, International Medical Corp,

¹⁰³ *Relaunched Liberian Repatriation Operation Gains Momentum*, RELIEFWEB, May 26, 2008, <http://www.reliefweb.int/rw/RWB.NSF/db900SID/EGUA-7F2NDN?OpenDocument>.

¹⁰⁴ Momodu, *supra* note 51, at 17.

¹⁰⁵ LRRRC Donor Appeal, *supra* note 62.

¹⁰⁶ Momodu, *supra* note 51, at 17.

¹⁰⁷ Itoka Interview, *supra* note 20.

Liberia National Red Cross Society, Liberia Opportunities Industrialization Centre, Medical Emergency Relief Cooperative International (MERCIC), Norwegian Refugee Council, Peace Winds Japan, Special Emergency Assistance to Restore Children Hope, and ZOA Refugee Care.¹⁰⁸

4. UNMIL and Other UN Agencies

The United Nations maintains a large and active presence in the country through UNMIL, which was established in October 2003 and is currently led by Ellen Margrethe Løj, the Special Representative of the Secretary-General and Coordinator of United Nations Operations in Liberia.¹⁰⁹ UNMIL includes a large military component of more than 12,000 troops engaged in security and disarmament, demobilization, and reintegration (DDR) activities as well as a civil component engaged in a variety of rule-of-law promotion, economic development, human rights, and other activities.¹¹⁰ In particular, the U.N. Security Council resolution establishing UNMIL provided for a Human Rights and Protection Section (HRPS) with a mandate to “contribute towards international efforts to protect and promote human rights in Liberia, with particular attention to vulnerable groups including refugees, returning refugees, and internally displaced persons, women, children, and demobilised child soldiers.”¹¹¹ The United Nations has also authored a Development Assistance Framework for 2008-12 for Liberia that “sets out the specific areas of response of the United Nations to Liberia’s national recovery and development

¹⁰⁸ UNHCR Liberia Appeal 2008, *supra* note 7, at 181.

¹⁰⁹ UNMIL was established pursuant to U.N. Security Council Resolution 1509 of September 19, 2003. *See* S.C. Res. 1509, U.N. Doc. S/RES/1509 (Sept. 19, 2003).

¹¹⁰ For a general introduction to the work and mission of UNMIL, see UNMIL Press Kit, *supra* note 90. The Liberian Government also has a National Commission for Disarmament, Demobilization, Rehabilitation, and Reintegration (NCDDRR). *See* NATIONAL SOCIAL WELFARE POLICY, *supra* note 3, at 6.

¹¹¹ UNMIL, Human Rights Protection, <http://unmil.org/content.asp?ccat=humanrights> (last visited Jan. 26, 2009); *see also* S.C. Res. 1509, ¶ 3, U.N. Doc. S/RES/1509 (Sept. 19, 2003). The most recent UNMIL HRPS report, covering the period November 2007 to June 2008, is available on ReliefWeb at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-7LZR4S?OpenDocument&rc=1&cc=lbr>.

challenges.”¹¹²

Following a formal extension of UNMIL’s mandate authorized by the Security Council in 2007, UNMIL determined that one of its priority tasks would be to “facilitate the completion of the return and resettlement of refugees and internally displaced persons.”¹¹³ However, as of late 2008, UNMIL has begun a drawdown process whereby various battalions are slowly withdrawing and returning to their home countries. A further Security Council resolution in September 2008 concluded that “Liberia continues to constitute a threat to international peace and security in the region” and further extended UNMIL’s mandate.¹¹⁴

5. Challenges of Reintegration

Liberian returnees continue to face many challenges in the reintegration process. Henry Snyder reports that the four most important issues facing returning refugees are housing, reclamation of property, employment, and education.¹¹⁵ The 2008 Report of the U.N. Secretary-General identified “high unemployment and rising food and fuel prices” as two key challenges facing returnees, and stated that the Liberian government and the United Nations would continue to look for ways of helping returnees grow food and gain training in income-generating activities.¹¹⁶

Two of these challenges—property disputes and unemployment—seem to pose the greatest risks for systemic social instability and even possible violence. Property disputes in Montserrado, Margibi, Maryland, Bong, Nimba, and Grand Bassa counties have led to tribal

¹¹² UNITED NATIONS DEVELOPMENT ASSISTANCE FRAMEWORK FOR LIBERIA 2008-2012: CONSOLIDATING PEACE AND NATIONAL RECOVERY FOR SUSTAINABLE DEVELOPMENT 5 (May 2007), available at <http://www.undg.org/docs/9360/UNDAF-Liberia-2008-2012.pdf>. This Development Assistance Framework replaced the earlier 2003-2005 framework. See UNITED NATIONS DEVELOPMENT ASSISTANCE FRAMEWORK FOR LIBERIA 2003-2005, available at http://www.undg.org/archive_docs/3135-Liberia_-_UNDAF__2003-2005_.doc.

¹¹³ UNMIL Press Kit, *supra* note 90, at 6; see also S.C. Res. 1777, U.N. Doc. S/RES/1777 (Sept. 20, 2007).

¹¹⁴ S.C. Res. 1836, U.N. Doc. S/RES/1836 (Sept. 29, 2008).

¹¹⁵ Snyder Memorandum #1, *supra* note 6, ¶ 4.

¹¹⁶ REPORT OF THE SECRETARY-GENERAL 2008, *supra* note 6, ¶ 11.

fighting in which many have died.¹¹⁷ The Liberian government acknowledges in its PRS that “a proliferation of land disputes over tenure and ownership” has resulted in a “manifestation of conflict over identity and citizenship issues.”¹¹⁸

Unemployment is a serious problem, particularly among unskilled and poorly educated youths.¹¹⁹ Snyder states that as many as 80% of the working-age population in Liberia is unemployed.¹²⁰ Compounding the problem of lack of opportunity in rural parts of the country is that “many qualified and experienced teachers and health workers are not willing to [serve]” in those areas.¹²¹ “Right-sizing” among government agencies has also exacerbated the unemployment problem, even as these staff cuts have arguably made government less corrupt and more efficient.¹²²

Insofar as returnees are particularly affected, Snyder considers that these shortcomings stem from the larger problem of a general lack of “further assistance to returnees after they have left the transit center.” The Liberian government, he says, should be doing more to help returnees establish livelihoods through “income generation, micro loan or grant[s], food security, skills training,” and by providing “seeds and tools and other farming implements.”¹²³

Indeed, a severe shortage of human and financial resources and infrastructure persists. The UNHCR Global Appeal for 2008 reports that there are still major needs in the country for “basic educational facilities and health care, safe drinking water, sanitation, shelter, roads and

¹¹⁷ Snyder Memorandum #1, *supra* note 6, ¶ 4; *see also* INT’L CRISIS GROUP, LIBERIA AND SIERRA LEONE: REBUILDING FAILED STATES 24-25 (Crisis Group Africa Report No. 87, Dec. 8, 2004), *available at* <http://www.crisisgroup.org/home/index.cfm?id=3156> (discussing interethnic conflict in the property reclamation context).

¹¹⁸ POVERTY REDUCTION STRATEGY, annex 2, ¶ 6, *supra* note 1.

¹¹⁹ *See id.* (“Young men and women have been denied education, have had their transition from childhood to adulthood interrupted by war, have few skills and are often burdened with many of the responsibilities of adults, particularly as heads of households and income earners. Unmet expectations with this group could trigger significant social unrest, not only in Liberia, but across the region.”).

¹²⁰ Snyder Memorandum #1, *supra* note 6, ¶ 5.

¹²¹ *Id.* ¶ 4.

¹²² *Id.* ¶ 5.

¹²³ Snyder Memorandum #2, *supra* note 6, ¶ 2.

bridges; and employment opportunities in areas where returnees and former IDPs are settled.”¹²⁴

Among other shortcomings, Liberia’s efforts to implement a free and compulsory primary education system have been stalled by a lack of human and financial capital.¹²⁵

The shortfall of resources for returnee reintegration in Liberia is linked to the country’s overall problem of underdevelopment and economic deterioration during the civil war. Between 1980 and 2005, per capita gross domestic product in Liberia fell from US \$1,269 to U.S. \$163, an 87% decline. It is estimated that three-quarters of the Liberian population lives on less than U.S. \$1 per day, with the southeastern region of the country lagging furthest behind in economic development.¹²⁶ Even in the largest areas of the capital, Monrovia, power and water services were only restored in full in July 2006 after fifteen years of no utility service.¹²⁷ As the government’s National Health Plan concluded: “Almost without exception Liberians are far worse off today than they were twenty five years ago.”¹²⁸ Liberia also has a huge external debt burden, estimated at U.S. \$3.7 billion as of mid-2005, equivalent to 800% of GDP.¹²⁹

III. RIGHTS UNDER LIBERIAN LAW

A. Constitutional Law

All Liberian citizens have rights under the Liberian Constitution. The current Constitution was written in 1983, was approved by referendum in 1984, and entered into force in 1986.¹³⁰

¹²⁴ UNHCR Liberia Appeal 2008, *supra* note 7, at 179.

¹²⁵ Press Release, LRRRC Executive Director, Cllr. Wheatonia Y. Dixon Barnes’s Message to Liberian Refugees, Community Members and Liberians in the Diaspora, Oct. 20, 2008, http://lrrrc.org/press.php?news_id=30.

¹²⁶ Situation Analysis, *in* NATIONAL HEALTH PLAN, at 3, *supra* note 80.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *See* Constitution of the Republic of Liberia (1986): Introduction, <http://www.liberianlegal.com/constitution1986.htm> (last visited Jan. 26, 2009). “The Liberia 1986 Constitution replaced the Liberia 1847

Chapter II of the Constitution, “General Principles of National Policy” (arts. 4-10), provides that the pursuit of certain economic and social rights should be “fundamental in the governance of the Republic and shall serve as guidelines in the formulation of legislative, executive and administrative directives, policy-making and their execution.”¹³¹ Among them are:

- the “encouragement of all citizens to participate in government” (art. 5(a));
- “equal access to educational opportunities and facilities for all citizens to the extent of available resources,” with an emphasis on promoting literacy (art. 6);
- the administration of the country’s natural resources “in such manner as shall encourage the maximum feasible participation of Liberian citizens under conditions of equality” (art. 7); and
- the non-discriminatory promotion for “all citizens” of “opportunities for employment and livelihood under just and humane conditions” (art. 8).

Chapter III of the Constitution, “Fundamental Rights” (arts. 11-26), sets out the fundamental rights that the Liberian government owes its citizens. Among the provisions relevant to the constitutional rights of returning refugees and IDPs are the following:

- **rights of life, liberty, and property:** “All persons are born equally free and independent and have certain natural, inherent and inalienable rights, among which are the right of enjoying and defending life and liberty, *of pursuing and maintaining the security of the person* and of acquiring, possessing and protecting property, subject to such qualifications as provided for in this Constitution” (art. 11(a)) (emphasis added);

Constitution which was suspended on April 12, 1980, following the coup d’état which overthrew the presidency of H. E. William R. Tolbert, Jr. The process of writing a new constitution began on April 12, 1981, when Dr. Amos Sawyer, a political scientist at the University of Liberia, was appointed chairman of the National Constitution Committee (NCC), the 25-member body that was given the responsibility of drafting a new constitution for Liberia. The NCC completed its work in December 1982, and submitted the draft constitution to the People’s Redemption Council (PRC) in March 1983; subsequently, the PRC published the draft Constitution for public debate. The PRC also appointed a 59-member Constitutional Advisory Committee (CAA) to review the draft constitution. The CAA completed its work on October 19, 1983. On July 3, 1984, the new constitution was submitted to a national referendum and approved. On January 6, 1986 the Constitution came into force.” *Id.* The country’s previous constitution, which entered into force in 1847, was suspended in a 1980 military coup. *See* LIBERIA CONST. (1847), available at http://onliberia.org/con_1847.htm.

¹³¹ LIBERIA CONST. (1986), art. 4 (introducing the general principles of national policy set out in arts. 5-10).

- **non-discrimination in application of rights:** “All persons, irrespective of ethnic background, race, sex, creed, place of origin or political opinion, are entitled to the fundamental rights and freedoms of the individual, subject to such qualifications as provided for in this Constitution” (art. 11(b));
- **equal protection:** “All persons are equal before the law and are therefore entitled to the equal protection of the law” (art. 11(c));
- **freedom of movement:** “Every person lawfully within the Republic shall have the right to move freely throughout Liberia, to reside in any part thereof and to leave therefrom subject however to the safeguarding of public security, public order, public health or morals or the rights and freedoms of others” (art. 13(a));
- **equal opportunity for work:** “All Liberian citizens shall have equal opportunity for work and employment regardless of sex, creed, religion, ethnic background, place of origin or political affiliation, and all shall be entitled to equal pay for equal work” (art. 18);
- **due process of law:** “No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law” (art. 20(a));
- **right of appeal:** “The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. The Legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal” (art. 20(b));
- **right to own property:** “Every person shall have the right to own property alone as well as in association with others; provided that only Liberian citizens shall have the right to own real property within the Republic” (art. 22(a)); and
- **right to control over pre-marital property:** “The property which a person possesses at the time of marriage or which may afterwards be acquired as a result of one's own labors shall not be held for or otherwise applied to the liquidation of the debts or other obligations of the spouse, whether contracted before or after marriage; nor shall the property which by law is to be secured to a man or a woman be alienated or be controlled by that person's spouse save by free and voluntary consent” (art. 23(a)).

B. Statutory Law

Liberia’s Refugee Act of 1993 is the country’s primary statutory authority with respect to refugee issues.¹³² Most notably, the Refugee Act creates the Liberian Refugee Repatriation and Resettlement Commission (LRRRC); defines the category of persons entitled to “refugee” status

¹³² Refugee Act of 1993, *supra* note 25. The Act was drafted by the Liberian Ministry of Foreign Affairs with UNHCR assistance. *See* Dixon Barnes WINNE Interview, *supra* note 24.

as a matter of domestic law; makes provision for the registration, detention, and expulsion of refugees; and codifies Liberia's international obligations under three international law instruments¹³³—the 1951 United Nations Convention Relating to the Status on Refugees (Geneva Refugee Convention),¹³⁴ the 1967 United Nations Protocol Relating to the Status of Refugees (Refugee Protocol),¹³⁵ and the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention).¹³⁶

The Refugee Act also provides a number of conditions under which a person can lose refugee status. Most notably for the purposes of Liberian refugees returning from Ghana:

A person shall cease to be a refugee for the purposes of th[e] Act if . . . he voluntarily re-establishes himself in the country which he left, of outside which he remained owing to a reason referred to in paragraph (c) of subsection (1), as the case may be[.]¹³⁷

¹³³ The preamble of the Refugee Act provides, in pertinent part:

WHEREAS, the Republic of Liberia is party to the Convention relating to the Status of Refugees, done at Geneva on the 28th of July, 1951; the Protocol thereto of the 31st of January 1967; and the Convention Governing the Specific Aspects of Refugee Problems in Africa, done at Addis Ababa on the 10th of September, 1969; and WHEREAS, the Republic of Liberia is desirous to have the said Conventions apply as though they were part of the Laws of the Republic of Liberia . . .

Refugee Act of 1993, *supra* note 25, pmbl.

Section 12 of the Act further provides:

(1) Subject to the provisions of this Act, every recognized refugee and every protected person within Liberia:

- (a) shall be entitled to the rights and be subject to the duties contained in
 - (i) the Articles of the Convention Relating to the Status of Refugees of the 28th July, 1951, which are set out in Part of the schedule; and
 - (ii) the Articles of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of the 10th September, 1969 which are set out in Part II of the Schedule; as if the references therein to refugees were references to recognized refugees and protected persons; and
- (b) shall be subject to all compatible laws in force within Liberia.

Refugee Act of 1993, *supra* note 25, § 12.

¹³⁴ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150, *entered into force* April 22, 1954, *acceded to by Liberia* Oct. 15, 1964, *available at* <http://www1.umn.edu/humanrts/instree/v1crs.htm> [hereinafter Geneva Refugee Convention].

¹³⁵ Protocol to the Convention Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267, *entered into force* Oct. 4, 1967, *acceded to by Liberia* Feb. 27, 1980, *available at* <http://www1.umn.edu/humanrts/instree/v2prsr.htm>.

¹³⁶ Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S. 45, *entered into force* June 20, 1974, *ratified by Liberia* Oct. 1, 1971, *available at* <http://www1.umn.edu/humanrts/instree/z2arcon.htm> [hereinafter OAU Refugee Convention].

¹³⁷ Refugee Act of 1993, *supra* note 25, § 3(5)(d).

The aforementioned paragraph (c) of subsection (1) defines as a refugee any person who:

owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, . . . is compelled to leave his place of habitual residence in order to seek refuge in another Place outside his country of origin or nationality.¹³⁸

Likewise, a person may lose refugee status if “he voluntarily re-avails himself of the protection of the country of his nationality”;¹³⁹ if “he . . . acquires the nationality of some other country and enjoys the protection of the country of his new nationality”;¹⁴⁰ or if he “continue[s] to refuse to avail himself of the Protection of his country of nationality” or “to refuse to return to the country of his former habitual residence” whenever “the circumstances in connection with which he was recognized as a refugee have ceased to exist.”¹⁴¹

The Refugee Act of 1993, however, does not create any specific duties on the part of the Liberian government to its own citizens living as refugees in asylum countries. Nor does the Act make express provision for the treatment or protection of internally displaced persons or repatriating Liberian citizens who have returned to Liberia. However, as noted above, the Act provides that protected persons within Liberia “shall be entitled to the rights and be subject to the duties contained in” the Geneva Refugee Convention and the OAU Refugee Convention.¹⁴² This provision incorporates Liberia’s international law obligations towards its returning citizens under the two treaties and renders them binding as a matter of domestic statutory law.

C. Peace Agreement

¹³⁸ *Id.* § 3(1)(c).

¹³⁹ *Id.* § 3(5)(a).

¹⁴⁰ *Id.* § 3(5)(c).

¹⁴¹ *Id.* § 3(5)(e)(i-ii).

¹⁴² Refugee Act of 1993, *supra* note 25, § 12(1)(a).

Finally, Liberia has certain legal obligations toward its own nationals living abroad as refugees and toward internally displaced Liberians stemming from the 2003 peace agreement signed in Accra, Ghana, which ended the Liberian civil war.¹⁴³ Article 30 of the agreement provides that the National Transitional Government of Liberia (NTGL) “shall design and implement a plan for the voluntary return and reintegration of Liberian refugees and internally displaced persons . . . in accordance with international conventions, norms and practices”¹⁴⁴ and that “[r]efugees or internally displaced persons, desirous of returning to their original Counties or permanent residences, shall be assisted to do so.”¹⁴⁵ The Transitional Government is also called upon to “request the International Community to assist in providing humanitarian assistance for those in need, including internally displaced persons, refugees and returnees.”¹⁴⁶

IV. INTERNATIONAL LEGAL FRAMEWORK FOR REFUGEES AND RETURNEES

A. Introduction

The international legal framework for refugees and returnees comprises a combination of legally binding treaties, UNHCR mandates, and guidelines that set the standards for UNHCR and state practices.

The relevant, legally binding treaty law includes the Geneva Refugee Convention,¹⁴⁷ the OAU Refugee Convention,¹⁴⁸ and a number of multilateral human rights treaties that Liberia has signed and ratified, including the International Covenant on Civil and Political Rights

¹⁴³ See Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties, Aug. 18, 2003, available at http://www.usip.org/library/pa/liberia/liberia_08182003_cpa.html.

¹⁴⁴ *Id.* art. 30(1)(a).

¹⁴⁵ *Id.* art. 30(1)(b).

¹⁴⁶ *Id.* art. 14.

¹⁴⁷ Geneva Refugee Convention, *supra* note 134.

¹⁴⁸ OAU Refugee Convention, *supra* note 136.

(ICCPR),¹⁴⁹ the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁵⁰ the Convention on the Rights of the Child (CRC),¹⁵¹ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁵² the Convention Against Discrimination in Education (CDE),¹⁵³ and the African Charter on Human and Peoples' Rights (African Charter).¹⁵⁴ The treaties' texts, which are supplemented by interpretations and commentaries set forth by relevant commissions, are largely complementary in nature and weave together a patchwork of various rights for refugees and returnees.¹⁵⁵

The Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR Statute),¹⁵⁶ subsequent mandates from the UN General Assembly, and Executive Committee Conclusions from the UNHCR's Executive Committee,¹⁵⁷ form the legal basis for the UNHCR's

¹⁴⁹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, *entered into force* Mar. 24, 1976, *ratified by Liberia on* Sept. 22, 2004, *available at* <http://www2.ohchr.org/english/law/ccpr.htm>.

¹⁵⁰ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, *ratified by Liberia on* Sept. 22, 2004, *available at* <http://www2.ohchr.org/english/law/cescr.htm>.

¹⁵¹ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, *entered into force* Feb. 9, 1990, *ratified by Liberia* June 4, 1993, *available at* <http://www2.ohchr.org/english/law/crc.htm>.

¹⁵² Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, *entered into force* Sept. 3, 1981, *accession by Liberia on* July 17, 1985, *available at* <http://www2.ohchr.org/english/law/cedaw.htm>.

¹⁵³ Convention Against Discrimination in Education, Dec. 14, 1960, 429 U.N.T.S. 93, *entered into force on* May 22, 1962, *ratified by Liberia on* May 17, 1962, *available at* <http://www2.ohchr.org/english/law/education.htm>.

¹⁵⁴ African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217, *entered into force* Nov. 21, 1986, *ratified by Liberia on* Aug. 4, 1982, *available at* <http://www1.umn.edu/humanrts/instree/z1afchar.htm> [hereinafter African Charter].

¹⁵⁵ The Universal Declaration of Human Rights, while not a treaty, is a strong normative instrument that also includes important rights for refugees and returnees. Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948), *available at* <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>.

¹⁵⁶ Statute of the Office of the United Nations High Commissioner for Refugees, G.A. Res. 428 (V), Annex, U.N. GAOR, 5th Sess., Supp. No. 20, UN Doc. A/1775 (1950), *available at* <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b66c39e1> [hereinafter UNHCR Statute].

¹⁵⁷ The UNHCR Executive Committee, a subsidiary of the UN Economic and Social Council, is the governing body of the UNHCR, and is comprised of states selected "on the basis of their demonstrated interest in and devotion to the solution of the refugee problem." UNHCR Statute, *supra* note 156, art. 4. Beyond providing the statutory framework and subsequent resolutions, the General Assembly has repeatedly directed the UNHCR to abide by the conclusions of the Executive Committee. MARJOLEINE ZIECK, UNHCR AND VOLUNTARY REPATRIATION OF REFUGEES: A LEGAL ANALYSIS 70 (1997). "The Executive Committee . . . Conclusions are intended to guide states in their treatment of refugees and asylum seekers and in their interpretation of existing international refugee law They are adopted by consensus by the Committee member states, broadly represent the views of the international community, and carry persuasive authority." HUMAN RIGHTS WATCH, *The Responsibility To Protect Returnees, in*

activities. An assortment of UNHCR guidelines also govern the UNHCR's activities and set forth standards for state action. The UNHCR has laid out the significance of these guidelines:

Guidelines are not mere suggestions that can be ignored when it is not convenient to follow them. Guidelines are tools for reaching policy objectives, so there must be good reasons for not following them in a specific situation. Sometimes you will find a statement that is more strongly worded than other guidelines. In such cases, that particular guideline is a set standard of practice that must be followed, except under the most extraordinary circumstances. Most of the Guidelines are also "universal"; they apply in an emergency situation as well as in on-going refugee assistance programmes, both in countries of asylum and in countries of return. For example, the importance of family tracing and reunification for an unaccompanied child does not cease the moment that child crosses the border to repatriate.¹⁵⁸

The obligations of both Liberia and the UNHCR should be interpreted in the light of international human rights treaties, which apply without distinction but which, in some cases, may hold particular relevance for returnees. Moreover, the obligations of the UNHCR should be interpreted in light of the handbooks, guidelines, and Executive Committee Conclusions relating to the protection and assistance of refugees and returnees. As Liberia is obligated under the OAU Refugee Convention to cooperate with the UNHCR,¹⁵⁹ and is obligated under the Geneva Refugee Convention to cooperate and facilitate the duties of the UNHCR,¹⁶⁰ its duties to its returnees should be interpreted in the light of these UNHCR guidelines as well. These provisions may apply as a matter of domestic Liberian law, as well as international law, as the Geneva Refugee Convention and the OAU Refugee Convention have been expressly incorporated

COMING HOME: RETURN AND REINTEGRATION IN ANGOLA (2005), available at <http://www.hrw.org/en/node/11814/section/4> [hereinafter HRW, *Responsibility To Protect*].

¹⁵⁸ UNHCR, REFUGEE CHILDREN: GUIDELINES ON PROTECTION AND CARE 13 (1994), available at <http://www.unhcr.org/refworld/docid/3ae6b3470.html>.

¹⁵⁹ OAU Refugee Convention, *supra* note 136, art. VIII(1) ("Member States shall co-operate with the Office of the United Nations High Commissioner for Refugees.").

¹⁶⁰ Geneva Refugee Convention, *supra* note 134, art. 35 ("The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees . . . in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.").

into Section 12 of the Refugee Act of 1993.¹⁶¹ The rights and corresponding duties of these provisions fall under at least three categories: those relating to return, reintegration, and non-discrimination in the provision of assistance. After briefly discussing the status of the refugees and returnees at Buduburam, this Section will discuss each in turn.

1. Status as Refugees

The Liberian residents of Buduburam may qualify as refugees under the OAU Refugee Convention, which defines a refugee in the following way:

The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.¹⁶²

Ghana conducts its own refugee status determination, one that ostensibly follows the definition above. The UNHCR, while facing the aspirational goal to provide protection to “all who need it,”¹⁶³ in practice only recognizes as refugees only those who have been determined to

¹⁶¹ Refugee Act of 1993, *supra* note 25, § 12. To the extent that reintegration is necessary to prevent recurring refugee flows, Liberia may also face an additional legal obligation for assisting its returnees. The obligation that states have to avoid damage to other states is reflected in treaties and in the resolutions of arbitrations. Moreover, as declared by one commentator, “[it] is in fact obvious—undeniable—that refugee flow imposes severe social and economic burdens on receiving states.” Jack I. Garvey, *The New Asylum Seekers: Addressing Their Origin, in* INTERNATIONAL REFUGEE LAW: A READER 303, 304 (B.S. Chimni ed., 2000).

¹⁶² OAU Refugee Convention, *supra* note 136, art. IA(2). Unlike the OAU Refugee Convention, the Geneva Refugee Convention does not include in its definition of a refugee individuals who fled from events seriously disturbing the public order, and it therefore probably does not apply to all residents of Buduburam. However, it may apply directly to a refugee in Buduburam who fled for reasons of persecution “for reasons of race, religion, nationality, membership of a particular social group or political opinion, [who] is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” Geneva Refugee Convention, *supra* note 134, art. 1(A)(2). The Geneva Refugee Convention does not explicitly offer protections for returnees.

¹⁶³ *See, e.g.*, Resolution Concerning the Office of the UN High Commissioner for Refugees, G.A. Res. 50/152, U.N. Doc. A/RES/50/152 (1995), available at <http://www1.umn.edu/humanrts/resolutions/50/152GA1995.html> [hereinafter G.A. Res. 50/152]

be refugees by Ghana.¹⁶⁴ Those residents of Buduburam who so qualify continue to fall under the mandate of the UNHCR.¹⁶⁵

For the purposes of international law and Liberia's efforts, however, those who qualify under the OAU definition should be considered refugees and accorded the appropriate protections. As noted by the late Ousmane Goundiam, former Director of the Legal Division of the UNHCR, "all persons finding themselves in the [definition of paragraph 2 of Article 1 of the OAU Refugee Convention] acquire ipso facto the status of refugee"¹⁶⁶

2. International Obligations Concerning the Protection and Assistance of Returnees

As the residents of Buduburam return to Liberia, they continue to fall under the protection of not only applicable human rights treaties, but also the OAU Refugee Convention and the UNHCR mandate. Article 5 of the OAU Refugee Convention places affirmative obligations on Liberia vis-à-vis returning refugees. It provides:

“Voluntary Repatriation

1. The essentially voluntary character of repatriation shall be respected in all cases, and no refugee shall be repatriated against his will.
2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.
3. The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.
4. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances

¹⁶⁴ Lowenstein Clinic Correspondence with Mr. Senai Terrefe, UNHCR Ghana, Apr. 7, 2009.

¹⁶⁵ Lowenstein Clinic Correspondence with Mr. Senai Terrefe, UNHCR Ghana, Jan. 27, 2009.

¹⁶⁶ IVOR C. JACKSON, *THE REFUGEE CONCEPT IN GROUP SITUATIONS* 192 (1999) (quoting a comment by Mr. Goundiam printed in *Migration News* in its March/April 1970 issue).

- prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.
5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations, to facilitate their return.”

While the UNHCR’s original mandate, set out in the UNHCR Statute, did not include assisting the reintegration of returnees, this is now a regular part of the agency’s work. Since 1973, the General Assembly and the UNHCR Executive Committee have repeatedly re-affirmed and broadened UNHCR’s functions to create an active role for UNHCR in the country of origin,¹⁶⁷ recognizing that the reintegration of returnees is necessary to the achievement of a durable solution for refugees. In addition, as we have noted above, Article 35 of the Geneva Refugee Convention provides that states parties “undertake to co-operate with the Office of the United Nations High Commissioner for Refugees . . . in the exercise of its functions,” which include the agency’s mandate to assist the return and reintegration of mandate refugees. This suggests that Liberia has a responsibility under the Geneva Refugee Convention to cooperate with the UNHCR and facilitate its assistance of returning Liberian citizens.

B. Returning

1. General Legal Obligations: Safety and Dignity

Article 5 of the OAU Refugee Convention requires that the country of asylum, in

¹⁶⁷ HRW, *Responsibility To Protect*, *supra* note 157; *see also* G.A. Res. 1672 (XVI) (Dec. 18, 1961); G.A. Res. 40/118 (Dec. 13, 1985); G.A. Res. 44/137 (Dec. 15, 1989); UNHCR Exec. Comm., 36th Sess., Conclusion on Voluntary Repatriation, para. (I), No. 40 (1985) (“The High Commissioner should be recognized as having a legitimate concern for the consequences of return, particularly where such return has been brought about as a result of an amnesty or other form of guarantee. The High Commissioner must be regarded as entitled to insist on his legitimate concern over the outcome of any return that he has assisted. Within the framework of close consultations with the State concerned, he should be given direct and unhindered access to returnees so that he is in a position to monitor fulfillment of the amnesties, guarantees or assurances on the basis of which the refugees have returned. This should be considered as inherent in his mandate.”).

collaboration with the country of origin, “make adequate arrangements for the safe return of refugees who request repatriation.” The African Charter guarantees refugees the right to return to their country of origin¹⁶⁸ and provides that “[e]very individual shall have the right to the respect of the dignity inherent in a human being.”¹⁶⁹ The UNHCR Handbook on Voluntary Repatriation and International Protection provides that the country of origin “should allow its nationals to return in safety and with dignity without any fear of harassment, discrimination, arbitrary detention, physical threat or prosecution on account of having left or remained outside the country, and should provide guarantees and/or amnesties to this effect.”¹⁷⁰

2. Transportation and Entry

The UNHCR is mandated to “[o]rganize, in cooperation with NGOs and other agencies, the transportation and reception of returnees, provided that such arrangements are necessary to protect their interests and well-being.”¹⁷¹ According to the UNHCR Voluntary Repatriation Handbook, in cases where the returnee does not have a UNHCR Voluntary Repatriation Form, the country of origin “should provide repatriating refugees with the necessary travel documents, entry permits, and any other documentation required for return.”¹⁷²

3. Possessions

The right to return with dignity includes the right of returnees to bring movable possessions with them.¹⁷³ The UNHCR Repatriation Handbook emphasizes that “[e]very possible effort should therefore be made to allow refugees to return without leaving their

¹⁶⁸ African Charter, *supra* note 154, art. 12.2.

¹⁶⁹ *Id.* art. 5.

¹⁷⁰ UNHCR, HANDBOOK: VOLUNTARY REPATRIATION AND INTERNATIONAL PROTECTION, § 2.6 (1996), *available at* <http://www.unhcr.org/publ/PUBL/3bfe68d32.pdf> [hereinafter UNHCR HANDBOOK ON VOLUNTARY REPATRIATION]. While the Handbook is not binding international law, its guidelines for the activities of UNHCR and national governments are based on international human rights law, international humanitarian law, and international refugee law. HUMAN RIGHTS WATCH, *supra* note 157, at n.11.

¹⁷¹ UNHCR HANDBOOK ON VOLUNTARY REPATRIATION, *supra* note 170, § 2.4.

¹⁷² *Id.* § 2.6.

¹⁷³ *Id.* § 2.4.

belongings behind. As a general principle, refugees should be allowed to take their personal property with them to their home country, subject to possible limitations with regard to a luggage entitlement, based on logistics constraints.”¹⁷⁴

4. Family Unity

The right to return with dignity also includes respect for family unity.¹⁷⁵ The ICESCR calls for “[t]he widest possible protection and assistance [to be] accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.”¹⁷⁶ Children are guaranteed a right to family unity, which is especially relevant to returnee children. Article 7 of the CRC, for example, provides that a child has the right to know and be cared for by his or her parents. A 2004 UNHCR Executive Committee Conclusion stressed the “importance of family unity during and following voluntary repatriation and call[ed] upon States, where necessary, to assist spouses and family members of different nationalities to remain together as families.”¹⁷⁷

5. Restoration of Rights as Nationals

The obligation of countries of origin to allow the returnees to repatriate with dignity includes “the full restoration of their rights” as nationals.¹⁷⁸ “Where refugees have lost their nationality, the country of origin should arrange for its restoration as well as for its granting to children born outside the territory and, as appropriate, to non-national spouses.”¹⁷⁹ The 2004 Executive Committee Conclusion also “[n]otes the importance of ensuring nationality; and urges

¹⁷⁴ *Id.* § 8.1.

¹⁷⁵ *Id.* § 2.4.

¹⁷⁶ International Covenant on Economic, Social and Cultural Rights, *supra* note 150, art. 10.

¹⁷⁷ UNHCR Exec. Comm., 55th Sess., Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, No. 101 (Oct. 8, 2004), *available at* <http://www.unhcr.org/refworld/docid/417527674.html>.

¹⁷⁸ UNHCR HANDBOOK ON VOLUNTARY REPATRIATION, *supra* note 170, § 2.4.

¹⁷⁹ *Id.*

countries of origin to ensure that there is no exclusion of returning refugees from nationality and that statelessness is thus avoided; and recalls in this context Conclusion No. 78 (XLVI) on the prevention and reduction of statelessness and the protection of stateless persons.”¹⁸⁰ These guidelines are reinforced by Article 16 of the ICCPR, which guarantees the right to be recognized everywhere as a person before the law, and Article 5 of the African Charter, which guarantees recognition of legal status to all individuals. Therefore, when returnees lose access to their personal papers and documentation, or have been unable to properly register a birth or a death, they may invoke their right to be recognized everywhere as a person before the law.¹⁸¹ In this vein, the 2004 Executive Committee Conclusion

[n]otes also the importance of providing under national law for the recognition of the civil status of returning refugees and changes thereto, including as a result of births, deaths, adoptions, marriage and divorce, as well as of documentation or registration proving that status, issued by the competent bodies in the country of asylum or elsewhere, taking into account the special situation of returning refugee women who may not have documentation proving their civil status or who may face difficulties securing recognition of documentation issued by the authorities of the country of asylum.¹⁸²

Furthermore, it “[c]alls on countries of origin and countries of habitual residence to accept back refugees who are non-nationals but have been habitually resident in that country, including those who were previously stateless there.”¹⁸³

Moreover, the UNHCR “encourages the international community at large to mobilize adequate and sustained support to countries of origin, particularly those emerging from conflict,

¹⁸⁰ UNHCR Exec. Comm., 55th Sess., Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, *supra* note 177, ¶ (t).

¹⁸¹ The Human Rights Committee has expressed concern over the large number of unregistered births to undocumented refugees in Ecuador, whose lack of documentation prevented their children from claiming Ecuadorian nationality. The Committee recommended the government adopt measures so that refugee babies automatically assume nationality in order to comply with Article 16. Human Rights Comm., Concluding Observations on the Fourth Periodic Report of Ecuador, *adopted on* July 27, 1998, U.N. Doc. A/53/40, para. 291; U.N. Doc. CCPR/C/79/Add.92.

¹⁸² UNHCR Exec. Comm., 55th Sess., Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, *supra* note 177, ¶ (l).

¹⁸³ *Id.* ¶ (m).

to assist them to restore national protection to, including respect for the human rights of, their citizens and former habitual residents, including returning refugees.”¹⁸⁴

C. Reintegration

1. Reintegration, Generally

As noted previously, the OAU Refugee Convention provides that repatriating refugees “shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations, to facilitate their return.”¹⁸⁵ More specifically, a country of origin has an obligation to “facilitate [the] resettlement” of returnees.¹⁸⁶ The UNHCR Voluntary Repatriation Handbook also calls on “[t]he country of origin [to] seek lasting solutions to refugee problems, inter alia by assuming responsibility for . . . the creation of conditions conducive to voluntary return and reintegration.”¹⁸⁷ It further notes that the country of origin “should provide full support to the efforts of UNHCR and other actors to the same end.”¹⁸⁸

Likewise, international law envisions that international actors, such as the UNHCR, will play an active role in facilitating the reintegration of returnees.¹⁸⁹ According to Executive Committee Conclusion No. 40 (1985):

International action to promote voluntary repatriation requires consideration of the situation within the country of origin as well as within the receiving country. Assistance for the reintegration of returnees provided by the international community in the country of origin is recognized as an important factor in promoting repatriation. To this end, UNHCR and other United Nations agencies as appropriate, should have funds readily available to assist returnees in the

¹⁸⁴ *Id.* ¶ (t).

¹⁸⁵ OAU Refugee Convention, *supra* note 136, art. 5(5).

¹⁸⁶ *Id.* art. 5(3).

¹⁸⁷ UNHCR HANDBOOK ON VOLUNTARY REPATRIATION, *supra* note 170, § 2.6.

¹⁸⁸ *Id.*

¹⁸⁹ *See, e.g.,* OAU Refugee Convention, *supra* note 136, art. 5(5).

various stages of their integration and rehabilitation in their country of origin.¹⁹⁰

The UNHCR should ensure that basic needs are met during an initial period of reintegration and beyond, including an assessment of access to health care, education, and other public services.¹⁹¹

Reintegration assistance should be aimed at “promoting self-reliance and reducing the need for continuing external support.”¹⁹² During the UNHCR’s Global Consultation Series, an

unprecedented gathering of 156 countries,¹⁹³ a consensus was reached that:

[r]eturnees generally require assistance to reintegrate through income-generating activities. UNHCR’s ability to provide income-generating opportunities is limited to assisting the most vulnerable returnees during an initial period after return (e.g. through skills training, micro-finance and credit programmes). Where the majority of returnees are rural, recovery of land or restitution of land rights (for cultivation or animal husbandry) are crucial to re-establishment of livelihoods after return. Smaller inputs, such as the distribution of seeds or tools, can be provided by UNHCR, while larger developmental schemes (e.g. the rehabilitation of irrigation systems) are the task of other actors. UNHCR may also facilitate, in negotiations with the country of origin, the re-instatement of civil servants, teachers, medical professionals and others into their former positions. Increased efforts are required to ensure that multilateral and bilateral development agendas are coordinated in such a way that the transition between relief, rehabilitation and development is effectively addressed to ensure the sustainability of return.¹⁹⁴

Reintegration assistance should take into account the relationship between returnees and the local community to which they have returned. For this reason, it should afford returnees not only material support and access to income generating activities, but also “a means of

¹⁹⁰ UNHCR Exec. Comm., 36th Sess., Conclusion on Voluntary Repatriation, ¶ (k), No. 40 (Oct. 18, 1985), available at <http://www.unhcr.org/refworld/docid/3ae68c9518.html>.

¹⁹¹ UNHCR, HANDBOOK FOR REPATRIATION AND REINTEGRATION ACTIVITIES (2004), available at <http://www.unhcr.org/refworld/docid/416bd1194.html>. See also UNHCR, Global Consultations on International Protection/Third Track: Voluntary Repatriation, April 25, 2002, EC/GC/02/5, ¶ 27, available at <http://www.unhcr.org/refworld/docid/3d62695d4.html> [hereinafter UNHCR, Global Consultations on Voluntary Repatriation] (noting that returnees “will usually need assistance in the form of material aid when they first reach their home region,” as well as “employment, a *minimum standard of living*, [and] access to education”).

¹⁹² UNHCR, Global Consultations on Voluntary Repatriation, *supra* note 191, ¶ 27.

¹⁹³ UNHCR, Global Consultations, An Agenda for Protection, <http://www.unhcr.org/global-consultations.html> (last visited Feb. 27, 2009).

¹⁹⁴ UNHCR, Global Consultations on Voluntary Repatriation, *supra* note 191, ¶ 27.

participating in the local community decision-making process.”¹⁹⁵ The needs of returnees should be measured against the condition of the national population; returnees should find themselves on an equal footing with the local population.¹⁹⁶ The UNHCR cautions that returnees should not be “granted undue benefits and privileges because of their previous conditions as refugees, thereby possibly causing resentment among other, less privileged community members.”¹⁹⁷

The UNHCR Executive Committee has subsequently reiterated the importance of providing assistance to returnees for reintegration purposes and affirmed the obligation of the UNHCR and other organizations to aid the host country in providing this assistance.¹⁹⁸

For return to be sustainable, promoting self-reliance and reducing the need for continuing external support is crucial. Returnees generally require assistance to reintegrate through income-generating activities. UNHCR’s ability to provide income-generating opportunities is limited to assisting the most vulnerable returnees during an initial period after return (e.g. through skills training, micro-finance and credit programmes). Where the majority of returnees are rural, recovery of land or restitution of land rights (for cultivation or animal husbandry) are crucial to re-establishment of livelihoods after return. Smaller inputs, such as the distribution of seeds or tools, can be provided by UNHCR, while larger developmental schemes (e.g. the rehabilitation of irrigation systems) are the task of other actors. UNHCR may also facilitate, in negotiations with the country of origin, the re-instatement of civil servants, teachers, medical professionals and others into their former positions. Increased efforts are required to ensure that multilateral and bilateral development agendas are coordinated in such a way that the transition between relief, rehabilitation and development is effectively addressed to ensure the sustainability of return.¹⁹⁹

2. Nutrition and Health

Basic food, water, and health services are requisites for protecting the safety of the returning population:

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ UNHCR HANDBOOK ON VOLUNTARY REPATRIATION, *supra* note 170, § 6.4.

¹⁹⁸ UNHCR Exec. Comm., 55th Sess., Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations, *supra* note 177, ¶ (v).

¹⁹⁹ UNHCR, Global Consultations on Voluntary Repatriation, *supra* note 191, ¶ 27.

Material safety implies notably access in the early phases of return to means of survival and basic services, such as potable water, health services and education, followed by measures to underpin sustainable reintegration. UNHCR thus aims to: (i) first increase the availability of basic services in situations where such services have collapsed, are of poor quality or are insufficient for large segments of the population, including returnees; (ii) ensure non-discriminatory access to available public utilities. . . .²⁰⁰

These basic services are guaranteed by various human rights treaties.

Article 4 of the ICCPR and Article 4 of the African Charter guarantee the right to life.

The Human Rights Committee has interpreted the former provision to require states to take positive measures to reduce infant mortality and to eliminate malnutrition and epidemics within refugee or IDP camps.²⁰¹ It logically applies to communities of returnees as well.

Both the African Charter and the ICESCR provide that individuals are entitled to enjoy the best attainable state of physical and mental health and that state parties must take the necessary measures achieve the realization of this right.²⁰² The ICESCR calls for states to take the specific steps of reducing infant mortality rates, and both the African Charter and ICESCR call for treating those who are sick.²⁰³ Article 11 of the ICESCR calls for state parties to take appropriate steps to ensure the realization of the right to “adequate standard of living . . . including adequate food, clothing and housing, and to the continuous improvement of living conditions.”²⁰⁴ Article 2 (1) of the ICESCR obligates each State party to take the necessary steps “to the maximum of its available resources.” The Committee on Economic, Social and Cultural

²⁰⁰ *Id.* ¶¶ 25-26.

²⁰¹ Human Rights Comm., General Comment No. 6, ¶ 6 (1982), *available at* <http://www1.umn.edu/humanrts/gencomm/hrcom6.htm>; *see also* Human Rights Comm., Concluding Observations on the Initial Report of Gabon, adopted on Nov. 6, 1996, U.N. Doc. A/52/40 at 25, para. 132 (expressing particular concern over the appalling conditions in refugee centers and detention camps, particularly those conditions that have caused refugees to die.)

²⁰² African Charter, *supra* note 154, art. 16; International Covenant on Economic, Social and Cultural Rights, *supra* note 150, art. 12.

²⁰³ African Charter, *supra* note 154, art. 16; International Covenant on Economic, Social and Cultural Rights, *supra* note 150, art. 12.

²⁰⁴ Article 25 of the Universal Declaration of Human Rights similarly recognizes the right to “food, clothing, housing and medical care and necessary social services.”

Rights, interpreting States' obligations under the Covenant, has declared that "[i]n order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."²⁰⁵

3. Right to Housing and the Right to Return Home

The OAU Refugee Convention obligation to facilitate the return and resettlement of returnees, read together with UNHCR reports and conclusions and international human rights instruments, includes the duty to realize returnees' right to adequate housing. The African Commission on Human and People's Rights—whose mandate, elaborated upon in Article 45 of the African Charter, includes interpreting principles and rules of the Charter—has found that a right to housing exists within the Charter's Article 5 guarantee of dignity.²⁰⁶ The African Commission has also determined that forced evictions violate the right to property guaranteed by Article 14 of the African Charter.²⁰⁷ Article 11 of the ICESCR calls for state parties to take appropriate steps to ensure the realization of the right to adequate housing, and the right to housing is recognized in the Universal Declaration of Human Rights.²⁰⁸ The Committee on Economic, Social and Cultural Rights has interpreted the right to housing as a "right to live somewhere in security, peace and dignity." In assessing the adequate nature of housing one can consider the availability of services (water, electricity), materials, and infrastructure (roads,

²⁰⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), ¶ 10, Dec. 14, 1990, U.N. Doc. E/1991/23, *available at* <http://www.unhcr.org/refworld/docid/4538838e10.html>.

²⁰⁶ John K. Modise v. Botswana, African Comm'n on Human and Peoples' Rights, Commc'n No. 97/93, ¶ 32 (1997), *available at* <http://hrlibrary.ngo.ru/africa/comcases/97-93b.html> (finding that placing stateless person on a specially created strip of border territory enforced homelessness and offended "the dignity of human beings and thus violates article 5").

²⁰⁷ Malawi African Ass'n & Others v. Mauritania, African Comm'n on Human and Peoples' Rights, Commc'n No. 54/91, ¶ 128 (1999), *available at* <http://www1.umn.edu/humanrts/africa/comcases/54-91.html>.

²⁰⁸ Universal Declaration of Human Rights, *supra* note 155, art. 25.

hospitals, etc.); affordability; habitability; accessibility (particularly to the disabled, to children, or to the elderly); location; and cultural adequacy.²⁰⁹

A report issued by the UNHCR Global Consultations emphasized the importance of adequate housing, as a right and a necessary component of a durable solution for returning refugees:

Experience has shown that voluntary repatriation operations are likely to be less successful if housing and property issues are left too long unattended, and particularly if refugees are not able to recover their houses and property in the country of origin. The right to return to one's own country²¹⁰ is increasingly seen as closely linked with the right to adequate housing.²¹¹ In this context, the right to adequate housing is understood to embrace the right not to be arbitrarily deprived of housing and property in the first place. For refugees this means they have the right to return not only to their countries of origin but also to recover the homes from which they were previously evicted (restitution). If this is not possible, the right to adequate compensation for any loss suffered should apply. In some situations, special efforts have been necessary to enable returning women to exercise property and inheritance rights. For sustainable return, it is also important that housing, property and land restitution issues are addressed at an early stage in the cycle of displacement and in a more systematic manner.²¹²

Similarly, the 2004 Executive Committee Conclusion “[e]ncourages countries of origin to provide homeless returning refugees, as appropriate, with access to land and/or adequate housing, comparable to local standards.”²¹³ The Global Consultations report placed additional emphasis on the desirability of refugees returning to their original communities and homes:

In UNHCR's experience, return to areas other than the refugee's place of origin or previous residence may impact adversely on the protection situation of the returnees themselves, that of others in the place of return and more generally on the processes of stabilization, reintegration, and reconciliation. From UNHCR's perspective, to internal displacement upon return should only be countenanced if

²⁰⁹ UNHCR, TRAINING MANUAL ON HUMAN RIGHTS REPORTING, ch. XI, ¶ 81 (2001), available at <http://www.unhcr.ch/html/menu6/2/training.htm> [hereinafter UNHCR TRAINING MANUAL].

²¹⁰ Universal Declaration of Human Rights *supra* note 155, art. 13(2); International Covenant on Civil and Political Rights, *supra* note 149, art. 12.

²¹¹ International Covenant on Economic, Social and Cultural Rights, *supra* note 150, art. 13(2).

²¹² UNHCR, Global Consultations on Voluntary Repatriation, *supra* note 191, ¶ 23.

²¹³ UNHCR Exec. Comm., 55th Sess., Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, *supra* note 177, ¶ (t).

relocation is based on a free and informed choice, is not the result of obstacles to return in the area of origin, proves viable and does not infringe the rights of others, including property rights.²¹⁴

There is also, however, a need to take into account the absorption capacity of the receiving location.²¹⁵ Premature returns to areas with little or no absorption capacity could lead to competition for scarce resources among returnees or between returnees and local communities.²¹⁶

4. Children and Education

Children often make up more than half of the returning population, and they are recognized as an especially vulnerable group in need of heightened protection. Children are likely to suffer more severe and permanent trauma than an adult would from the same event. Malnutrition and ill treatment may result in permanently stunted growth or mental development. Lost years of schooling may be difficult to make up, leading to fewer future opportunities. Furthermore, children may be less likely to protect themselves from violations of their rights by seeking protection when available. Their vulnerability grows when they are denied access to education or healthcare, when they are displaced, and when they lose family members.²¹⁷ Exhaustion and malnutrition can make children particularly vulnerable to illnesses such as cholera and malaria.²¹⁸ Unaccompanied minors often make up a large group of the returning population and are especially vulnerable and in need of protection.²¹⁹

Returning children are entitled to almost all of the same human rights accorded to adults,²²⁰ with some additional protections. Article 24 of the ICCPR guarantees the right of every child to receive protection from family, society, and the state. States must adopt special

²¹⁴ UNHCR, Global Consultations on Voluntary Repatriation, *supra* note 191, ¶¶ 25-26.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ UNHCR, REFUGEE CHILDREN: GUIDELINES ON PROTECTION AND CARE, *supra* note 158, preface.

²¹⁸ UNHCR TRAINING MANUAL, *supra* note 209, ch. XI, ¶ 143.

²¹⁹ *Id.* ch. XI, ¶ 143.

²²⁰ *Id.* ch. XI, ¶¶ 3-6.

measures to protect children in their territory and within their jurisdiction.²²¹ The Human Rights Committee’s General Comment No. 17 provides that pursuant to Article 24, states should take “every possible economic and social measure . . . to reduce infant mortality and to eradicate malnutrition among children.”²²² The ICESCR calls for “[s]pecial measures of protection and assistance [to] be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. . . . [and for] [c]hildren and young persons [to] be protected from economic and social exploitation.”²²³ Article 27 of the CRC provides that every child has the right “to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”²²⁴ State parties, “in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”²²⁵ The CRC requires that in all state action concerning children, “the best interests of the child shall be a primary consideration.”²²⁶ The UNHCR calls for putting in place systems of assessment to determine the needs of children for food, shelter, water, clothing, and sanitation.²²⁷ Minimum standards include 20 liters of potable water a day per person, 3.5 meters of space per person in a shelter, 30 meters of space per person in a settlement, and at least 1 latrine per 20 people.²²⁸

States of origin, with the assistance of international actors like the UNHCR, should also

²²¹ Human Rights Comm., General Comment No. 17, ¶ 1, *available at* <http://www1.umn.edu/humanrts/gencomm/hrcom17.htm> [hereinafter General Comment No. 17]. The Human Rights Committee has specified that these measures must be non-discriminatory, particularly as between children who are nationals and those who are aliens. *Id.* ¶ 5.

²²² *Id.* ¶ 3.

²²³ International Covenant on Economic, Social and Social Rights, *supra* note 150, art. 10.

²²⁴ Convention on the Rights of the Child, *supra* note 151, art. 27(1).

²²⁵ *Id.* art. 27(3).

²²⁶ *Id.* art. 3(1).

²²⁷ UNHCR, REFUGEE CHILDREN: GUIDELINES ON PROTECTION AND CARE, *supra* note 158, at 55.

²²⁸ *Id.* at 57. For more information regarding the protection of children, generally, see *id.*

take steps to ensure that returnees, and especially returnee children, are able to realize their right to education. “[R]eturnees . . . may find themselves excluded from education opportunities when they return home,” and “[e]ducation is particularly important for returnee children who will often have missed several years of formal and structured schooling.”²²⁹ The 2004 Executive Committee Conclusion calls for providing students and teachers with documentation before return, recognizing the equivalency of courses completed in the country of asylum, and promoting schooling in areas of return.²³⁰

The Human Rights Committee has called for children to be provided “a level of education that will enable them to enjoy the rights recognized in the [ICCPR], particularly the right to freedom of opinion and expression.”²³¹ The ICESCR also declares that education is a human right and calls for states to take the necessary steps to make primary education compulsory and free to all.²³² The CDA prohibits discrimination at all levels of education.²³³ The African Charter also provides for the right to an education.²³⁴

5. Women

Women may suffer disproportionately during periods of displacement and return.²³⁵ Women may not have equal access to food, water, and health care.²³⁶ The lack of adequate health care and basic goods generally has disparately negative effects on the physical well-being

²²⁹ UNHCR TRAINING MANUAL, *supra* note 209, ch. XI, ¶ 95.

²³⁰ UNHCR Exec. Comm., 55th Sess., Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, *supra* note 177, para. (o).

²³¹ General Comment No. 17, *supra* note 221, ¶ 3.

²³² International Covenant on Economic, Social and Social Rights, *supra* note 150, art. 13.

²³³ Convention Against Discrimination in Education, *supra* note 153.

²³⁴ African Charter, *supra* note 154, art. 17.

²³⁵ Judy El-Bushra & Kelly Fish, *Refugees and Internally Displaced Persons*, in INCLUSIVE SECURITY, SUSTAINABLE PEACE: A TOOLKIT FOR ADVOCACY AND ACTION, WOMEN WAGING PEACE (2004), at 1, 4, *available at* http://www.huntalternatives.org/download/40_refugees.pdf.

²³⁶ UNHCR, GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN ¶¶ 82, 91 (1991), *available at* <http://www.unhcr.org/refworld/docid/3ae6b3310.html>.

of women,²³⁷ which has the potential to affect the well-being of the whole family.²³⁸ In particular, the reproductive health of women and girls may go unattended without adequate health care infrastructure.²³⁹ During periods of conflict, refugee women and girls may suffer various forms of sexual violence that require specialized post-conflict treatment.²⁴⁰ Returnee women often face problems with regard to the inheritance of property. Where a woman is separated from her husband, she may be unable to inherit the family property that was registered in his name.²⁴¹

Article 15 of CEDAW provides that women are equal with men before the law and that, in particular, they shall be accorded “equal rights to conclude contracts and to administer property.”²⁴² Article 16(1)(h) of the Convention emphasizes the equal rights of husband and wife in owning, acquiring, managing, administering, enjoying, and disposing of property.²⁴³ The 2004 Executive Committee Conclusion “[s]tresses the desirability of ensuring that any restitution and compensation framework takes account of the situation of returning refugee women, in particular, where women, especially female heads of households, are prevented from securing property rights in accordance with inheritance laws or where inheritance procedures prevent them from recovering their property within a reasonable period of time.”²⁴⁴ The UNHCR also recognizes the need to protect women from sexual violence and violence generally.²⁴⁵ If abuse is discovered, women should have access to adequate medical care and be afforded protection

²³⁷ El-Bushra & Fish, *supra* note 235, at 1, 4.

²³⁸ UNHCR, GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN, *supra* note 236, ¶ 89.

²³⁹ El-Bushra & Fish, *supra* note 235, at 4 n.16.

²⁴⁰ *Id.* at 6.

²⁴¹ *Id.*

²⁴² Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 152, art. 15.

²⁴³ *Id.* art. 16(1)(h).

²⁴⁴ UNHCR Exec. Comm., 55th Sess., Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, *supra* note 177, ¶ (t).

²⁴⁵ UNHCR, GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN, *supra* note 236, ¶ 42. For more information regarding the protection of women, see generally *id.*

against subsequent assaults.²⁴⁶ It calls for especially vulnerable women, such as those who are adolescents, elderly, or unaccompanied, to be identified and provided special protection.²⁴⁷ The UNHCR has also recommended consulting with women to determine whether they have equal access to goods and services.²⁴⁸

Article 11 of CEDAW guarantees women equal rights with men in employment. These equal rights include the same employment opportunities, equal remuneration, and equal treatment in respect of work of equal value. The UNCHR Voluntary Repatriation Handbook also calls on the UNHCR to enlist women “in the planning and implementation of projects . . . that . . . are designed to aim at empowerment of women through specifically designed and targeted assistance, in particular, with a view to income generation.”²⁴⁹

D. Discrimination in Assistance

1. Spontaneous Returnees

A spontaneous returnee is a former refugee who does not participate in the UNHCR voluntary repatriation program, but returns home by his or her own devices. While spontaneous returnees may not possess the UNHCR-issued VRF, which can serve as an identity and travel document for re-entry, they should still be accorded entry, recognized as a national, and provided appropriate documentation.²⁵⁰

Article 5 of the OAU Refugee Convention explicitly calls for providing repatriation assistance to spontaneous refugees: “Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by

²⁴⁶ *Id.* ¶ 124. For more information on abuse, see *id.* ¶¶ 124-29.

²⁴⁷ *Id.* ¶ 46.

²⁴⁸ *Id.* ¶ 102.

²⁴⁹ UNHCR HANDBOOK ON VOLUNTARY REPATRIATION, *supra* note 170, § 6.4.

²⁵⁰ See *supra* Subsection IV.B.5, “Restoration of Rights as Nationals.”

the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations, to facilitate their return.” The UNHCR, in particular, is mandated to “[p]romote the voluntary repatriation of refugees once conditions are conducive to return,”²⁵¹ and to “[f]acilitate the voluntary return of refugees when it is taking place spontaneously, even if conditions are not conducive to return.”²⁵²

The UNHCR has made clear that spontaneous returnees and those who return with UNHCR assistance have similar needs and that discriminating between them is impermissible.²⁵³

It has explained:

In efforts to promote the reintegration process . . . reintegration activities [should not] differentiate between “assisted” and “spontaneous” returnees. Assistance should be provided wherever possible on a community-wide basis, while recognizing the importance of providing support to individuals, households and groups of people with special needs.²⁵⁴

Given the similar needs and histories of registered and non-registered returnees, discriminating between them on this characteristic likely violates the Equal Protection Clause of the Liberian Constitution,²⁵⁵ as well as the right to equal protection afforded by the ICCPR²⁵⁶ and the African Charter,²⁵⁷ both of which Liberia has ratified.

2. Returnees Not Previously Registered as Refugees

²⁵¹ *Id.* § 1.6.

²⁵² *Id.*

²⁵³ UNHCR Exec. Comm., 45th Sess., Conclusion on Internally Displaced Persons, para. (g)(7), No. 75 (Oct. 1994), available at <http://www.unhcr.org/refworld/docid/3ae68c434.html>; see also UNHCR, AGENDA FOR PROTECTION 77 (3d ed. 2003), available at <http://www.unhcr.org/refworld/docid/4714a1bf2.html>.

²⁵⁴ UNHCR, Policy Framework and Implementation Strategy: UNHCR’s Role in Support of the Return and Reintegration of Displaced Populations, Informal Consultative Meeting, Feb. 18, 2008, available at <http://www.unhcr.org/doclist/excom/45c88f562.html>.

²⁵⁵ LIBERIA CONST. art. 11(c).

²⁵⁶ International Covenant on Civil and Political Rights, *supra* note 149, art. 26. This protection is neither limited to ICCPR rights—see Human Rights Comm., General Comment No. 18, ¶ 12, available at <http://www1.umn.edu/humanrts/gencomm/hrcom18.htm> (interpreting the right to non-discrimination)—nor to nationals—see *Simunek et al. v. the Czech Republic*, Commc’n No. 516/1992, *views adopted on July 19, 1995*, U.N. GAOR, 50th Sess., Supp. No. 40, U.N. Doc. A/50/40, vol. II at 96, U.N. Doc. CCPR/C/54/D516/1992 (condemning a law that provided for restitution for property confiscated during the Communist Government except for non-residents and non-citizens).

²⁵⁷ African Charter, *supra* note 154, art. 3.

Individual registration as a refugee is not determinative of refugee status, and a country of origin should not use it as a basis for discriminating between returnees.²⁵⁸ Under the Geneva Refugee Convention, a person becomes a refugee at the moment he or she satisfies the definition. A formal declaration of refugee status is not necessary.²⁵⁹ Therefore, returnees who were never registered as refugees in Ghana, but who in fact did qualify as refugees under the OAU Refugee Convention, should be entitled to the same assistance as returnees who were previously registered as refugees.

The UNHCR recognizes that registration may pose a particular problem for women and children. In some countries of asylum, only the male heads of household are provided documentation. Should the family become separated, this may make it “impossible” for the wife and children in the family to prove that they are in the country legally. In other countries, procedures may not exist for granting refugee status to spontaneously settled individuals and groups, or for the registration of births or deaths.²⁶⁰

Partly for this reason, the UNHCR Voluntary Repatriation Handbook calls for refugees who were not previously registered to have access to its voluntary repatriation program and receive repatriation assistance, “subject to a determination that they are indeed refugees.”²⁶¹ It may be necessary to use gender-sensitive techniques during these interviews in order to determine possible past abuse.²⁶² Given that, in the present case, additional assistance is being provided by the UNHCR in Monrovia, returnees should be given another opportunity to establish

²⁵⁸ Registration is encouraged by the UNHCR for the protection of the refugees themselves. UNHCR Exec. Comm., 52d Sess., Conclusion on Registration of Refugees and Asylum-Seekers, No. 91 (Oct. 5, 2001), *available at* <http://www.unhcr.org/refworld/docid/3bd3e1d44.html> (acknowledging “the importance of registration as a tool of protection, including protection against *refoulement*, protection against forcible recruitment, protection of access to basic rights, family reunification of refugees and identification of those in need of special assistance, and as a means to enable the quantification and assessment of needs and to implement appropriate durable solutions”).

²⁵⁹ GUY S. GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 20 (1983).

²⁶⁰ UNHCR, *GUIDELINES FOR THE PROTECTION OF WOMEN*, *supra* note 245, ¶¶ 63-64.

²⁶¹ UNHCR *HANDBOOK ON VOLUNTARY REPATRIATION*, *supra* note 170, § 4.3.

²⁶² UNHCR, *GUIDELINES FOR THE PROTECTION OF WOMEN*, *supra* note 245, ¶ 71.

their status as former refugees in order to qualify.²⁶³ Lack of notice and other inadequacies in the voluntary repatriation registration process in Ghana could provide an additional rationale for such re-examination.²⁶⁴ Furthermore, given the similar needs and histories of registered and non-registered returnees, providing assistance only to returnees who can produce VRFs or other UNHCR-issued documentation likely violates the right to equal protection afforded by the ICCPR and the African Charter, as well as the Liberian Constitution. Of course, regardless of their status as returnees, returning individuals are entitled to the same human rights protections as all other Liberian citizens, including the right to be recognized by the law.

V. RETURNING REFUGEES IN COMPARATIVE PERSPECTIVE: FIVE COUNTRY CASES

This Part examines the cases of five countries—two in Europe, one in Asia, and two in Africa—that have had both positive and negative experiences as countries of origin receiving large numbers of returning refugees. The Part will briefly describe the conflicts that drove a large section of each state’s population to become refugees, and will then discuss aspects of the countries’ repatriation and reintegration programs and draw lessons from them. In order of discussion, the five countries are: Kosovo, Bosnia and Herzegovina, Mozambique, Burundi, and Afghanistan.

A. Kosovo

²⁶³ Repatriating refugees without paperwork are interviewed at the border in order to ascertain whether they are indeed Liberian nationals. See *supra* note 24 and accompanying text. Proving that a national was indeed a refugee may be more difficult if there is no official documentation available to confirm his or her presence in a camp. The Niapele Project may wish to advocate that the LRRRC use an interview process for determining refugee status similar to that used for determining Liberian nationality.

²⁶⁴ UNHCR Exec. Comm., 52d Sess., Conclusion on the Registration of Refugees and Asylum-Seekers, No. 91 (Oct. 5, 2001), available at <http://www.unhcr.org/refworld/docid/3bd3e1d4.html> (calling for the registration process to be confidential, easily accessible, and non-threatening).

Since Kosovo was annexed to the former Yugoslavia in 1918, “Yugoslavia ha[d] done all it could . . . to Serbicize Kosov[o] by putting pressure on the Kosovar Albanians to leave their country, sometimes by killing them.”²⁶⁵ These attempts to cleanse Kosovo of ethnic Albanians came to a head in 1999, and the North Atlantic Treaty Organization (NATO) began bombing the then-Federal Republic of Yugoslavia (FRY, now the independent states of Serbia and Montenegro). By March 27, 1999,

[t]he United Nations [High] Commissioner for Refugees (UNHCR) reported its first refugees outside of Kosovo The toll increased until June 4 [1999], reaching a reported total of 670,000 in neighboring countries (Albania, Macedonia), along with an estimated 70,000 in Montenegro (within the FRY) and 75,000 who had left for other countries.²⁶⁶

In response to the many refugees created by the Kosovo conflict, the United Nations Mission in Kosovo (UNMIK)²⁶⁷ created, in collaboration with domestic groups, a “Manual for Sustainable Return.”²⁶⁸ The Manual establishes mechanisms for assisting returnees, and it is accompanied by a Protocol setting out agreed-upon principles for the facilitation of return.²⁶⁹

The Kosovo Return Protocol’s preamble is indicative of the international legal instruments that the Direct Dialogue Working Group had in mind when writing the Protocol:

²⁶⁵ GLOBAL LAW ASSOCIATION, THE KOSOVO CRISIS: FACTS, FIGURES AND DOCUMENTS 74 (W. Van Der Wolff ed., 1999).

²⁶⁶ *Id.* at 75.

²⁶⁷ UNMIK was created pursuant to UN Security Council Resolution 1244. UNMIK had a “sweeping mandate to provide Kosovo with a ‘transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.’” UNMIK, About UNMIK, <http://www.unmikonline.org/intro.htm> (last visited Feb. 22, 2009). Since the mission began, “as Kosovo’s Provisional Institutions of Self Government (PISG) were established and gained capacity to assume more responsibilities, UNMIK has moved back from an executive role to one of monitoring and support to local institutions. UNMIK, in its present form, is now into its final chapter before status resolution.” *Id.*

²⁶⁸ UNITED NATIONS MISSION IN KOSOVO [UNMIK], REVISED MANUAL FOR SUSTAINABLE RETURN (2006), available at http://www.unmikonline.org/srsg/orc/documents/Manual_ENG.pdf [hereinafter KOSOVO RETURN MANUAL].

²⁶⁹ Direct Dialogue Working Group on Returns Protocol on Voluntary and Sustainable Return Between United Nations Interim Administration Mission in Kosovo and Provisional Institutions of Self-Government in Kosovo and Government of Serbia, available at <http://www.unmikonline.org/pio/returns/Protocol-on-returns-eng.pdf> [hereinafter Kosovo Return Protocol].

Taking into consideration the United Nations Charter . . . , the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the ensuing Protocols, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Elimination of All Forms of Racial Discrimination, the UN Convention on the Rights of the Child, [treaties which are situationally or geographically irrelevant to Liberia are omitted] . . . the UN Guiding Principles on Internal Displacement, and other relevant principles contained in internationally recognized legal instruments . . .²⁷⁰

The Manual, which is essentially an operationalization of the principles set out in the Protocol, also acknowledges the importance of international law. The Manual states in its “Returns Environment” section:

This revised manual seeks to reaffirm international standards and best practices as well as incorporate the main objectives of the Protocol of Cooperation on Voluntary and Sustainable Return and updated Returns Policies²⁷¹

In addition, the Manual’s introduction to displacement of people includes a brief “Legal Framework” section, which notes that

[u]nder international human rights instruments, refugees and internally displaced persons have the fundamental human right to return to their homes, irrespective of their ethnicity, in either a spontaneous or an organized and assisted manner. This is in conformity with United Nations Security Council Resolution 1244 (1999) [authorizing the United Nations Mission in Kosovo], the Constitutional Framework [in Kosovo] and international standards for implementation of human rights.²⁷²

As to practical matters of return, Article 3 of the Return Protocol states that “voluntary organized” returnees may travel to their resettlement area sixty days after they submit their applications for return.²⁷³ During the sixty days between submission of the application and return, municipalities are to “finalize preparations and activities with a view to ensuring administrative, material, safety, communal, infrastructure and other conditions for return.”²⁷⁴

These “preparations and activities” include: providing temporary shelter to returnees, facilitating

²⁷⁰ *Id.* at pmbl.

²⁷¹ KOSOVO RETURN MANUAL, *supra* note 268, at 7 (emphasis added).

²⁷² *Id.* at 10 (emphasis added).

²⁷³ Kosovo Return Protocol, *supra* note 269, art. 3.

²⁷⁴ *Id.*

“reconstruction of destroyed and damaged buildings,” and providing returnees with “equitable access to transport, health, education, police and other social and public services.”²⁷⁵

In its operationalization of these provisions, the Manual sets out an extensive administrative blueprint based on multiple levels of participation, placing responsibility for carrying out return services and planning most firmly in the hands of municipal authorities.²⁷⁶

The return process proceeds as follows: First, Municipal Returns Officers (MROs, who are in turn linked to Municipal Working Groups, or MWGs) in the municipalities connect the prospectively returning refugee with her municipality and community of origin.²⁷⁷ The municipal authority identifies material or situational obstacles to the refugee’s return (such as lack of housing or safety concerns), as well as tools that may be used to overcome these obstacles.²⁷⁸ Municipalities are required to implement a Municipal Returns Strategy, so that “municipal authorities [may] assume responsibility for overall returns.”²⁷⁹ Next, groups and individuals may develop and apply for funding for returns projects. These projects should “respond to identified needs,” and concept papers on the projects are funneled from the municipality to a central committee to a funding mechanism.²⁸⁰ Projects may fall into any of five sectors:

- 1) housing reconstruction/property repossession assistance; 2) limited infrastructure; 3) employment and income generation; 4) access to and strengthening of public and social services (e.g., health, social services, education); and 5) inter-ethnic dialogue and community integration and development.²⁸¹

²⁷⁵ *Id.*

²⁷⁶ *See* KOSOVO RETURN MANUAL, *supra* note 268, at 13-27.

²⁷⁷ *Id.* at 35-36.

²⁷⁸ *Id.* at 36-37.

²⁷⁹ *Id.* at 37.

²⁸⁰ *Id.* at 15.

²⁸¹ *Id.* at 37.

Regardless of the presence of funded returns projects, once a refugee has returned to her municipality, “[t]he municipal administration will ensure the administrative [and socioeconomic] integration of the returnees into the municipality.”²⁸² The Manual indicates that an “affirmative action approach” may be used to reintegrate the “most vulnerable groups” if necessary.²⁸³

Individual returnees may also find assistance through the United Nations Development Programme’s Sustainable Partnership for Assistance to Minority Returns to Kosovo (SPARK),²⁸⁴ which runs an Individual Returns Facility (continuing a facility formerly run by the UN Population Fund), assisting both the returnees and their receiving communities.²⁸⁵ The Facility provides two lines of assistance: housing and socioeconomic.²⁸⁶ The latter category includes assistance based on an individualized assessment of the returnee’s needs: “[T]ailor-made assistance is rendered to the returnee in several ways including agricultural income generation grants, vocational skills training and tools for small handiwork businesses and contribution in kind of cattle and poultry.”²⁸⁷

Overall, the Kosovo Return Manual is a useful resource and a good example of a comprehensive and detailed administrative blueprint for returns. Of course, the Kosovo conflict and ensuing returns process are distinct from the Liberian context in multiple aspects. The Kosovar refugees have been away from their land for fairly short periods of time in comparison to the Liberian refugees, and more infrastructural and logistical capacity appears to be in place in Kosovo than in Liberia. In addition, many of the Manual’s policies probably cannot be directly applied to Liberia, as they are linked to the specific context of Kosovo—its municipalities and its

²⁸² *Id.* at 38.

²⁸³ *Id.*

²⁸⁴ For more information on SPARK, see United Nations Development Programme, Sustainable Partnerships for Return in Kosovo, <http://www.ks.undp.org/?cid=2,104,64> (last visited Feb 22, 2009).

²⁸⁵ KOSOVO RETURN MANUAL, *supra* note 268, at 38.

²⁸⁶ *Id.* Housing assistance is defined as help in repairing or reconstructing a damaged house rather than constructing a new home.

²⁸⁷ *Id.* at 38-39.

available structural, political, and financial resources. This specificity of design and the Manual's integration of multiple levels of administration down to the local level are two of the Manual's strengths. In light of these strengths, Liberia might consider a returns strategy that distributes responsibilities beyond the central government, involving local municipalities to a greater degree.

B. Bosnia & Herzegovina

In 1991, the Socialist Federal Republic of Yugoslavia began to break up, with conflict beginning in the areas of Croatia and Slovenia.²⁸⁸ In 1992, the ethnically diverse region of Bosnia and Herzegovina (BiH) was drawn into the war, declaring its independence and becoming a target for ethnic cleansing by the predominantly Serb Yugoslav Army.²⁸⁹

Approximately a month after BiH declared its independence,

95 per cent of the Muslim and Croat populations in the major towns and cities of eastern Bosnia had been forced from their homes and Sarajevo [the region's capital] was under daily bombardment. By mid-June, Serb forces controlled two-thirds of Bosnia and Herzegovina and approximately one million people had fled their homes.²⁹⁰

As in the case of Kosovo, Bosnian refugees have not been away from home as long as Liberian refugees. However, BiH's response to returning refugees, particularly its approach to the issue of healthcare, may be instructive for Liberia.

In 2001, the UNHCR produced a detailed report on the state of healthcare in BiH, including a section specifically addressing provisions for returned IDPs and refugees.²⁹¹

²⁸⁸ See UNHCR, STATE OF THE WORLD'S REFUGEES 218 (2000).

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS [UNHCHR], HEALTH CARE IN BOSNIA AND HERZEGOVINA IN THE CONTEXT OF THE RETURN OF REFUGEES AND DISPLACED PERSONS 10-11 (2001), available at <http://www.unhcr.ba/publications/hs.pdf> [hereinafter BIH HEALTHCARE REPORT]. For more information on the UNHCR presence in Bosnia & Herzegovina, see generally UNHCR, UNHCR GLOBAL REPORT 2007, at 409-13

Pragmatically, as the UNHCR Bosnia report notes, “the importance of the availability of satisfactory healthcare in the place of origin as a factor facilitating return must not be underestimated.”²⁹²

BiH’s statutory healthcare provision for returnees is set out in the report as follows:

The legislation currently in place in both Entities [BiH and the Rpublika Srpska, or RS] provides for equal and nondiscriminatory access of [IDPs and returnees] to health insurance, as it does for all BiH citizens. In practise, however, such persons often effectively remain uninsured. The primary reason for this situation is that many returnees and repatriates, as they face unemployment on return, but are unfamiliar with current regulations, fail to meet the 30 day deadline from arrival in BiH to register with their local Unemployment Bureau, as required to obtain the benefits that they would otherwise accrue as registered unemployed persons. As health care contributions for those unemployed are generally paid by the Unemployment Agency with which these persons are registered, returnees and repatriates who would otherwise obtain such cover, fail to qualify.

Nonetheless, in recognition of this problem, and realising that in general most returnees/repatriates lack the means to pay for health insurance from their personal resources, both Entities have adopted special laws . . . enabling these categories of persons to access health care assistance irrespective of whether or not they are insured. A lack of [governmental] financial resources, however . . . has meant that these special provisions remain generally unenforced. Thus, in practice, many IDPs and returnees / repatriates remain without access to health care.²⁹³

Several lessons may be drawn from BiH’s experience in providing healthcare to returnees. First, the state’s recognition that returnees often experience unemployment, poverty, and general upheaval in their lives when they repatriate, potentially leaving them unable to adequately attend to bureaucratic niceties, is an important observation. BiH offers a sensible solution to this problem, crafting a special category for returning refugees for purposes of receiving state healthcare and requiring returnees to show only that they fall within this class to receive healthcare. Of course, like many other previously war-torn countries (including Liberia),

(2008), available at <http://www.unhcr.org/publ/PUBL/484920f42.pdf>. For a discussion of refugee law and policy on returnee health and nutrition, see *supra* Part IV.C.2.

²⁹² *Foreword and Acknowledgments*, in BiH HEALTHCARE REPORT, *supra* note 291.

²⁹³ BiH HEALTHCARE REPORT, *supra* note 291, at 10.

BiH has suffered from a lack of financial resources to support its progressive program. Nevertheless, it remains a wise idea to exempt returnees from an excessive amount of administrative processes and deadlines when they have recently repatriated, as well as to assume that they will a) need healthcare and b) likely be unable to pay for it.

A second lesson with regard to returnee healthcare may be drawn from the following passage of the report:

Contributory factors to the poor state of the health care system would appear to extend beyond both the complexity of the administrative and legal system, as well as the general shortage of facilities and other resources. Sub-optimal basic distribution and organisation of the resources that are available may also be considered important factors in this regard.²⁹⁴

In short, another lesson learned is that the state must make a priority of building up infrastructure (including medical personnel), since a guarantee even of universal healthcare is empty without a functional system to deliver medical services to the population.

C. Mozambique

Mozambique's refugee population fled from conflict that began shortly after the country achieved independence in 1975. The post-independence revolutionary government "plunged into a three-year involvement on the side of other black nationalists in their guerrilla warfare" in Southern Rhodesia (now Zimbabwe), and later in South Africa on the side of the African National Congress.²⁹⁵ The country's long civil war between various political factions finally ended in 1992 due to a UN-negotiated peace agreement.²⁹⁶ "By mid-1995 the more than 1.7 million Mozambican refugees who had sought asylum in neighboring Malawi, Zimbabwe,

²⁹⁴ *Id.* at 21.

²⁹⁵ See FOREIGN AREA STUDIES, THE AMERICAN UNIVERSITY, MOZAMBIQUE: A COUNTRY STUDY 243-44 (Harold D. Nelson ed., 1984).

²⁹⁶ CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK: MOZAMBIQUE (2008), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/mz.html>.

Swaziland, Zambia, Tanzania, and South Africa as a result of war and drought had returned, as part of the largest repatriation witnessed in Sub-Saharan Africa.”²⁹⁷

Repatriation efforts have involved the UNHCR and the domestic Mozambican body charged with refugee matters, the National Institute for Refugee Assistance (in Portuguese, Instituto Nacional de Apoio aos Refugiados, or INAR). INAR is part of the Ministry of Foreign Relations and Coordination.²⁹⁸ However, since there is not a great deal of public information available on many of INAR’s programs, this Section will consider Mozambique’s policy towards land restitution for returnees, an issue which is often high on the list of returning refugees’ concerns.²⁹⁹

In a policy paper on the problem of land tenure for returning Mozambican refugees, Bina Hanchinamani writes:

Many . . . returnees journey back to their abandoned homelands only to find that they have no homes left to which to return. Even when returnees repatriate voluntarily, they often find their homelands ridden with landmines, angry competing land-right holders, residual ethnic animosity, and hostile armed forces. . . In response to such [land] issues facing returnees, Mozambique implemented a new land tenure policy The struggles and successes of recent Mozambican land policies offer a model for improving land tenure rights for returning refugees in other countries around the world.³⁰⁰

²⁹⁷ U.S. Dep’t of State, Bureau of African Affairs, Background Note: Mozambique (2009), *available at* <http://www.state.gov/r/pa/ei/bgn/7035.htm> (last visited Feb. 9, 2009). According to a UNHCR report:

The repatriation to Mozambique was, in a number of respects, unique. It involved the return of some 1.7 million refugees from no less than six adjacent countries of asylum over a time span stretching from late 1992 to the middle of 1995. The number of refugees for whom UNHCR was responsible in individual countries of asylum varied greatly, from over a million in Malawi to figures in the region of twenty thousand in Swaziland, Tanzania and Zambia. The number in South Africa was never precisely ascertained.

EVALUATION OF UNHCR’S REPATRIATION OPERATION IN MOZAMBIQUE, *available at* <http://www.unhcr.org/publ/RESEARCH/3ae6bcf90.html> (last visited Feb. 22, 2009).

²⁹⁸ Ministério dos Negócios Estrangeiros e Cooperação, Instituições Subordinadas, <http://www.minec.gov.mz/content/view/47/85/lang,en/> (last visited Feb. 9, 2009). There is no web content describing INAR or its work, only its listing as an institution contained within MINEC and its contact information.

²⁹⁹ *See generally* INGUNN SOFIE AUERSNES & CONOR FOLEY, NORWEGIAN REFUGEE COUNCIL, PROPERTY RESTITUTION IN PRACTICE: THE NORWEGIAN REFUGEE COUNCIL’S EXPERIENCE (2005), *available at* <http://www.reliefweb.int/library/documents/2005/nrc-gen-18apr.pdf> (discussing property restitution and land tenure for returnees across multiple countries of origin).

³⁰⁰ Bina Hanchinamani, *The Impact of Mozambique’s Land Tenure Policy on Refugees and Internally Displaced Persons*, AMER. U. WASH. COLL. OF LAW HUM. RTS. BRIEF, Vol. 7, No. 2 (2000), *available at*

More specifically, in 1997, Mozambique passed a Land Law that implemented a comprehensive new land policy.³⁰¹ The law ensures that, in the present day,

[u]se rights [in land] emerge either through occupancy or by a specific grant through the state. The government can issue use right title documents to individuals, companies, or entire communities and groups, although those who occupy the land for more than ten years acquire permanent use rights without the need for title documents. This particularly benefits peasants and returnees who often do not possess actual title documents to prove their occupancy of land. One of the new land law's mechanisms for improving the rights of those who lack title documents is the requirement that courts accept verbal evidence from community members regarding occupancy of land.

.....
The land law also improves land access rights by decreasing the bureaucracy and cost of registering land titles Increased use of title documents offers further security to occupiers of land and offers an easier way for courts to determine which claims over a piece of land are legitimate. Also . . . small landholders [may] seek titles for their lands in the name of their local community, rather than [being made to] undertake the expense and bureaucracy as individuals.

To prevent conflicting land claims created by overlapping issuance of title, the new law prevents the state from granting new occupation rights when others already hold title over the land in question. To prevent incidences where one agency grants land rights over a certain property, while another agency grants land rights to someone else over the same property, the law creates a more structured system for delegating the power to grant titles for land use in particular areas. . . . When conflicts emerge about which claims over a certain piece of land are legitimate, the new land law provides court remedies that take into account the verbal testimonies of community members.

One of the most important provisions of the new law is the increased role of local communities and traditional leaders. . . . [T]o determine whether the land in question is occupied, the state must consult local authorities before granting leasehold titles that last up to 50 years. . . .

Although the new law grants more discretion to customary authorities, these authorities may not employ customary practices that discriminate against women.³⁰²

<http://www.wcl.american.edu/hrbrief/v7i2/mozambique.htm>. José Negrão describes five principles on which civil society participants agreed upon as the Land Law was negotiated: "1. Recognition of rights to possession of land without need for title. 2. The State should be obliged to consult rural dwellers before assigning the rights of use and benefit to a piece of land to someone else. 3. More important than resolving conflicts is preventing their emergence. 4. The larger the area the higher the taxes that should be paid to the State. 5. Limited recognition of customary rights to constitutional principles as a means of defending women's rights to land." José Negrão, *The Mozambican Land Campaign, 1997-1999* (1999), available at <http://www.caledonia.org.uk/land/mozambiq.htm>.

³⁰¹ Lei de Terras, 1997, Law No. 19/97 (Mozambique).

³⁰² Hanchinamani, *supra* note 300.

We quote extensively from this analysis of the Mozambican land reform policy because it gives a wide-ranging view of the policy changes brought about by the 1997 land statute and how those changes positively affected returnees. Discussion of the land statute requires a caveat, however: Mozambique has a socialist land system in which the government owns all of the land.³⁰³ This fact separates Mozambique from many other African nations that provide for private landownership. Nevertheless, several lessons may be drawn from the Mozambican experience. First, granting title to land based on occupancy has both positive and negative aspects for returnees. It may help them in that they can easily (re)claim land, but it may hurt them in that land originally theirs may have been claimed by occupancy in their absence. This problem may be particularly acute in countries such as Liberia where returnees have been absent for extended periods of time. Registered title solves this problem and clarifies ownership; hence Mozambique's focus on using court processes to clarify who owns land (or use rights in the land, in Mozambique's case) and on registering official title to that person.

Second, involving local authorities in the land tenure decision process and allowing local witnesses to participate may be helpful for returnees, especially if fellow returnees or others from the same locality can testify to the fact that a particular returnee did indeed reside upon or own a piece of land before being forced to flee. Given the undoubtedly confusing nature of evidence regarding land occupancy from past decades with a war in the intervening period, using local sources for information and testimony is sensible.

Third, Mozambique's wariness of conflicting titles granted by different government agencies speaks to the probable need for a centralized system of land decisions and title

³⁰³ See Amade Sucá, Office of Lobby & Advocacy Advisor, Gov't of Mozambique, Land Reform in SADC Region: Mozambique Land Reform and Poverty Alleviation (2001), available at <http://www.sarpn.org.za/EventPapers/Land/20010604Suca.pdf>.

registration. A central office that could coordinate evidence, legal proceedings, and title grants (and keep adequate records of these processes) would alleviate problems of government overlap.

Finally, land availability should be considered an element of return in “safety and dignity,” as recovering one’s home or building a new one are elements of a safe and dignified life. As we noted above, “[a] report by the UNHCR has emphasized the importance of adequate housing, as a right and a necessary component of a durable solution [for successful return].”³⁰⁴

D. Burundi

The violence that displaced large numbers of Burundi’s citizens was part of the endemic ethnic and political violence in the Great Lakes region. Violence between members of the Hutu and Tutsi ethnic groups resulted in the deaths of some 200,000 Burundians in less than two decades, beginning with the “1972 watershed”³⁰⁵ (creating the “‘1972 Burundians,’ [who are] refugees of primarily Tutsi ethnicity”³⁰⁶) and continuing with the “1988 killings.”³⁰⁷ As of 2007, about 353,000 Burundian refugees were still hosted by Tanzania.³⁰⁸

Repatriation efforts have struggled with funding scarcity,³⁰⁹ as well as land disputes.³¹⁰

Refugees International summarizes resettlement services in Burundi as follows:

³⁰⁴ See *supra* Part IV.C.3.

³⁰⁵ RENÉ LEMARCHAND, BURUNDI: ETHNOCIDE AS DISCOURSE AND PRACTICE 76 (1994).

³⁰⁶ UNHCR, GROUP RESETTLEMENT OF “1972 BURUNDIANS” FROM TANZANIA 1 (2007), available at http://www.africanleadership.org/images/graphics/Burundi_fact_sheet.pdf.

³⁰⁷ *Id.* at 118.

³⁰⁸ U.S. COMM. FOR REFUGEES & IMMIGRANTS, WORLD REFUGEE SURVEY 2007, at 4 (2007).

³⁰⁹ *Tanzania Camp to Close as Burundian Refugees Return Home*, UNHCR NEWS, Apr. 5, 2005, <http://www.unhcr.org/cgi-bin/tehis/vtx/home/opensoc.htm?tbl=NEWS&id=4252a1af4&page=news> (“The funding situation for the Burundi repatriation is desperate,” explained Ursula Aboubacar, UNHCR’s Head of Desk for Africa’s Great Lakes region. “The lack of funds may further hamper smooth reintegration for refugees who have gone home. And without significant additional donations, we may not be able to accommodate an eventual increase in return movements before elections this summer.”).

³¹⁰ *Burundi: Returning Refugees Encounter Difficulties To Repossess Their Properties*, HIRONDELLE NEWS AGENCY, May 6, 2008, available at <http://allafrica.com/stories/200805070590.html>; see also REFUGEES INTERNATIONAL, BURUNDI: STABILITY DEPENDS ON SUCCESSFUL REINTEGRATION OF RETURNEES (2008), available

There are four categories of returnees who receive and require varying degrees of assistance. First, those who fled to Tanzania in 1972, when civil war broke out in Burundi, receive a small \$45 cash allowance when they return and are allowed to carry up to 100 kg of luggage per person. Out of 72,700 Burundians who have returned in 2008, some 15,000 are part of the 1972 caseload; in total some 45,000 people from the 1972 group are expected to return by next year. Second, refugees who fled a later conflict in 1993 are considered to be less self-sufficient, and therefore receive a six-month food package, other supplies, and the \$45 cash allowance.

A third category consists of spontaneous returnees who decided to return home because they feared being forcibly expelled or hoped to recover their land and property in a newly peaceful Burundi. During their journey back, many people suffered harassment and extortion from border forces, including rape of women and girls. Finally, people who were not legally refugees were forcibly expelled from Tanzania. Initially invited by the Tanzanian authorities to register, with the hope of integrating locally, they were later expelled from the country without notice or time to recover their belongings or documentation. The most vulnerable among these two categories of people do receive assistance upon return in a very random manner.³¹¹

Although this section is brief, the lesson to be learned from Burundi's mixed example is an important one, and though obvious, it deserves emphasis: good intentions to provide return services must be paired with consistent and non-arbitrary provision. Providing a six-month food package, \$45, and other supplies may be helpful to returnees, but it will be less so if the goods are not consistently distributed and if they only reach one group within the returnee population. Finding funding, building infrastructure, and distributing assistance equitably are among the most important requirements for giving life to a repatriation and reintegration program.

E. Afghanistan

The country of Afghanistan "has produced one of the largest refugee movements since the end of World War II, sending over five million refugees to the neighboring countries of

at <http://www.refugeesinternational.org/policy/field-report/burundi-stability-depends-successful-reintegration-returnees>.

³¹¹ *Id.*

Pakistan and Iran as well as to Europe, North America and India.”³¹² These refugees have been displaced from their land of origin by thirty years of conflict:

The first Afghans began fleeing communist repression within weeks of the 1978 coup d’etat by the [Afghanistan Communist party] . . . By the time of the December 1979 Soviet invasion, some 400,000 had crossed the border into Pakistan and another 200,000 into Iran. The exodus quickly became a flood; an estimated 1.9 million had fled by the first year of the occupation, constituting the largest single group of refugees in the world.³¹³

By around 1990, “the United Nations estimated that more than six million Afghans were refugees—nearly a quarter of the entire population”³¹⁴

Repatriation of this huge population seemed “remote” in mid-2001 (before the U.S. invasion). “[F]ew would have imagined the dramatic change in Afghanistan’s fortunes that 12 months later propelled one of the largest repatriation movements in modern history. By the end of 2002, well over 2 million Afghans had returned home from Pakistan and Iran.”³¹⁵ This sea change is considered a direct effect of “international re-engagement” with Afghanistan.³¹⁶ The U.S. government has become deeply involved in repatriating Afghani refugees back to their home country,³¹⁷ although UNHCR was the organization technically in charge.

As in the case of Kosovo’s returnee program, the Afghan government “focused on providing housing units, schools, healthcare centers, water and sewage systems, and roads in areas with displaced populations.”³¹⁸ In other words, there was a focus on direct and

³¹² Peter Marsden, *Exile for a Cause: The Plight of Refugees*, in *ESSENTIAL FIELD GUIDES TO HUMANITARIAN AND CONFLICT ZONES: AFGHANISTAN* 41, 41 (Edward Girardet & Jonathan Walter eds., 1998).

³¹³ *Id.*

³¹⁴ David Fox, *A Nation of Refugees*, in *AFGHANISTAN: LIFTING THE VEIL* 140, 141 (Jim Boyd ed., 2002).

³¹⁵ UNHCR, *THE STATE OF THE WORLD’S REFUGEES 2006: HUMAN DISPLACEMENT IN THE NEW MILLENNIUM* 144 (2006).

³¹⁶ *Id.*

³¹⁷ RHODA MARGESON, FOREIGN AFFS., DEF. & TRADE DIV., CONG. RESEARCH SERV., *AFGHAN REFUGEES: CURRENT STATUS AND FUTURE PROSPECTS* (2007).

³¹⁸ PUB. INT’L LAW & POLICY GROUP, *RETURN OF REFUGEES AND INTERNALLY DISPLACED PERSONS: CORE ELEMENTS* 6 (2006), available at <http://www.publicinternationallaw.org/areas/peacebuilding/PILPGRRefugeesandIDPsCoreElements11.05.2006.doc>.

infrastructural services. Programs organizing and assisting returns are led by “the Ministry of Refugees and Repatriation and supported by the [UNHCR] with the assistance from the International Organization of Migration (IOM); [UNICEF]; [WFP]; the [WHO] and a number of national and international NGOs.”³¹⁹

These programs have provided returnees with food aid, return packages, travel money, wells, seeds, tools, and shelters. They have also included “cash-for-work” programs for unemployed returnees, a monitoring network, a referral program for special needs returnees, a Return Commission including local representatives, a school rehabilitation drive, school “catch-up” classes for children, and a “national advocacy campaign” to help reintegrate returning teachers and children.³²⁰ Facilitating return has thus far been quite successful, but the work continues both with regard to recently returned refugees and to refugees who plan to repatriate in the future, particularly the many thousands of Afghan refugees currently residing in Pakistan.³²¹

The high level of service and goods provision in Afghanistan may not be currently attainable in countries such as Liberia who are off the United States’ political and foreign policy radar; as noted above, the adequately funded programs and mass scale of returns to Afghanistan post-9/11 are due in large part to heightened scrutiny related to the United States’ military operations and foreign policy objectives in Afghanistan. As the Congressional Research Service’s 2007 Report to the U.S. Congress on the subject of Afghan refugees notes, “[t]he safe and voluntary return of refugees to Afghanistan is not only a major part of the U.S. reconstruction effort in Afghanistan, but also an important indicator of its success.”³²²

³¹⁹ UNITED NATIONS ASSISTANCE MISSION IN AFGHANISTAN [UNAMA], FACT SHEET: REFUGEE-IDP RETURN AND REINTEGRATION 1 (2003), available at <http://www.un.org/News/dh/latest/afghan/refugee-idp-fact-sheet.pdf#search=%22return%20refugee%20IDP%22>.

³²⁰ *Id.*

³²¹ *Id.*

³²² MARGESON, *supra* note 317, at summary (emphasis added).

Nevertheless, Afghanistan's example, like that of Kosovo, does indicate that the most successful repatriation and reintegration projects are both comprehensive in their service delivery and sensitive to local needs and representation.

VI. CONCLUSIONS AND RECOMMENDATIONS

Both international law and Liberian domestic law place a number of obligations on the Government of Liberia with respect to the state's relationship to its returnees. However, the research that we have conducted into the situation of returnees in Liberia has not been comprehensive. As a result, we are unable to make specific findings regarding the reach and comprehensiveness of Liberia's programs, or to identify those policy areas where outcomes have most fallen short of international standards.

Nevertheless, to the extent that returnees in Liberia are still facing considerable hardship or lack access to assistance, our research indicates that these circumstances are largely the result of a lack of resources on the part of the Liberian government and not the result of the government's abrogation of its duties to returnees. The LRRRC works with a limited budget, and the "emergency" resources provided by the UN are dwindling, even before other promised development aid becomes available.

Moreover, while we are not in a position to determine conclusively whether Liberia is meeting its obligations to its returning citizens under international refugee and human rights law, our review of refugee repatriation and reintegration experiences in other countries suggests that Liberia's returnee assistance programs may even serve as a model to be followed in other African countries in the future. Of course, this does not mean that further investigation would not unveil serious gaps in Liberia's efforts, or even violations of Liberia's international legal

obligations. It is clear that improvements can be made and that international law can be employed as a tool for advocating for these improvements. Below we outline some possible areas and approaches for engagement.

If violations are discovered and confirmed, one potential option for engagement would be to file a formal complaint in Liberian national courts or a report in an international body charged with overseeing the treaties discussed in Part II. The Niapele Project could investigate how Liberian courts have handled international human rights claims pertaining to refugee issues, and what civil and administrative options might exist for bringing a complaint proceeding in national courts. Unfortunately, there is no review mechanism or enforcement body for either the OAU or Geneva Refugee Conventions. The African Commission on Human and Peoples' Rights has the authority to receive complaints from individuals and NGOs of violations under the Charter, but domestic legal remedies (i.e., the pursuit of proceedings in Liberian courts) must be exhausted before submitting a communication unless "the procedure of achieving those remedies would be unduly prolonged."³²³

Other human rights treaty bodies are open to receiving reports from NGOs when Liberia is under review. These bodies include the Human Rights Committee of the ICCPR,³²⁴ the Committee on Economic, Social and Cultural Rights of the ICESCR,³²⁵ the Committee on the

³²³ African Charter, *supra* note 154, art. 50. The Commission also does not apply the exhaustion requirement in circumstances where domestic remedies are unavailable, ineffective, or insufficient. *See* Dawda Jawara v. The Gambia, ¶ 31, Comm. Nos. 147/95 and 147/96 (2000), African Commission on Human and Peoples' Rights, available at <http://www1.umn.edu/humanrts/africa/comcases/147-95.html>. More information on guidelines for submitting a communication can be found at: http://www.achpr.org/english/info/guidelines_communications_en.html.

³²⁴ Liberia has not submitted a report to the Human Rights Committee since at least 1997, and it is not clear if or when it is scheduled to do so in the future. An OHCHR website lists the state reports expected through late 2009. *See* Human Rights Committee—Sessions, <http://www2.ohchr.org/english/bodies/hrc/sessions.htm>.

³²⁵ While specific complaints of violations are not examined, the Committee allow NGOs and community-based organizations "to express their views about how the Covenant is or is not implemented by States parties." Comm. on Econ., Social & Cultural Rights, Fact Sheet No. 16 (Rev.1), § 7, available at <http://www.unhchr.ch/html/menu6/2/fs16.htm>. To intervene, an NGO or CBO must write to the secretariat of the Committee several months before the session with a specific request for intervention. More information on how to proceed, including how to address a

Elimination of Discrimination Against Women of CEDAW,³²⁶ and the Committee on the Rights of the Child of the CRC.³²⁷

To the extent that Liberia is unable to meet its obligations because of a lack of resources, international law presents the international community with a duty to support Liberia with the assistance it requires.³²⁸ The Niapele Project could contribute to the realization of this duty by collaborating with the Liberian government and the UNHCR in providing assistance to returnees. It could also encourage foreign donors to provide funding for NGOs and Liberian agencies directly engaged in providing relief to returnees.

It may be useful for the Niapele Project to engage the UNHCR or Liberian Government to advocate for the continuation of cash assistance and provision of NFIs to returnees until all

request for intervention, can be found at <http://www2.ohchr.org/english/bodies/cescr/NGOs.html>. It should be noted, however, that Liberia has not submitted a state report in recent years and is not presently scheduled to do so, at least through 2010, limiting the effectiveness of this option. Committee on Economic, Social and Cultural Rights—Sessions, *available at* <http://www2.ohchr.org/english/bodies/cescr/sessions.htm>.

³²⁶ Because Liberia has not yet ratified the Optional Protocol to CEDAW—*see* Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 10, 1999, 2131 U.N.T.S. 83, *entered into force* Dec. 20, 2000, *available at* <http://www2.ohchr.org/english/law/cedaw-one.htm>—individuals cannot file complaints with the Committee on the Elimination of Discrimination Against Women. NGOs are invited, however, to present evidence to supplement state party submissions. Guidelines for submitting material can be found at United Nations, Division for the Advancement of Women, NGO Information Note, <http://www.un.org/womenwatch/daw>. Liberia has not yet submitted a country report, however, and it is not clear that Liberia will be presenting in the near future. Convention on the Elimination of All Forms of Discrimination Against Women, Country Reports, <http://www.un.org/womenwatch/daw/cedaw/reports.htm>.

³²⁷ The monitoring Committee on the Rights of the Child does not have the jurisdiction to handle individual complaints, but it does allow input from NGOs in a pre-session working group that helps the Committee define a set of issues to be examined in the state reporting session, which usually takes place three to four months after. Committee on the Rights of the Child—Working Methods, Overview of the Working Methods of the Committee on the Rights of the Child IIA, <http://www2.ohchr.org/english/bodies/crc/workingmethods.htm#a11>. Liberia presented a state report in 2004 and is not scheduled to present again at least until after February 2010. Committee on the Rights of the Child—Sessions, <http://www2.ohchr.org/english/bodies/crc/sessions.htm>.

³²⁸ As noted previously, Article 5(5) of the OAU Refugee Convention provides that repatriating refugees “shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations, to facilitate their return.” Furthermore, the UNHCR “encourages the international community at large to mobilize adequate and sustained support to countries of origin, particularly those emerging from conflict, to assist them to restore habitual residents, including returning refugees.” Exec. Comm., 55th Sess., Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees, *supra* note 180. Article 2.1 of the ICESCR calls on “[e]ach State Party to the present Covenant . . . to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

residents of Buduburam have been able to return. Whether this assistance will be continued and for how long is likely to be determined at the next tripartite committee meeting between Liberia, Ghana, and the UNHCR.

Another discrete area for potential engagement involves the transport method of return. More, and better-planned, land-based convoys in place of UNMIL flights would allow residents of Buduburam to return with more of their possessions, as called for by UNHCR guidelines.³²⁹ The Niapele Project may also consider advocating for a “local integration” option for the residents of Buduburam who wish to remain in Ghana. While this might be politically complicated due to past tensions between the settlement residents and the Ghanaian government, it could be feasible if the group wishing to remain is relatively small and is able to demonstrate its willingness to accept local integration.

Regarding programs within Liberia, the LRRRC aims to direct resources toward areas of high return and toward “vulnerable persons,” but it does not have any programs directed primarily at returning refugee children. Niapele might wish to engage the LRRRC in the provision of specific services to, and monitoring of, returnee children. It may also advocate for more robust employment programs and better coordination between the LRRRC and private employers. Similarly, the Niapele Project may ask the Government of Liberia to adopt a more specific orientation of the Poverty Reduction Strategy and Basic Package of Health Services, in their implementation phases, toward areas of high refugee return.

The Niapele Project could also directly facilitate the return and reintegration of returnees by assisting with applications for microfinance loans, encouraging spontaneous returnees to register in the LRRRC returnee database, encouraging the use of the LRRRC employment referral service, and assisting the LRRRC in identifying populations that are especially

³²⁹ See *supra* Subsection IV.B.3.

vulnerable and in need of services. Relatedly, the Niapele Project may choose to coordinate with other NGOs and private actors, and it may also wish to approach the Union of Liberian Associations in the Americas³³⁰ for funding or advocacy support.

³³⁰ The Union of Liberian Associations in the Americas (ULAA) is an umbrella organization for Liberian organizations in the Western Hemisphere. According to the LRRRC, the ULAA has “established a national fund drive to assist in the reintegration of Liberian returnees.” See LRRRC, Briefing Notes, *supra* note 19. Part of the ULAA’s mission is to “advocate and advance the cause of constitutional democracy and sustainable national development in the Republic of Liberia.” For more information, see its website at <http://www.ulaaliberia.net/>.