

Appendix A



Commissioners of the Liberia TRC

Councillor Jerome J. Verdier, Sr., Chair

Councillor Jerome J. Verdier, Sr. is a practicing attorney, credited for rendering pro bono legal services to indigents, civil society activists and journalists, while also leading civil society adversarial legal teams in several successful lawsuits against the government of Liberia. He holds a Bachelors of Business Administration (BBA) from the University of Liberia and a Bachelors of Laws Degree (LLB) from the Louis Arthur Grimes School of Law. Apart from working in the private and public sectors as a senior accountant, comptroller, and executive director, he has been instrumental in strengthening civil society advocacy. Cllr. Verdier served as executive director of Liberia Democracy Watch (LDW), as chairman of the board of directors of The National Human Rights Center of Liberia (NHRCL), as board chairperson of the Foundation For International Dignity (FIND), as senior staff attorney for the Association of Environmental Lawyers (Green Advocates), and as the first research and program officer of the Catholic Justice & Peace Commission (JPC).

Dede Dolopei, Vice Chair

Dede Dolopei is an administrator, manager, social worker and peace activist. She is a graduate of the University of Liberia, holding a Bachelors of Business Administration (BBA) in accounting. She served as a member of the board of directors for NAWOCOL and the Christian Foundation for Children and the Aging. Commissioner Dolopei has been instrumental to the promotion and protection of women rights in Liberia. She is well known for her efforts and expertise in peace building, conflict resolution, and psychosocial counseling.

Oumu K. Syllah, Treasurer

Oumu K. Syllah is a registered nurse, HIV/AIDS counselor, and social worker. She holds a Bachelor of Science degree in nursing from Cuttington University College, Bong County, Liberia, and a certificate in nursing as a state registered nurse (SRN) from the National School of Nursing in Freetown, Sierra Leone. Commissioner Syllah has worked as a professional nurse and social worker at Cannaught Hospital in Freetown and St. Joseph Catholic Hospital in Monrovia. She has also acted as a trainer/facilitator and participant in numerous workshops in the field of social work.

Sheikh Kafumba F. Konneh, Member

Sheikh Kafumba F. Konneh is a leader in the Liberian Muslim community who has a long record of conflict resolution and peace building efforts. In addition to his theological (Al-Islamic) achievement, Commissioner Konneh studied secular law through apprenticeship. He held several positions in the Liberian civil service, including Justice of the Peace, Associate Stipendiary Magistrate, and County Commissioner. He has also served as Secretary General and Managing Director of the Liberian Muslim Union, as well as Secretary General and National Chairman of the National Muslim Council of Liberia. Commissioner Konneh was born in Nimba County.

Councillor Pearl Brown Bull, Member

Councillor Pearl Brown Bull has been a lawyer and Liberian politician since the late 1970s. She has a

Bachelor of Arts in political science from the University of Liberia and a law degree from Quinnipiac University, USA. Cllr. Bull also served as a professor of Management & Supervision in Law Enforcement and Criminal Evidence at Shaw University, USA. In the public sector, Cllr. Bull served as a member of the Interim Legislative Assembly, the Constitutional Advisory Assembly, the Public Procurement and Concession Commission, the Panel of Experts for the Selection of Commissioners of the Independent National Human Rights Commission of Liberia, and as Vice President of the International Federation of Women Lawyers.

Reverend Gerald B. Coleman, Member

Rev. Coleman is an electrical engineer and project manager by training, having completed a masters degree in electrical engineering (M.S.E.E.) and post graduate studies at Northeastern University, USA. Rev. Coleman is the Spiritual Elder and founding national missionary of the Unification Movement of Liberia and has worked with the mission for over 25 years. In 1996, he was commissioned Ambassador and Special Envoy of the Government of Liberia to the Far East. During this period, he worked for the peaceful transition to civilian government by facilitating several peace-building, scholarship, cultural exchange, and food-aid programs between Asia and Liberia. In 2000, Rev. Coleman helped launch the Inter-Religious & International Federation for World Peace of Liberia (IIFWP-Liberia). The National Transitional Legislative Assembly asked Rev. Coleman to help facilitate the establishment of the current TRC, a process which culminated in the final passage of the TRC Act of Liberia in June 2005.

John H. T. Stewart, Member

John H. T. Stewart is a Liberian journalist and activist in Liberia. He was educated at the University of Liberia and has held numerous positions including local consultant for the Media Foundation for West Africa, reporter for Channel Africa, regional coordinator for the Catholic Justice and Peace Commission, information assistant for the United Nations Population Fund (UNFPA), and National Assistant Field Security Advisor to the United Nations Development Program. Commissioner Stewart's advocacy efforts include work with the Citizens of Liberia Against Gambling (COLAG), Citizens of Liberia in Defense of Albert Porte (COLIDAP), and the Movement for Justice in Africa (MOJA). He has been an advocate for the past 30 years and has suffered imprisonment as well as physical and mental torture as a result of his efforts. As a journalist, he served as associate editor of the New Democrat Weekly and presenter of the Radio Veritas Topical Issues program.

Massa A. Washington, Member

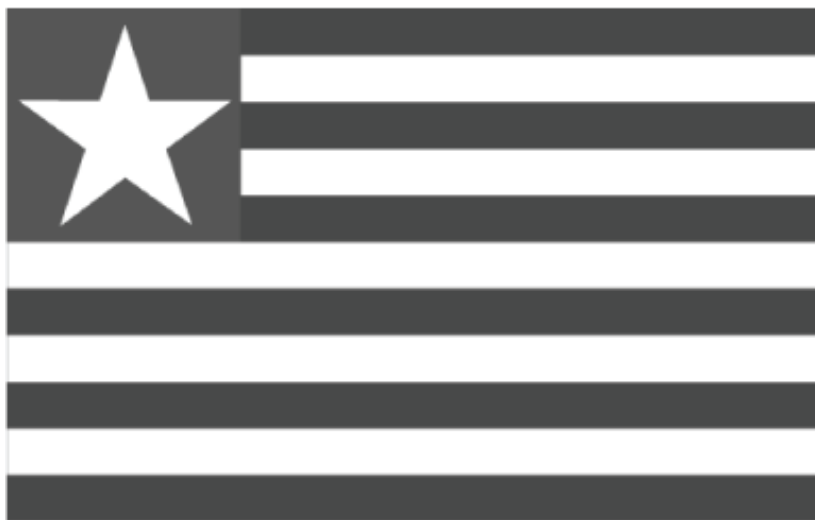
Massa A. Washington is a journalist with more than 20 years of experience. She holds a B.A. in mass communication from the University of Liberia and took a leave from graduate studies at Temple University School of Social Administration and Management, USA, to take up her post as a commissioner. Her past positions include Public Relations Officer of the Liberian National Red Cross Society, Senior Reporter for the New Liberian Newspaper, and News Editor for the Independent Inquirer. Commissioner Washington covered the Liberian crises extensively, reporting in a column in the

Inquirer dedicated to Liberian women. She is a women's rights and civil society activist and is a member of the Liberian Women Initiative (LWI) which has been at the vanguard of peace advocacy in Liberia. She has represented the women of Liberia at peace conferences including the Accra Clarification Conferences and the Abuja Conference. Commissioner Washington has worked with Liberians in the diaspora, serving as Chairman of the Association of Liberian Journalists in the Americas (ALJA), Delaware Valley Chapter, and co-owned and published the Iwina Heritage Newspaper targeting the African immigrant community in the United States.

Bishop Arthur F. Kulah, Member

Bishop Arthur F. Kulah is a well-known Methodist prelate who traveled throughout Liberia during the civil war, spreading hope to the people. He holds many degrees in theology and other disciplines from Cuttington University College, Bong County, Liberia; St. Paul Theology Seminary, Kansas City, MO, United States of America; and Wesley Theological Seminary, Washington, DC, USA. Commissioner Kulah began serving as pastor of the United Methodist Church in Liberia in 1980, and held numerous prominent positions until his retirement in 2000, including Resident Bishop of the Liberia Annual Conference/United Methodist Church. As an educator, administrator and author, Bishop Kulah has served as Dean of the Gbarnga School of Theology, and Dean and Principal of the Theological College and Church Training Center in Freetown, Sierra Leone. He has written several books and articles including *Liberia will Rise Again* and *Theological Education in Liberia: Problems and Opportunities*. In June 1990, Bishop Kulah and others organized a sixty thousand person peace march that initiated the creation of an interfaith committee and helped build a foundation for the 2003 peace process in Liberia. *Bishop Kulah resigned his position on the Liberian TRC in March 2008, to become the Interim Bishop of the United Methodist Church of Nigeria.

Appendix B



International Law and Liberia's International Legal Obligations

I. Introduction

International human rights and humanitarian law developed largely in response to monumental human tragedies in the modern era. International humanitarian law (IHL) is older than human rights law and traces its roots to the middle of the nineteenth century. IHL, commonly called the “law of war,” applies in specifically defined instances of international and internal armed conflict. IHL regulates the conduct of hostilities and aims to protect victims of war (e.g., civilians, wounded and sick, prisoners, displaced persons, etc.) and prevent excessive human suffering and material destruction.

International human rights law (IHRL), which developed primarily after the Second World War, generally provides broader protection than IHL. IHRL protects a number of individual rights, including freedom of movement, liberty and security, freedom of association, and freedom of speech. Under IHRL, however, certain human rights may be suspended in limited circumstances, such as in times of public emergency that threaten the life of the nation, but only to the extent required by the exigencies of the situation. Still, not all human rights may be suspended, and, importantly, IHL and IHRL apply simultaneously to limit the suspension of an individual’s right to exercise his or her basic human rights. Together, IHL and IHRL establish an essential set of human rights that cannot be suspended under any circumstances. These core protections include the right to life, the prohibition of slavery and servitude, the prohibition of torture and inhumane treatment, and the prohibition of any retroactive application of the law.

The core IHL and IHRL protections apply in Liberia. In fact, Liberia has joined most of the treaties and conventions that comprise the foundations of IHRL and IHL, either through ratification or accession, or by signature only. Liberia did not ratify many of these conventions, however, until after the exile of Charles Taylor in 2003. For example, Liberia signed the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights in 1967, but did not ratify those instruments until 2004. Likewise, Liberia joined the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment in 2004, after having taken no action on it for twenty years, and did not sign the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict until 2004.

This section will discuss the sources of international law, the major instruments of IHRL, including universal and regional instruments, and the major instruments of IHL.

II. Sources of International Law

Article 38 of the Statute of the International Court of Justice (ICJ) is generally regarded as a complete statement of the sources of public international law.¹ Article 38 defines four primary sources of public international law:²

1. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
2. international custom, as evidence of a general practice accepted as law;
3. the general principles of law recognized by civilized nations;
4. subject to the provisions of Article 59 [decisions of the Court have no binding force except between the parties and in respect of that particular case], judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.³

1. International treaties, such as conventions, covenants,⁴ protocols,⁵ or pacts, are an important source of international law. A treaty is generally a legally binding, written agreement concluded between states or between the United Nations and a state.⁶ At the international level, a state establishes its consent to be bound through ratification,⁷ acceptance or approval,⁸ or accession.⁹ Law-making treaties establish general norms for the future conduct of the parties, and the obligations are basically the same for all parties.¹⁰ States may sign treaties; however, until the treaty is ratified, accepted, approved, or acceded to by domestic legislation, a state's signature serves only as an expression of the state's intent to refrain from acts that would defeat the object and purpose of the treaty.¹¹ Once a human rights treaty has entered into force, states have an obligation to strictly perform their treaty obligations in good faith.¹² Examples of influential treaties in the human rights area include the International Convention on Civil and Political Rights and the International Convention on Economic, Social, and Cultural Rights.¹³

2. Customary international law is derived from the actual conduct of states. The existence of a custom is shown by two factors: (1) "settled practice," and (2) "*opinio juris*."¹⁴ Settled practice may be established even after relatively little time has passed so long as state practice is "both extensive and virtually uniform in the sense of the provision invoked."¹⁵ *Opinio juris* may be established by "evidence of a belief that [a certain] practice is rendered obligatory by the existence of a rule of law requiring it."¹⁶ "It is thus beyond doubt that basic human rights obligations form part of customary international law. . . . [T]he [ICJ] has expressly mentioned the crimes of genocide and aggression, as well as the prohibition of racial discrimination, slavery, arbitrary detention and physical hardship as forming part of a universally binding corpus of law, [but] it has not limited the scope of [customary international] law to these elements."¹⁷

3. General principles of law are legal propositions so fundamental to human existence that they can be found in all major legal systems world-wide.¹⁸ For example, if there is evidence that domestically states adhere to a legal principle providing for a right or that is essential to the protection of a right, this illustrates the existence of a legally binding principle under IHRL.¹⁹

4. Judicial decisions and the teachings of the most highly qualified publicists may also constitute binding public international law. In the IHRL area, a wealth of international caselaw now exists, and it must be regarded as authoritative evidence of the state of IHRL law.²⁰ Domestic judicial decisions may also be used as evidence of binding IHRL.²¹ The writings of international legal commentators and scholars may also inform IHRL, but “it is advisable to exercise considerable care before relying on legal articles and principles and comments adopted by private bodies outside the framework of the officially established treaty organs.”²²

III. Major Instruments of International Human Rights Law

Effective protection of human rights promotes peace and stability at the national level and is an essential precondition for peace and justice at the international level. Protecting human rights at the domestic level and providing a framework within which domestic conflicts can be resolved peacefully eases social tensions before they can create a threat to international peace and security.

A. United Nations Charter

IHRL as we know it today began in 1945 with the Charter of the United Nations. The preamble to the United Nations Charter “reaffirm[ed] faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women and of nations large and small,” and it established the United Nations’ goal “to promote social progress and better standards of life in larger freedom.”²³ To this end, one of the four main purposes of the United Nations is to “achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”²⁴

Articles 56 and 55(c) of the Charter require Member States “to take joint and separate action in co-operation with the Organization for the achievement of . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”²⁵ Although this language is generally regarded as vague, the obligation imposed by Article 56 “provided the United Nations with the requisite legal authority to embark on what became a massive lawmaking effort to define and codify [IHRL].”²⁶ The centerpiece of this effort was the 1948 Universal Declaration of Human Rights. Then, in 1966, two international covenants on human rights were adopted. “These two treaties, together with the human rights provisions of the [United Nations] Charter and the Universal Declaration [of Human Rights], constitute the International

Bill of Rights.”²⁷ In turn, this International Bill of Rights represents a codification of international norms of conduct into a statutory treaty system designed to protect human rights.

B. International Bill of Rights

i. Universal Declaration of Human Rights

On December 10, 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) to give meaning to the “human rights and fundamental freedoms” protected in the United Nations Charter.²⁸ The UDHR “recognizes civil, cultural, economic, political[,] and social rights, and, although it is not a legally binding document per se . . . the principles contained therein are now considered to be legally binding on States either as customary international law, general principles of law, or as fundamental principles of humanity.”²⁹ Indeed, on the twentieth anniversary of its adoption, the U.N. General Assembly declared that the UDHR “states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.”³⁰ Moreover, all significant human rights treaties adopted after 1948 recognize the UDHR in their preambles. The ICJ also has recognized that the UDHR is a part of customary international law.³¹ Thus, it may be argued that the UDHR is binding on a state even if the state has made no effort to adopt its provisions.

The UDHR applies without regard to race, color, sex, religion, or national origin and secures the right to life, liberty, and security of person.³² It prohibits slavery or servitude; torture or cruel, inhuman, or degrading treatment or punishment; discrimination based on race, color, sex, or religion; arbitrary arrest, detention, or exile; *ex post facto* laws; interference with travel; and arbitrary deprivation of property.³³ It also protects the right to recognition before the law; to an effective remedy by competent national tribunals for acts violating fundamental rights; to a fair and public hearing by an independent and impartial tribunal and a presumption of innocence for persons accused of a crime; to seek asylum; to a nationality; to marry; to freedom of religion; to freedom of thought and expression; to freedom of association; to equally participate in government; to social security; to work; to an adequate standard of living; and to an education.³⁴

The UDHR provides “that human rights should be protected by the rule of law.”³⁵ Thus, the UDHR envisions an international legal system in which domestic legal systems directly provide for the protection of a person’s human rights. The UDHR does not specifically recognize a state’s right to derogate from (i.e., suspend) their obligations under the UDHR but allows only “such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”³⁶

From an ethical perspective, the rights provided in the UDHR and further developed in other human rights treaties spring not from positive law but rather are a component of “the inherent dignity and . . . the equal and inalienable rights of all members of the human family.”³⁷ The American Convention on Human Rights also expressly recognizes “that the essential rights of man are not derived from one’s being a national of a certain state, but are based upon attributes of the human personality.”³⁸ The African Charter on Human and Peoples’ Rights recognizes “that fundamental human rights stem from the attitudes of human beings, which justifies their international protection.”³⁹ In this respect, states must provide human rights to all individuals within their jurisdiction, and these rights cannot be suspended even in emergency situations. For example, the Inter-American Court of Human Rights found that the rights provided under the American Convention on Human Rights cannot be suspended even in emergency situations because they are “inherent to man.”⁴⁰

ii. International Covenant on Economic, Social and Cultural Rights

The International Convention on Economic, Social and Cultural Rights (ICESCR) was adopted by the U.N. General Assembly in 1966 and entered into force in January 1976.⁴¹ As of June 11, 2009, 160 states are party to the ICESCR.⁴² The U.N. Economic and Social Council (ECOSOC) is formally entrusted under the ICESCR with the task of monitoring compliance by state parties but since 1987 this task has been carried out by the Committee on Economic, Social and Cultural Rights.⁴³

The ICESCR addresses a state’s obligation to provide certain economic, social, and cultural rights to its citizens. Each State Party to the ICESCR “undertakes 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.”⁴⁴ The ICESCR also provides that state parties agree “to guarantee that the rights enunciated in the . . . Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴⁵

The ICESCR guarantees, *inter alia*, the following rights:

- the equal right of both women and men to the enjoyment of all rights set forth in the convention;
- to work in just and favorable conditions;
- to form trade unions;
- to social security and social insurance;
- to marriage;
- to an adequate standard of living;

- to the highest attainable standard of physical and mental health;
- to an education and the enjoyment of the benefits of cultural freedom and scientific progress; and
- recognition of protection and assistance to the family, in particular mothers, children, and young persons.⁴⁶

The ICESCR contains a general limitation in article 4: recognizing “that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” Satisfying the general limitation is a difficult task. Otherwise, the only specific derogation allowed is provided in article 8(1)(a), (c) with respect to trade unions and allows for limitations on this right as prescribed by law “which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.”⁴⁷ Liberia ratified the ICESCR on September 22, 2004.

iii. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) went into effect on March 23, 1976, and as of June 11, 2009, 164 states have ratified or acceded to the ICCPR.⁴⁸ The Human Rights Committee monitors the implementation of the ICCPR.⁴⁹

The ICCPR addresses the state’s responsibility for administering justice and maintaining the rule of law. The ICCPR is not “confined to the respect of human rights, but . . . States Parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction.”⁵⁰ States Parties have a legal duty to ensure that (1) domestic laws are modified where necessary in order to comply with the state’s international obligations, and (2) domestic laws are effectively implemented in practice by all public organs and officials, such as courts, prosecutors, police officers, prison officials, schools, the military, and hospitals.⁵¹

The ICCPR guarantees the following rights:

- to life;
- to freedom from torture or cruel, inhuman, or degrading treatment or punishment;
- to freedom from slavery, servitude, or forced labor;
- to liberty and security of the person;
- to liberty of movement and freedom to choose one’s residence;
- to a fair hearing before an impartial tribunal;
- to freedom from *ex post facto* laws;
- to recognition as a person before the law;
- to freedom of thought and expression;

- to peaceful assembly;
- to association;
- to marriage;
- to participate in government; and
- to a nationality.⁵²

The ICCPR also prohibits, among other things, war propaganda and advocacy of national, racial, or religious hatred constituting incitement to discrimination, hostility, or violence.⁵³

The ICCPR has two Optional Protocols.⁵⁴ The first establishes the procedure for dealing with communications (i.e., complaints) from individuals claiming to be victims of the violation of any right set out in the ICCPR.⁵⁵ The second abolishes the death penalty.⁵⁶

Unlike the UDHR and the ICESCR, the ICCPR authorizes a state to suspend the enjoyment of certain rights in times of an officially declared public emergency that threatens the life of the nation.⁵⁷ Such limitations are permitted only to the extent that they are prescribed by law and strictly necessary under the circumstances.⁵⁸ Furthermore, any suspension must be consistent with the state's other international legal obligations and cannot be for the purpose of discriminating on the basis of race, color, sex, language, religion, or social origin.⁵⁹ Derogations also must be reported to the United Nations.⁶⁰ Some provisions, however may never be suspended, such as the rights to life, freedom from torture, slavery, *ex post facto* laws, recognition as a person before the law, and freedom of thought and religion.⁶¹ The right to access the courts may not be suspended to the extent that a judicial system is required to enforce and protect these rights. For example, article 2(3) requires Member States:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.⁶²

The rights provided in these universal international instruments must be enforced by domestic legislation. It therefore follows that, before a state, or in certain circumstances an individual, may enforce human rights instruments at the international level, all domestic enforcement avenues must be exhausted unless they are unavailable or ineffective. Liberia ratified the ICCPR on September 24, 2004.

iv. Specific Application of International Bill of Rights to Police and Law Enforcement, Judicial, and Legislative Branches

Generally, international human rights instruments apply to all public authorities, including the judicial and legislative branches and police and law enforcement, by their own terms. In other words, the right to be free from arbitrary arrest and detention provided in the UDHR applies with equal weight to the branches of the national and local governments and to the individual police officers working within a state. The United Nations High Commissioner on Human Rights has produced a pocket book for police describing the application of international human rights to police and law enforcement officers specifically.⁶³ Furthermore, the United Nations High Commissioner for Human Rights also has produced a background guide for judges, prosecutors, and lawyers, detailing the application of IHRL to the coordinate branches of a national government and police and law enforcement.⁶⁴

The concept of state responsibility under international law is expansive, and it is generally recognized that human rights law applies even to “private” conduct. Specifically, states are not only obligated to refrain from committing human rights violations themselves, but may also be responsible for failing to exercise due diligence toward otherwise “private” acts when they fail to fulfill their duty to prevent, investigate, or punish such acts.⁶⁵

C. Other Major Universal International Human Rights Instruments

In addition to the UDHR, ICESCR, and ICCPR, several other major universal international human rights instruments are especially relevant.

i. The Convention on the Prevention and Punishment of the Crime of Genocide

The Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) was adopted by the U.N. General Assembly on December 9, 1948 and entered into force on January 12, 1951.⁶⁶ As of June 11, 2009, 140 states were parties to the Genocide Convention.⁶⁷ The parties to the Genocide Convention “confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”⁶⁸ Thus, the Genocide Convention recognizes that genocide is likely already a crime under customary international law.

The Genocide Convention does not have an international body charged with the implementation of the Convention; rather, the parties “undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the...Convention, and, in particular, to provide effective penalties for persons guilty of genocide” or of conspiracy to commit, incitement or attempt to commit, or complicity in, the crime of genocide.⁶⁹ The Genocide

Convention defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”⁷⁰

Liberia ratified the Genocide Conventions on June 9, 1950.

Tribunals have been established to prosecute various large-scale human rights abuses that constitute grave violations of the laws and customs of war, genocide, and crimes against humanity.⁷¹ In Africa, for example, an International Criminal Tribunal for Rwanda was created by the U.N. Security Council.⁷² Additionally, on July 17, 1998, the Rome Statute of the International Criminal Court (ICC) was adopted by the U.N. Conference of Plenipotentiaries.⁷³ The ICC is competent to try national persons irrespective of their official capacity, but will not have jurisdiction over legal entities, such as states and corporations.⁷⁴ The ICC Statute went into effect on July 1, 2002.⁷⁵

ii. The International Convention on the Elimination of All Forms of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) was adopted by the United Nations General Assembly on December 21, 1965, and entered into force on January 4, 1969.⁷⁶ As of June 11, 2009, 173 states were parties to it.⁷⁷ The term racial discrimination means “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”⁷⁸ The States Parties to the Convention “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.”⁷⁹ They agree not to practice racial discrimination and to prohibit public institutions from practicing the same, not to support racial discrimination by any persons or organizations, to take effective public policy measures to eliminate racial discrimination, and to encourage multiracial organizations and movements permitting integration.⁸⁰ They also agree to assure that adequate remedies exist in their jurisdictions for acts violating the Convention.⁸¹ The Committee on the Elimination of Racial Discrimination is tasked with monitoring and implementing the Convention.⁸² Liberia acceded to CERD on November 5, 1976.

iii. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted by the U.N. General Assembly on December 10, 1984 and entered into force on June 26, 1987.⁸³ As of December 16, 2008, 146 states were parties to the Convention.⁸⁴ Under the Convention “torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”⁸⁵ “Each State Party [to the Convention] shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”⁸⁶

The Convention also expressly specifies that torture is not justified in any circumstance (e.g., internal political instability, public emergency, etc.) or for any reason (e.g., order from superior, order from public authority, etc.).⁸⁷ The fact that international protection against torture may not be suspended is consistent with the ICCPR, which also does not permit suspension of the right to be free from torture.⁸⁸

The Committee against Torture was established to supervise and implement the Convention.⁸⁹ The Committee receives reports from states and considers communications (i.e., complaints) from states and individuals.⁹⁰ The Convention only authorizes the Committee to visit countries where torture is practiced with the consent of the State Party concerned, but efforts have been made since 1991 to draft an optional protocol that would establish a preventive system of regular visits to places of detention.⁹¹ Liberia acceded to CAT on September 22, 2004.

iv. The Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly on December 18, 1979 and entered into force on September 3, 1981.⁹² As of June 11, 2009, 186 states are party to the Convention.⁹³ The Convention defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”⁹⁴ States Parties agree to embody the principle of equality of gender in

their national laws, to adopt legislation prohibiting discrimination against women, to establish equal rights for women, to refrain from discriminating against women, and to take appropriate measures to eliminate discrimination against women by any person, organization, or enterprise.⁹⁵ States also agree to modify the social and cultural patterns of society that are based on the idea of superiority or inferiority of the sexes or stereotyped roles for men and women, to ensure that family education includes a proper understanding of maternity as a social function and recognizes the common responsibility of men and women in raising children, and to take all appropriate measures to suppress all forms of traffic in women and exploitation of prostitution of women.⁹⁶

CEDAW established a monitoring committee called the Committee on the Elimination of Discrimination against Women.⁹⁷ The implementing Committee receives reports from States Parties and makes recommendations.⁹⁸ The Committee is also restricted to meeting for no more than two weeks annually.⁹⁹ An Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women entered into force on December 22, 2000.¹⁰⁰ The optional protocol allows the committee to consider petitions from individuals or groups and to conduct confidential enquiries into grave or systematic violations of CEDAW.¹⁰¹ Liberia ratified CEDAW on July 17, 1984.

v. The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) was adopted by the U.N. General Assembly in 1989 and entered into force on September 2, 1990.¹⁰² As of June 11, 2009, 193 states are parties to the CRC.¹⁰³ The Convention has two optional protocols that entered into force in 2002, one relating to the involvement of children in armed conflict, and the other relating to the sale of children, child prostitution, and child pornography.¹⁰⁴

The guiding principle of the CRC is that “in all actions concerning children . . . the best interests of the child shall be a primary consideration.”¹⁰⁵ The Convention protects certain general rights, including non-discrimination and equality of opportunity; the right to life, survival, and development, including physical, mental, emotional, cognitive, social, and cultural development; and the freedom to express opinions and have those opinions taken into account, depending on the child’s age and maturity level.¹⁰⁶ Other rights of children include free and compulsory primary education; protection from economic exploitation; protection from sexual abuse, child prostitution, and child pornography; protection from physical and mental harm and neglect; special treatment and education for disabled children; and protection of children affected by armed conflict.¹⁰⁷ A Committee on the Rights of the Child was established “for the purpose of examining the process made by States Parties in achieving the realization of the obligations undertaken in the . . . Convention.”¹⁰⁸ Liberia ratified the CRC on June 4, 1993.

D. Regional Human Rights Instruments

Regional instruments also protect human rights. For example, both the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) (entered into force Sept. 3, 1953) and the Inter-American Convention on Human Rights (American Convention) (entered into force July 17, 1978) recognize and give effect to the human rights principles established in the UDHR.¹⁰⁹ In Africa, a specific regional charter protects human rights.

i. African Charter of Human and Peoples' Rights

The African Charter of Human and Peoples' Rights (African Charter) was adopted in 1981 and entered into force on October 21, 1986.¹¹⁰ As of June 11, 2009, 53 African states were parties to the African Charter.¹¹¹ Liberia ratified the African Charter on August 4, 1982. While it was inspired by the UDHR, the two international covenants, and the other regional human rights charters, the African Charter reflects a high degree of specificity due in part to the African conception of the term "right" and its meaning in reference to the responsibilities of human beings.¹¹² State parties undertake to "recognize the rights, duties and freedoms enshrined in [the Charter] and . . . to adopt legislative or other measures to give effect to them."¹¹³ State parties also "have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood" and "to guarantee the independence of the Courts and . . . allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter."¹¹⁴ Thus, the African Charter places an especially strong emphasis on the need for an independent administration of justice to protect human rights.¹¹⁵

The African Charter recognizes the following civil, political, economic, social, and cultural rights of individual human beings:

- freedom from discrimination;
- equality before the law;
- respect for one's life, personal integrity, and inherent dignity, including freedom from slavery, slave trade, and torture, and from cruel, inhuman or degrading punishment and treatment;
- the right to liberty and personal security, including freedom from arbitrary arrest or detention;
- access to the courts for redress of grievances;
- presumption of innocence and the right to a defense, to be tried within a reasonable time, and to be free from *ex post facto* laws;
- freedom of conscience, profession, thought, and religion;
- the right to receive information;
- freedom of association;

- freedom of movement;
- the right to participate in the government;
- the right to own property;
- the right to work and to receive equal pay for equal work;
- the right to enjoy the best attainable state of physical and mental health; and
- the right to an education;
- and the right to family.¹¹⁶

Also recognized are the peoples' rights to equality, existence, and self-determination; right to dispose of wealth and natural resources; economic, social, and cultural development; national and international peace and security; and "a general satisfactory environment favorable to their development."¹¹⁷

Uniquely, the African Charter also imposes certain general duties on individuals in regard to groups, including "family and society, the State and other legally recognized communities and the international community," and toward other individuals.¹¹⁸ In particular, "every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance."¹¹⁹ The African Charter requires every individual to preserve the harmonious development of the family, serve one's national community, not compromise the security of the state, preserve and strengthen the social and national solidarity, work to the best of one's abilities and competence, pay taxes, preserve and strengthen positive African cultural values, and contribute to the best of one's ability to the promotion and achievement of African unity.¹²⁰

Unlike the ICCPR and the American and European Conventions, the African Charter does not explicitly provide for any derogation of rights in times of public emergency. The African Commission on Human and Peoples' Rights ("African Commission") has interpreted this to mean that derogations are not permissible under the African Charter.¹²¹ Rather, the African Charter states that the "rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest."¹²² In specific instances, states may place restrictions on certain rights as "provided for by law for the protection of national security, law and order, public health or morality."¹²³

The African Charter created the African Commission "to promote human and peoples' rights and ensure their protection in Africa."¹²⁴ The African Commission may study particular problems and make recommendations to states, "formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights," and cooperate with other African and international institutions to promote human rights.¹²⁵ The African Commission is also empowered to consider disputes between states but only after all domestic remedies have been exhausted "unless . . . the procedure of achieving these remedies would be unduly prolonged."¹²⁶ Individual communications

(i.e., complaints) may also be sent to the African Commission under certain narrow, well-defined circumstances.¹²⁷ Finally, the African Commission is charged with issuing a report detailing its efforts every two years.¹²⁸

ii. Additional African Regional Instruments

Protocols and subject-specific charters also regulate human rights in Africa. For example, the African Charter on the Rights and Welfare of the Child was adopted in 1990 and entered into force in 1999; it spells out a long list of children's rights and establishes an African Committee of Experts on the Rights and Welfare of the Child.¹²⁹ It defines a child as any person below the age of 18 years (Art. 2) and enumerates rights, including the right to an education (Art. 11), protection against child abuse, torture (Art. 16), economic exploitation (Art. 15), and sexual exploitation (Art. 27). The treaty also calls upon States Parties to ensure respect for international humanitarian law pertaining to the child and to "ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child" (Art. 22). It also ensures that the child refugees or children seeking refugee status are accorded protection and assistance as provided for by the treaty and international law (Art. 23). Also, any child who is deprived of a family environment, whether permanently or temporarily, is to be afforded protection and assistance (Art. 25). Liberia ratified the African Charter on the Rights and Welfare of the Child in 2007.

A specific African convention also deals with women's rights and refuge problems.¹³⁰ The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa enumerates several rights and obligations of States Parties. It requires States Parties to eliminate discrimination against women (Art. 2), as well as ensure equal protection for women before the law (Art. 8), equal rights in marriage (Art. 6), and women's increased participation in the peace process (Art. 10). The Protocol also requires States Parties to respect international humanitarian law, particularly with regard to women, and to protect civilians, including women, during armed conflict (Art. 11). The protocol affirms the right of women to life, respect and security of person (Art. 4), and it requires States Parties to pass laws prohibiting violence against women and to punish perpetrators who violate such laws (Art. 4(2)(a), (e)). Liberia ratified the protocol in 2007.

Finally, a protocol to the African Charter establishes a regional court, the African Court on Human and Peoples' Rights, to rule on compliance issues raised under the African Charter.¹³¹ The African Court on Human and People's Rights, created in 2004, is composed of eleven judges, and is currently in the process of merging with the African Court of Justice, following a decision by the African Convention states at a June 2004 summit. Liberia has only signed the African Court on Human and Peoples' Rights, which it did in 1998.

IV. Major Instruments of International Humanitarian Law

The evolution of warfare and weaponry since the beginning of the twentieth century has resulted in very high civilian casualty rates (heavily comprised of women, children, and elderly) and ever increasing dangers to humanitarian workers in situations of armed conflict.¹³² In recent years, the increasing impact of war on vulnerable civilian populations and humanitarian workers has driven the development of more detailed and concrete rules of warfare.

International Humanitarian Law (IHL), also known as the law of war or armed conflict, aims to place restrictions on the conduct of hostilities (namely on the use of certain weaponry and means of warfare), protect those who are not or who are no longer participating in the conflict (e.g., civilians, prisoners of war, wounded and sick, and humanitarian workers, etc.), and confine the use of violence to the achievement of the objectives of the conflict.¹³³ IHL's goal is to "protect human dignity and to limit suffering during times of war."¹³⁴

The rules of IHL differ in content and application depending upon the type of conflict. First, the most comprehensive IHL rules apply to situations of "international armed conflict" (i.e., conflicts between states).¹³⁵ It is not surprising that the bulk of IHL applies to this type of conflict because states can more easily sign and enforce agreements regulating the conduct of their wars. Second, less extensive rules cover situations of "internal armed conflict" (i.e., those that take place within a country and involve one or more groups and possibly the state government).¹³⁶

A. Background and Differences Between IHL and IHRL

There are two major differences between international humanitarian law ("IHL") and international human rights law ("IHRL"). First, while both bodies of law share a common goal of protecting the rights and dignity of individuals, they pursue that goal in different ways.¹³⁷ IHL operates in a specific emergency situation – armed conflict; IHRL applies more broadly and seeks generally to protect the rights of individuals regardless of the presence of conflict.¹³⁸ Second, no derogations are allowed from IHL rules;¹³⁹ however, states may suspend some IHRL rights during a public emergency that threatens the security of the state.¹⁴⁰

IHL applies to international armed conflict and internal armed conflict, but it does not apply to internal disturbances, such as riots or isolated and sporadic acts of violence.¹⁴¹ There is no formal system, however, for determining whether a conflict is an "internal armed conflict" or an "internal disturbance." State sovereignty concerns may induce a state to evade the requirements of IHL by characterizing internal conflict as an "internal disturbance" or some other national emergency to which IHL does not apply.¹⁴² The state also may be concerned that designating the situation as "internal armed conflict" would give legitimacy to the opposition and implicitly recognize its existence. Accordingly, it is often difficult to persuade a state to accept the application of IHL to a violent conflict occurring within its borders.¹⁴³ As a result, situations arise where IHL does not apply because no actual conflict has been declared. Additionally, provisions of IHRL may be suspended

due to the national emergency. In such situations, individuals are left with only limited international humanitarian and human rights protections.¹⁴⁴

B. Principal Instruments of IHL¹⁴⁵

i. The Early IHL Instruments

The Hague Convention (including the Convention for the Protection of Cultural Property)* (1899; 1954). In 1899,¹⁴⁶ at the First Hague Peace Conference, a group of nations met with the primary goal of establishing a system for resolving disputes without resorting to warfare and a secondary goal of setting rules regarding the conduct of war.¹⁴⁷ The notion of agreeing prospectively to submit disputes to arbitration proved to be unpopular, but the Conference's attendees were more willing to discuss proposals related to the conduct of war.¹⁴⁸

The result of this conference was a set of regulations addressing land combat between nations at war.¹⁴⁹ Section I attempted to draw the lines between “belligerents,” “prisoners of war,” and others, and established rules for how prisoners of war and the sick or wounded should be treated (the goal being “humane” treatment).¹⁵⁰ Section II set limits on the means and practice of warfare, including conduct during hostilities, and practices concerning spies, surrender, and armistices.¹⁵¹ Certain practices were specifically banned, including the use of poison, “kill[ing] or wound[ing] treacherously,” killing or wounding an enemy who has surrendered, using any weapon that would “cause superfluous injury,” giving orders not to take any prisoners, and attacking undefended towns or villages.¹⁵² Section III requires that occupying forces restore public order and refrain from looting or pillaging; most interestingly, this section states that life and religion must be “respected.”¹⁵³ Finally, Section IV allows neutral states to detain “belligerent” forces (it also requires the detaining state to provide food and clothing for detainees) and permit sick and wounded into their territories.¹⁵⁴

In 1954, an additional instrument titled the Convention for the Protection of Cultural Property (“CPCP”) was added to the Hague Convention regime. Prompted by the massive destruction of cultural properties in World War II and other conflicts, the CPCP sought to protect cultural property of all kinds, including buildings with historical and/or architectural value.¹⁵⁵ The CPCP is one of the few instruments that applies to non-international armed conflicts, unlike the 1899 Hague Convention, which binds only states involved in international conflicts.¹⁵⁶ Specifically, Article 19 of the CPCP states that “in the event of an armed conflict not of an international character” occurring within the territory of a State Party to the CPCP, any party to the conflict is bound by the CPCP provisions mandating respect for cultural properties.¹⁵⁷

ii. The Geneva Convention and Additional Protocols

Spurred to action by the violence and horrors of the Spanish Civil War and World War II, members of the international community drafted the four Geneva Conventions during 1949.¹⁵⁸ The Geneva Conventions are the most widely recognized of any IHL or IHRL instruments, and their provisions cover the treatment of combatants on land and sea, prisoners of war, and civilians.¹⁵⁹ Over the years, as advancements in weaponry, changes in combat tactics (guerrilla tactics, etc.), and changes in the context of war (i.e., the rise of intra-state civil conflict and the severity of its consequences upon civilian populations) resulted in new problems in the conduct of war, another diplomatic conference was called in 1974, resulting in two Additional Protocols being added to the Geneva regime in 1977.¹⁶⁰

Convention I (1949). Convention I creates obligations relating to the treatment of wounded or sick members of armed forces on land. Article 12 dictates that all wounded and sick who are in the power of any party to the conflict must be given medical care, and forbids murdering or experimenting upon the wounded or sick.¹⁶¹ All parties to a conflict must make all possible efforts to search out and take custody of any sick or wounded regardless of their affiliation.¹⁶² Medical military services and Red Cross societies are also given protection, and medical units may not be attacked by any party.¹⁶³ Interestingly, civilians are given the ability to take in and care for wounded soldiers.¹⁶⁴ Finally, this Convention makes it clear that reprisals against forces that are not or have not been following this Convention are forbidden.¹⁶⁵

Convention II (1949). Convention II creates similar obligations as Convention I, except in the context of sick, wounded, or shipwrecked armed forces at sea.¹⁶⁶ Like Convention I, it prohibits reprisals against parties protected by the treaty.¹⁶⁷

Convention III (1949). Convention III deals with the treatment of prisoners of war (“POWs”). In general terms, all POWs must “at all times be humanely treated.”¹⁶⁸ No killing of POWs is allowed, and no reprisals against them are allowed.¹⁶⁹ POWs are entitled to protection and must be evacuated from combat areas as soon as practicable and cared for in a way that respects individual concerns such as hygiene, mental health, and religion.¹⁷⁰ The detaining state may put POWs to work, but Convention III places restrictions on the type of labor that they may be compelled to do.¹⁷¹

Convention IV (1949). Convention IV grants protection to civilians during war but these protections are not as extensive as those granted to combatants in Conventions I-III.¹⁷² Convention IV restrictions apply only to the treatment of civilians by enemy forces, not to the treatment of a civilians by its own state’s forces. Further, the restrictions of Convention IV do not seek to “protect civilians from the dangers of warfare – such as aerial bombardment.”¹⁷³

Common Article 3 to Conventions I-IV* (1949). Each of the four Geneva Conventions described above shares an identical provision, known as the Common Article 3, that covers the minimum rules that must apply in cases of internal armed conflicts (as opposed to the rest of the articles of

Conventions I-IV that apply only in cases of international armed conflicts).

Those persons who take no active part in the fighting, including any combatants who have surrendered their weapons and those who have been taken out of the fighting by sickness, wounds, or capture, must be treated humanely at all times without discrimination on the basis of race, color, religion, sex, birth, wealth, or similar criteria.¹⁷⁴ Common Article 3 states that this requirement forbids the following acts: “(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages against personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”¹⁷⁵ All wounded and sick also must be collected and cared for, although how humanitarian assistance is to be provided is not explained in practical terms.¹⁷⁶ Most noticeably, there are no provisions in Common Article 3 regarding the treatment of POWs.¹⁷⁷

Application of Common Article 3 has certain limitations. First, armed opposition groups cannot be parties to the Convention. Thus, these groups are not bound by Common Article 3; although, as a practical matter, it might be helpful both internally and externally for these groups to comply.¹⁷⁸ Second, sovereignty concerns render states extremely reluctant to recognize an opposition party in any capacity.¹⁷⁹ Common Article 3 therefore is rarely invoked. Nonetheless, all parties regardless of their status are called upon to follow and make special formal agreements concerning the full application of the Conventions I-IV, and these types of agreements have been reached in various conflicts in cooperation with the International Committee for the Red Cross.¹⁸⁰

In addition, the Geneva Conventions require States Parties to penalize and prosecute “grave breaches.” The four Geneva Conventions plus Additional Protocol I provide definitions of these grave breaches. Under Geneva Convention IV, grave breaches include: “wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”¹⁸¹ Additional Protocol I defines grave breaches as, “[a]ny wilful act or omission which seriously endangers the physical or mental health or integrity of any person who is in the power of a Party other than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol,” as well as, *inter alia*, “making the civilian population or individual civilians the object of attack” and “launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects” which, when committed

willfully, causes death or serious injury to body or health.¹⁸² Liberia ratified the four Geneva Conventions on March 29, 1954.

Additional Protocol I (1977). A large portion of the Additional Protocol I (a Protocol that applies only in cases of international armed conflict) is the codification of pre-existing rules of customary international law.¹⁸³ Major provisions of this protocol discuss combatant and POW status, methods and means of warfare, protection of and humanitarian assistance to civilian populations, treatment of the wounded, sick, and shipwrecked, and treatment of those persons “in the power of a party to the conflict.”¹⁸⁴ Liberia ratified Additional Protocol I on June 30, 1988.

Additional Protocol II* (1977). This protocol supplements Common Article 3.¹⁸⁵ As compared to the extensive Additional Protocol I, this protocol establishes a limited set of rules that apply to internal armed conflicts. As defined in Article 1, internal armed conflict does not include “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.”¹⁸⁶ This vague definition means that characterization of a given conflict “has largely been left to the discretion and the good faith of the state concerned . . . [m]uch will therefore depend on the good will of the authorities in the state concerned and, as the case may be, on such pressure as the outside world may be able to exert.”¹⁸⁷ In answer to state sovereignty fears inherent in recognizing an opposition group, this protocol makes no mention of “parties to a conflict,” and instead speaks in terms of “military operations” and situations involving “hostilities.”¹⁸⁸

This protocol applies to “all persons affected by an armed conflict” and it must be applied without any discrimination based upon race, color, sex, language, religion, ethnicity, wealth, or other similar criteria.¹⁸⁹ Any person who is not taking part in or who is no longer taking part in hostilities must be treated humanely.¹⁹⁰ Article 4 repeats the prohibition of acts forbidden by the Common Article 3, and forbids the following acts: corporal punishment, acts of terrorism, outrages upon personal dignity (including rape, forced prostitution, and any form of indecent assault), slavery and the slave trade, pillaging, and threats to commit any of these forbidden acts.¹⁹¹ Specifically dealing with the problem of child soldiers, this protocol provides that no one under the age of 15 may be recruited or allowed to take part in the armed conflict.¹⁹² Article 6 places due process requirements on the punishment of criminal offenses. Echoing Common Article 3, all wounded, sick, and shipwrecked must be protected and cared for, and special protections are added for medical and religious personnel.¹⁹³ Any attack that would directly target civilians or certain key pieces of social infrastructure is prohibited, and starvation or forced displacement of civilians (except for displacements due to security or “imperative military reasons”) is also prohibited.¹⁹⁴ Liberia ratified Additional Protocol II on June 30, 1988.

iii. The Post-Geneva Conventions and Protocols

Post-Geneva law includes conventions on the prohibition against or use of certain weapons. Such

treaties include the Convention on Certain Conventional Weapons and its Protocols (1980-1996), the Convention on Chemical Weapons (1993), and the Ottawa Convention on the Prohibition of Anti-Personnel Mines (1997).

Rome Statute of the International Criminal Court* (1998). As discussed above, the ICC Statute went into effect in July 2002. The ICC has jurisdiction over individuals who commit “war crimes, crimes against humanity, genocide, and the crime of aggression.”¹⁹⁵ Detailed provisions of the ICC Statute apply to international armed conflicts and less specific portions of the ICC Statute apply to internal armed conflicts. The major acts forbidden by Article 8 of the ICC Statute are murder, mutilation, torture, taking hostages, “committing outrages upon personal dignity,” “intentionally directing attacks against the civilian population,” intentionally attacking humanitarian or peacekeeping personnel or property, pillaging a town or place, commission of sexual violence (rape, sexual slavery, forced pregnancy, enforced prostitution, etc.), and the conscription of children under the age of 15 into military service.¹⁹⁶ These rules, however, do not apply to “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.”¹⁹⁷ Liberia ratified the Rome Statute on September 22, 2004.

CRC Protocol on Armed Conflict* (2000). In 1989, U.N. member states signed the CRC giving specialized human rights protection to a vulnerable sector of society – children.¹⁹⁸ In 2000, an Optional Protocol was signed in response to the growing use of child soldiers in combat.¹⁹⁹ The optional protocol forbids any compulsory conscription of persons under age 18, and voluntary enlistment of those under 18 is allowed only if strict guidelines are met (including parental consent). Although only states may be signatories, this instrument also states that “armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years” and state parties must take “all feasible measures to prevent such recruitment and use.”²⁰⁰ Thus, this Optional Protocol is one of the few IHL instruments that places requirements upon non-state actors engaged in armed conflict. Liberia signed only the OP-CRC-AC on September 22, 2004.

V. Summary of Instruments Signed or Ratified by Liberia

Significantly, Liberia did not ratify many of the instruments of IHRL and IHL until after Charles Taylor was exiled in 2003. Then, after taking no action on certain instruments of international law for as many as 20 years, Liberia formally joined many international treaties in 2004. Liberia has ratified or joined by accession the following treaties and conventions:

- Convention on the Prevention and Punishment of the Crime of Genocide (1950)²⁰¹
- The Geneva Conventions of August 12, 1949 (1954)
- Convention Relating the Status of Stateless Persons (1964)
- Convention Relating to the Status of Refugees (1964)

- International Convention on the Elimination of All Forms of Racial Discrimination (but not Declaration Article 14) (1976)
- Protocol Relating to the Status of Refugees (1980)
- The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (1971)
- The African Charter on Human and Peoples' Rights (1982)
- African Charter on the Rights and Welfare of the Child (2007)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2007)
- Convention on the Elimination of All Forms of Discrimination against Women (1984)
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (2005)
- U.N. Convention against Transnational Organized Crime (2004)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention against Transnational Organized Crime (2004)
- Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (but not Declaration Article 90) (1988)
- Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1988)
- Convention on the Rights of the Child (1993)
- ILO No. 182 Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (2003)
- ILO No. 29 Forced Labour Convention (1931)
- ILO No. 105 Abolition of Forced Labour Convention (1962)
- ILO C111 Discrimination (Employment and Occupation) Convention (1959)
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1999)
- Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (2004)
- Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (2004)
- International Covenant on Civil and Political Rights (2004)
- International Covenant on Economic, Social and Cultural Rights (2004)
- Second Optional Protocol to the International Covenant on Civil and Political Rights (2005)
- U.N. Convention against Corruption (2005)
- African Union Convention on Preventing and Combating Corruption (2007)
- Convention against Discrimination in Education (1962)
- Rome Statute of the International Criminal Court (2004)

- International Convention on the Suppression and Punishment of the Crime of Apartheid (1976)

Liberia has signed the following treaties and conventions:

- Optional Protocol to the International Covenant on Civil and Political Rights (2004)
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (2004)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (2004)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2004)
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2004)
- Convention on the Rights of Persons with Disabilities (2007)
- Optional Protocol to the Convention on the Rights of Persons with Disabilities (2007)
- Protocol of the Court of Justice of the African Union (2003)
- Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998)
- Convention on the Political Rights of Women (1953)
- African Youth Charter (2008)
- African Charter on Democracy, Elections and Governance (2008)

VI. Conclusion

Read together, IHRL and IHL require that the following rights be afforded to Liberians at all times: the right to life, the prohibition of slavery and servitude, the prohibition of torture and inhumane treatment, and the prohibition of any retroactive application of the law. In addition, the specific treaties above may provide additional rights to Liberians in certain circumstances. For example, during times of internal armed conflict, the core provisions of IHRL apply to Liberia, but other provisions of IHL also apply and can provide greater protection of individual liberties. For further details on the specific application of instruments of IHRL and IHL, the relevant treaty, convention, or protocol should be consulted, and international case law, where available, should be used to inform the reading of IHRL and IHL instruments.

Notes

- 1 IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 3 (4th ed. 1990).
- 2 U.N. Charter arts. 92-96 (establishing the Int'l Court of Justice); Statute of the International Court of Justice art. 38, as amended June 26, 1945, 1031 U.N.T.S. 993 (*entered into force* Oct. 24, 1945) [hereinafter ICJ Statute].
- 3 ICJ Statute, *supra* note 2, art. 38.
- 4 A convention or covenant is a formal written agreement between states.
- 5 Protocols often modify other international agreements and are less formal than a convention or treaty.
- 6 U.N. Office of the High Comm'r for Human Rights, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* 7 (2003) [hereinafter "*Human Rights in Administration of Justice*"].
- 7 Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.
- 8 The instruments of acceptance or approval of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. In the practice of certain states acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state.
- 9 Accession is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. *Human Rights in Administration of Justice*, at 7.
- 10 BROWNLIE, *supra* note 1, at 12.
- 11 *Id.*
- 12 *Human Rights in Administration of Justice*, *supra* note 6, at 7.
- 13 *Id.* at 8; BROWNLIE, *supra* note 1, at 12.
- 14 *Human Rights in Administration of Justice*, *supra* note 6, at 8; North Sea Continental Shelf Cases (F.R.G. v. Den., F.R.G. v. Neth.), 1969 I.C.J. 4, ¶ 77 (Feb. 20, 1969).
- 15 *Continental Shelf* ¶ 74.
- 16 Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14, ¶ 207 (June 27, 1986) (quoting *Continental Shelf*, ¶ 77).
- 17 *Human Rights in Administration of Justice*, *supra* note 6, at 10.
- 18 *Id.* at 11.
- 19 *Id.*; BROWNLIE, *supra* note 1, at 15-16, 19.
- 20 *Human Rights in Administration of Justice*, *supra* note 6, at 11.
- 21 *Id.* at 12.
- 22 *Id.* Brownlie also cautions that the writings of publicists must be used with care but states that these "opinions . . . are used widely." BROWNLIE, *supra* note 1, at 25.
- 23 U.N. Charter Preamble.
- 24 *Id.* art. 1(3). Other U.N. Charter provisions referencing human rights include articles 13(1)(b), 55(c), 62(2), 68, and 76(c).
- 25 *Id.* arts. 56, 55(c).
- 26 Thomas Buergenthal, *The Evolving International Human Rights System*, 100 AM. J. INT'L L. 783, 786-87 (2006).
- 27 *Id.* at 787; 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. 10, 1948) [hereinafter UDHR].
- 28 *Human Rights in Administration of Justice*, *supra* note 6, at 3.
- 29 *Id.*
- 30 U.N. Int'l Conference on Human Rights, Apr. 22 - May 13, 1968, *Final Act of the International Conference on Human Rights*, ¶ 3, U.N. Doc. A/CONF. 32/41 (May 13, 1968), <http://www1.umn.edu/humanrts/instree/l2ptchr.htm>.
- 31 Concerning United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 3, ¶ 91 (May 24, 1980).
- 32 UDHR, *supra* note 27, arts. 2, 3.
- 33 *Id.* arts. 4, 5, 7, 9, 11(2), 13, 17(2). The UDHR also prohibits other practices.
- 34 *Id.* arts. 6, 8, 10, 11, 14(1), 15, 16, 18-23, 25, 26. The UDHR also recognizes other rights.
- 35 *Id.* Preamble.
- 36 *Id.* art. 29(2).
- 37 International Covenant on Civil and Political Rights Preamble, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), *entered into force* Mar. 23, 1976, 999

- U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights Preamble, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), *entered into force* Jan. 3, 1976, 993 U.N.T.S. 3 [hereinafter ICESCR].
- 38 American Convention on Human Rights Preamble, 1144 U.N.T.S. 123, *entered into force* July 18, 1978 [hereinafter American Charter].
- 39 African (Banjul) Charter on Human and Peoples' Rights Preamble, *entered into force* Oct. 21, 1986, 21 I.L.M. 58 [hereinafter African Charter].
- 40 Habeas Corpus in Emergency Situations (Advisory Opinion OC-8/87), 1987 Inter-Am. Ct. H.R. (ser. A) No. 8, ¶ 18 (Jan. 30, 1987).
- 41 ICESCR, *supra* note 37.
- 42 United Nations Treaty Collection, Chapter IV: Human Rights, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last visited June 11, 2009).
- 43 *Human Rights in Administration of Justice*, *supra* note 6, at 39.
- 44 ICESCR, *supra* note 37, art. 2(1).
- 45 *Id.* art. 2(2).
- 46 *Id.* arts. 3, 6–15.
- 47 *Id.* art. 8(1)(a), (c).
- 48 ICCPR, *supra* note 37; United Nations Treaty Collection, Chapter IV: Human Rights, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last visited June 11, 2009).
- 49 ICCPR, *supra* note 37, arts. 28–45.
- 50 U.N. Human Rights Comm., *Gen. Comment No. 3, Article 2 Implementation at the National Level*, ¶ 1, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 4 (1994).
- 51 ICCPR, *supra* note 37, art. 2; *see also Human Rights in Administration of Justice*, *supra* note 6, at 32.
- 52 ICCPR, *supra* note 37, arts. 6–9, 12(1), 14–16, 18, 19, 21, 22, 25, 27.
- 53 *Id.* art. 20.
- 54 Optional Protocol to the International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171, [hereinafter ICCPR Optional Protocol]; Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, G.A. Res. 44/128, Annex, 44, U.N. Doc. A/44/49 (Dec. 15, 1989) [hereinafter ICCPR Second Optional Protocol].
- 55 ICCPR Optional Protocol, *supra* note 54.
- 56 ICCPR Second Optional Protocol, *supra* note 54.
- 57 ICCPR, *supra* note 37, art. 4.
- 58 *Id.*
- 59 *Id.*
- 60 *Id.* General Comment 29, adopted by the Human Rights Committee, provides more details on the interpretation of various conditions set out in article 4 of the ICCPR. U.N. Human Rights Comm., *Gen. Comment 29, States of Emergency (article 4)*, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).
- 61 ICCPR, *supra* note 37, art. 4(2).
- 62 *Id.* art. 2(3).
- 63 *See generally* U.N. High Comm'r for Human Rights, *Human Rights Standards and Practice for the Police: Expanded Pocketbook on Human Rights for the Police* (2004), http://www.unhcr.ch/html/menu6/2/pts5add3_E.pdf.
- 64 *See generally Human Rights in Administration of Justice*, *supra* note 6. For example, Chapters 5 to 7 of the manual address pre-arrest and trial issues in terms of IHRL. Chapter 16 addresses the administration of justice during states of emergency.
- 65 *See, e.g.*, U.N. Comm. on the Elimination of Discrimination Against Women, *Gen. Rec. No. 19, ¶ 9*, <http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>.
- 66 Convention on the Prevention and Punishment of the Crime of Genocide, Dec 9, 1948, 78 U.N.T.S. 277 (*entered into force* Jan. 12, 1951) [hereinafter Genocide Convention].
- 67 United Nations Treaty Collection, Chapter IV: Human Rights, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last visited June 11, 2009).
- 68 Genocide Convention, *supra* note 66, art. 1.
- 69 *Id.* arts. 3, 5.
- 70 *Id.* art. 2.
- 71 For a short discussion on international war crimes tribunals *see, e.g., Human Rights in Administration of Justice*, *supra* note 6, at 49–50.
- 72 S.C. Res. 955, U.N. Doc. S/RES/955 (Nov. 8, 1994) (establishing an International Criminal Tribunal for Rwanda).
- 73 U.N. Doc. A/CONF/183/9 (1998) (adopting the Rome Statute of the ICC).
- 74 Rome Statute of the International Criminal Court arts. 25, 27, U.N. Doc. A/CONF/183/9 (July 17,

- 1998) [hereinafter Rome Statute].
- 75 *Id.* art. 126 (stating that the Rome Statute would enter into force after 60 ratifications).
- 76 International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195 (Dec. 21, 1965) [hereinafter CERD].
- 77 United Nations Treaty Collection, Chapter IV: Human Rights, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last visited June 11, 2009).
- 78 CERD, *supra* note 77, art. 1.
- 79 *Id.* art. 2(1).
- 80 *Id.* art. 2(1)(a)–(1)(e).
- 81 *Id.* art. 6.
- 82 *Id.* art. 8.
- 83 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987 [hereinafter CAT].
- 84 United Nations Treaty Collection, Chapter IV: Human Rights, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.
- 85 CAT, *supra* note 83, art. 1.
- 86 *Id.* art. 2(1).
- 87 *Id.* art. 2(2)–2(3).
- 88 ICCPR, *supra* note 37, art. 4(2).
- 89 CAT, *supra* note 83, art. 17(1).
- 90 *Id.* arts. 19–22.
- 91 *Human Rights in Administration of Justice, supra* note 6, at 56. The World Conference on Human Rights unanimously called for the early adoption of this optional protocol. World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action* ¶ 61, U.N. Doc. A/CONF.157/23 (July 12, 1993).
- 92 Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981 [hereinafter CEDAW].
- 93 United Nations Treaty Collection, Chapter IV: Human Rights, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last visited June 11, 2009).
- 94 CEDAW, *supra* note 92, art. 1.
- 95 *Id.*, art. 2.
- 96 *Id.*, arts. 5–8, 10, 11, 13, 14(2).
- 97 *Id.*, art. 17–22.
- 98 CEDAW, *supra* note 92, art. 18, 20–21; *Human Rights in Administration of Justice, supra* note 6, at 60–61.
- 99 CEDAW, *supra* note 92, art. 20(1).
- 100 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 54/4, U.N. Doc. A/Res/54/4 (1999) *entered into force* Dec. 22, 2000, [hereinafter Protocol to CEDAW]. Liberia signed this optional protocol on September 22, 2004 but has not yet ratified or acceded to it. United Nations Treaty Collection: Chapter IV: Human Rights, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.
- 101 Protocol to CEDAW, *supra* note 100, arts 2, 8.
- 102 Convention on the Rights of the Child arts. 27(1), 31(1), 32, 34, G.A. Res. 44/25, Annex, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2 1990 [hereinafter Conv. on Rights of the Child].
- 103 United Nations Treaty Collection, Chapter IV: Human Rights, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last visited June 11, 2009).
- 104 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, May 25, 2000, 2173 U.N.T.S. 236; 8 I.H.R.R. 288, *entered into force* Feb. 12, 2002; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, May 25, 2000, 2171 U.N.T.S. 247; 8 I.H.R.R. 293 *entered into force* Jan. 18, 2002.
- 105 Conv. on Rights of the Child, *supra* note 102, art. 3(1).
- 106 *Id.* art. 2, 3, 6, 12.
- 107 *Id.* arts. 19, 23, 28, 32, 34, 38.
- 108 *Id.* art. 43.
- 109 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, *entered into force* Sept. 3, 1953, 213 U.N.T.S. 222, <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>; American Convention, *supra* note 38.
- 110 African Charter, *supra* note 39.
- 111 For a list of countries which have signed, ratified/ acceded to the African Union Convention on African Charter on Human and Peoples’ Rights, African Union, see <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20Human%20and%20Peoples%20Rights.pdf> (last visited June 11, 2009).
- 112 *Human Rights in Administration of Justice, supra* note 6, at 72.
- 113 African Charter, *supra* note 39, art. 1.

- 114 *Id.* art. 25, 26.
- 115 *Human Rights in Administration of Justice, supra* note 6, at 73.
- 116 African Charter, *supra* note 39, arts. 2–18.
- 117 *Id.* arts. 19–24.
- 118 *Id.* art. 27(1), 28.
- 119 *Id.* art. 28.
- 120 *Id.* art. 29.
- 121 *Human Rights in Administration of Justice, supra* note 6, at 75; *Commion Nationale des Droits de l'Homme et des Libertés v. Chad*, No.74/92, decision taken at the 18th ordinary session, October 1995, ¶ 21, <http://www1.umn.edu/humanrts/africa/comcases/74-92.html>.
- 122 African Charter, *supra* note 39, art. 27.
- 123 *Id.* art. 12(1) (allowing restriction of the right to movement); *see also id.* art. 11 (allowing restriction of the right to assemble).
- 124 *Id.* art. 30.
- 125 *Id.* art. 45(1).
- 126 *Id.* arts. 47–53.
- 127 *Id.* art. 55–58
- 128 *Id.* art. 62.
- 129 African Charter on the Rights and Welfare of the Child, African Commission on Human and Peoples' Rights, O.A.U. Doc. CAB/LEG/24.9/49 (1990), http://www.achpr.org/english/_info/child_en.html.
- 130 Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 U.N.T.S. 45, *entered into force* June 20, 1974; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, *entered into force* Nov. 25, 2005.
- 131 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, African Commission on Human and Peoples' Rights, http://www.achpr.org/english/_info/court_en.html.
- 132 Robyn Layton & Victoria Bannon, *International Law and Armed Conflict: Implications for Emergency and Humanitarian Organisations*, 15 AUSTRALIAN J. OF EMERGENCY MANAGEMENT 58-63 (Winter 2000).
- 133 American Red Cross International Services, Fact Sheet: International Humanitarian Law and Human Rights (March 2006), http://www.redcross.org/www-files/Documents/International%20Services/file_cont5229_lang0_1901.pdf; U.N. High Comm'r for Human Rights, Fact Sheet No. 13 – Int'l Humanitarian Law and Human Rights, <http://www.ohchr.org/Documents/Publications/FactSheet13en.pdf> (hereinafter “U.N. Fact Sheet No. 13”).
- 134 Int'l Comm. of the Red Cross, IHL: The Basics of Int'l Humanitarian Law (2005), <http://www.icrc.org/web/eng/siteeng0.nsf/html/p0850>.
- 135 IHL-IHRL Fact Sheet, *supra* note 133.
- 136 *Id.*
- 137 Int'l Committee of the Red Cross (ICRC), Int'l Humanitarian Law: Answers to Your Questions 36 (Oct. 2002), http://www.ehlicrc.org/images/stories/resources/ihl_answers_to_your_questions.pdf.
- 138 Am. Red Cross, *supra* note 133.
- 139 *Id.*
- 140 ICRC, *supra* note 137, at 36.
- 141 DAVID P. FORSYTHE & BARBARA ANN J. RIEFFER-FLANAGAN, THE INTERNATIONAL COMMITTEE OF THE RED CROSS: A NEUTRAL HUMANITARIAN ACTOR 41 (2007).
- 142 *Id.* at 68-69.
- 143 *Id.* at 68-69.
- 144 *Id.* at 68.
- 145 All instruments that apply in situations of internal armed conflict are noted with an asterisk. All other instruments apply only in situations of international armed conflict.
- 146 The Declaration of St. Petersburg (1868) is the earliest formal agreement forbidding the use of specified weapons in warfare. *See St. Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, Dec. 11, 1868*, 1 AM. J. INT'L. L. (Supp.) 95 (1907), <http://www.icrc.org/ihl.nsf/INTRO/130?OpenDocument>. The preamble to the Declaration states that “the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy.” The Declaration bans a particular version of explosive ammunition, with the reason that its use would “be contrary to the laws of humanity.”
- 147 Frits Kalshoven & Liesbeth Zegveld, *Constraints on the Waging of War: An Introduction to Int'l Humanitarian Law*, p. 21 (2001) [hereinafter *Constraints on Waging War*], <http://www.icrc.org/web/eng/siteeng0.nsf/html/p0793>.
- 148 U.N. Comm'r for Human Rights, *supra* note 133.
- 149 ICRC, *supra* note 137, at 10.

- 150 The Hague Convention with Respect to the Laws and Customs of War on Land and its annex § I, July 29, 1899, 32 Stat. 1803 *entered into force* Sept. 4, 1990 [hereinafter Hague Convention II], <http://www.icrc.org/ihl.nsf/FULL/150?OpenDocument>. Hague Convention treaties may also be accessed at The Avalon Project – Yale Law School – The Laws of War [hereinafter Avalon Project], <http://www.yale.edu/lawweb/avalon/lawofwar/lawwar.htm>.
- 151 Hague Convention II, *supra* note 150, § II.
- 152 *Id.*
- 153 *Id.* § III.
- 154 *Id.* § IV.
- 155 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 215 [hereinafter Hague Convention Cultural Property], <http://www.icrc.org/ihl.nsf/FULL/400?OpenDocument>.
- 156 Henckaerts, Jean-Marie, *Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict*, 87 INT'L REV. OF THE RED CROSS 175, 178 (March 2005), [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-857-p175/\\$File/irrc_857_Henckaerts.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-857-p175/$File/irrc_857_Henckaerts.pdf).
- 157 Hague Convention Cultural Property, *supra* note 155, art. 19.
- 158 ICRC, *supra* note 137, at 36.
- 159 *Id.*
- 160 *Id.*
- 161 *Constraints on Waging War*, *supra* note 147, at 54.
- 162 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 15, Oct. 21, 1950, 75 UNTS. 31 [hereinafter Geneva Convention I], http://avalon.law.yale.edu/20th_century/geneva05.asp.
- 163 *Constraints on Waging War*, *supra* note 147, at 55.
- 164 *Id.* at 54.
- 165 *Id.* at 56.
- 166 Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Oct. 21, 1950, 75 UNTS. 85 [hereinafter Geneva Convention II], http://avalon.law.yale.edu/20th_century/geneva06.asp.
- 167 *Id.* art. 47.
- 168 Geneva Convention Relative to the Treatment of Prisoners of War art. 13, Oct. 21, 1950, 75 UNTS. 135 [hereinafter Geneva Convention III].
- 169 *Id.* art. 13.
- 170 *Id.* arts. 15, 19, 21.
- 171 *Id.* arts. 49, 50.
- 172 *Constraints on Waging War*, *supra* note 147, at 52; Geneva Convention Relative to the Protection of Civilians in Time of War, Aug. 12, 1949 [hereinafter Geneva Convention IV].
- 173 *Id.*
- 174 *See, e.g.*, Geneva Convention I, *supra* note 162, art. 3; Geneva Convention II, *supra* note 166, art. 3 [hereinafter Common Article III].
- 175 *Id.*
- 176 ICRC, *supra* note 137, at 19; *Constraints on Waging War*, *supra* note 147, at 70.
- 177 *Constraints on Waging War*, *supra* note 147, at 70.
- 178 *Id.* at 69.
- 179 *Id.*
- 180 *See id.* at 70.
- 181 Geneva Convention IV, *supra* note 172, art. 147.
- 182 Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. I, June 8, 1977, 1125 U.N.T.S. 3, art. 11, 85 [hereinafter Additional Protocol I].
- 183 *Id.* art. 1(1).
- 184 *Id.* art. 22.
- 185 *Id.* art. I
- 186 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 1, June 8, 1977, 1125 U.N.T.S. 609 [hereinafter Additional Protocol II].
- 187 *Constraints on Waging War*, *supra* note 147, at 133.
- 188 *Id.*
- 189 Additional Protocol II, *supra* note 186, art. 2(1).
- 190 *Id.* art. 4(1).
- 191 *Id.* art. 4(2).
- 192 *Id.* art. 4(3).
- 193 *Id.* arts. 7, 9.
- 194 *Id.* arts. 13–17.
- 195 *Constraints on Waging War*, *supra* note 147, at 189.
- 196 ICC Statute, *supra* note 74, arts. 8(2)(c), 8(2)(e)–(f).
- 197 *Id.* arts. 8(2)(d), 8(2)(f).
- 198 Conv. on Rights of the Child, *supra* note 102.
- 199 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, May 25, 2000, 2173 U.N.T.S. 236; 8 I.H.R.R. 288, *entered into force* Feb. 12, 2002).
- 200 *Id.*

201 The date following the treaty or convention is the date of ratification, accession or signature by Liberia.

Appendix C



Protections for Refugees in International Law

I. International Refugee Protection

The protection of the world's estimated 14 million refugees¹ is governed by an international system which emerged following the Second World War.² The Convention relating to the Status of Refugees (1951 Refugee Convention), adopted in 1951 and amended by the 1967 Protocol to the Convention, continues to control today, with 144 states party to the Convention and the Protocol.³ The 1951 Refugee Convention defines who is a "refugee" under international law and sets forth the comprehensive set of protections to which refugees are entitled. Despite this international standard, the protection of refugees varies substantially around the world, as States Parties to the convention have implemented domestic procedures for refugee processing and as regional instruments have expanded the protection framework. And while the 1951 Refugee Convention can be recognized as "saving countless lives and ensuring a means of escape for people facing imprisonment, torture, execution and other human rights abuses for reasons such as their political or religious beliefs, or membership in a particular ethnic or social group,"⁴ the system has also come under criticism both for failing to adequately address economic migrants and for serving as a "back door" to migration from poor to rich countries.⁵

a. **Well-Founded Fear of Persecution: The Refugee Definition**

The 1951 Refugee Convention defines as a refugee any person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion ... is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."⁶

Certain persons are excluded by the 1951 Refugee Convention from refugee protection. Those who have committed a crime against peace, a war crime, or a crime against humanity; those who have committed a serious non-political crime outside the country of refuge; or those guilty of acts contrary to the purposes and principles of the United Nations are excluded from the refugee definition and its attendant protections.⁷

Refugee status and the protection accorded to refugees may cease under certain conditions. The Refugee Convention provides for cessation of refugee status when a refugee voluntarily re-avails himself of the protection of the country of nationality; when the refugee, having lost his nationality, voluntarily re-acquires it; when the refugee acquires a new nationality and enjoys the protection of the country of new nationality; or when an individual "can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality," unless that person "is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality."⁸

The Organization of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention) adopts the definition of refugee from the 1951 Refugee Convention. In addition, the OAU Refugee Convention holds that an individual fleeing generalized violence shall also be considered a refugee, extending protection beyond those subjected to targeted persecution identified in the 1951 Refugee Convention:

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.⁹

The U.S. definition of a refugee is founded upon the 1951 Convention relating to the Status of Refugees. The Immigration and Nationality Act (INA) sets forth the refugee definition:

Any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.¹⁰

Amending 8 U.S.C. §1158(b)(1)(B)(i), the REAL ID Act adds the following to the law of asylum: “The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 101(a)(42)(A). To establish that the applicant is a refugee...the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.”¹¹ As in the 1951 Refugee Convention, certain persons are excluded from the refugee definition by U.S. law,¹² and refugee and asylum status are subject to termination under certain circumstances.¹³

b. Prohibition of Expulsion or Return: Non-refoulement

Essential to refugee protection is the concept of *non-refoulement*. Article 33 of the 1951 Refugee Convention prohibits the expulsion or return of an individual “to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”¹⁴ Refugees unlawfully within a country must be afforded the opportunity to present themselves for refugee status determination.¹⁵ Refugees lawfully within a country may not be expelled except on grounds of national security or public order, and only in accordance with due process of law.¹⁶ The 1951 Refugee Convention allows, however, that the benefit of *non-refoulement* cannot be claimed by a refugee for “whom there are reasonable grounds

for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”¹⁷

Under Article 2(3) of the OAU Refugee Convention, a state is obliged not to return an individual from its frontiers to a territory where he or she would be subject to the treatment outlined in Article 1¹⁸ (see Section 1, above). Again, relative to other international standards, Article 2(3)’s *non-refoulement* standard is generous to displaced individuals. First, an individual may not be returned if he or she would face treatment encompassed by the expanded generalized violence refugee definition found in Article 1. Second, an individual may not be expelled from a country’s “frontiers,” suggesting that a State’s obligation extends to those over whom it exercises control, not only those who are within its territory.¹⁹ The African [Banjul] Charter on Human and Peoples’ Rights (African Charter) also maintains an absolute prohibition on the mass expulsion of non-nationals on account of their membership in “national, racial, ethnic or religious groups.”²⁰

The United States executes its obligation to avoid *refoulement* through the concept of withholding of removal.²¹ The Immigration and Nationality act (INA) prohibits the removal of an alien to a country if it is determined that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.²² Withholding of removal is mandatory once the alien establishes a clear probability that his or her life or freedom will be threatened on account of one of the protected grounds. Withholding of removal may also be granted to persons who establish a clear probability of torture, fulfilling the government’s obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).²³

c. Durable Solutions

Voluntary repatriation, local integration, and third-country resettlement constitute what are commonly referred to as durable solutions to refugee crises.²⁴ These durable solutions relate directly to the tension between states’ obligation against *refoulement* and their sovereign right to determine to whom, if anyone, an offer of permanent asylum will be granted. While refugees must not be forced to return to their country of origin involuntarily,²⁵ states are under no international legal obligation²⁶ to offer asylum.

The durable solutions often may be in conflict with one another. The decision to offer third-country resettlement is complex, involving foreign policy, humanitarian, and practical considerations.²⁷ Designation of third-country resettlement, for example, can result in a “magnet” effect of new migration and may be resisted by the government of the country of first asylum²⁸ or may disrupt efforts toward voluntary repatriation – long considered the most preferred solution by the United Nations High Commissioner for Refugees (UNHCR).²⁹

d. Asylum from Persecution

The political and legal reality is that states generally have not undertaken, and foreseeably will not undertake, an obligation to grant asylum in the sense of a lasting solution. The peremptory norm of *non-refoulement* secures admission and, in the individual case, may further raise the presumption that a local durable solution will be forthcoming. In the case of large-scale movements, however, no such presumption is raised.³⁰

The concept of asylum relates more to the rights and duties of states – both to grant asylum and to respect asylum that is granted by another sovereign state – rather than to the right of individual refugees seeking protection. States have not accepted an international obligation to grant asylum to refugees³¹ and the 1951 Refugee Convention does not include the affirmative right to asylum.³² Efforts to recognize a right to asylum in treaty largely have stalled since the adoption of the Declaration on Territorial Asylum in 1967 and the U.N. Conference on Territorial Asylum convened a decade later.

Under the OAU Refugee Convention, states “shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.”³³ A State Party thus must both accept a refugee within its borders and find a longer-term solution for settlement. This obligation is tempered in three ways. First, a state is obligated to provide harbor only to the extent that they are capable. Second, such harbor need only be provided to the extent that domestic legislation does not dictate otherwise. Third, a state is not obligated to provide longer-term harbor itself: it need only receive the refugee, but then may find a durable solution for the individual in a second state.

The right to asylum is also upheld in the African Charter.³⁴ Under Article 12(3) of the Charter: “Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.” The right contained within Article 12(3) also should be read within the context of a State Party’s other treaty-based obligations. However, unlike within the OAU Refugee Convention, the African Charter does not limit an individual’s right to asylum by a state’s capacity to provide safe harbor.

While the United States does provide that any person who is physically present in the United States or who arrives in the United States may apply for asylum,³⁵ whether to grant asylum remains discretionary and numerous exceptions to asylum eligibility exist.³⁶

II. RIGHTS OF REFUGEES

The 1951 Refugee Convention provides that refugees shall be accorded the same treatment as a national in matters pertaining to access to the courts, including legal assistance;³⁷ elementary education;³⁸ public relief and assistance;³⁹ labor protections and social security;⁴⁰ and finally, “[w]here a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.”⁴¹

In addition, refugees are to be accorded “the most favourable treatment accorded to” nationals of a foreign country or other aliens under similar circumstances, with regard to acquisition of movable and immovable property,⁴² right of association,⁴³ the right to engage in wage earning employment,⁴⁴ and self-employment;⁴⁵ housing rights;⁴⁶ the right to education beyond elementary education, including in the award of scholarships;⁴⁷ and freedom of movement and the right to freely choose place of residence.⁴⁸

Both the 1951 Refugee Convention and the OAU Refugee Convention prohibit discrimination between groups of refugees. Article 3 of the 1951 Refugee Convention states: “The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin,” while the OAU Refugee Convention expands the prohibition to discrimination based on membership of a particular social group or political opinions.⁴⁹

In addition, major international human rights instruments apply equally to citizens and non-citizens alike, as set forth in the Universal Declaration of Human Rights, which states: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁵⁰ The principle of equality and non-discrimination is reiterated in the International Covenant on Economic, Social and Cultural Rights,⁵¹ International Covenant on Civil and Political Rights,⁵² the Convention on the Elimination of All Forms of Discrimination Against Women,⁵³ and the Convention on the Rights of the Child.⁵⁴ While the Convention on the Elimination of All Forms of Racial Discrimination allows for States to distinguish among citizens and non-citizens under limited circumstances,⁵⁵ States may do so only in a manner that avoids undermining the basic prohibition of discrimination.⁵⁶

Similarly, under the African Charter, states must ensure that all individuals are equal before the law,⁵⁷ and:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social

origin, fortune, birth or other status.⁵⁸

States are therefore prohibited from discrimination against refugees in application of the rights afforded by the OAU Refugee Convention, as well as in the application of the rights afforded by the African Charter,⁵⁹ including the rights to life,⁶⁰ dignity,⁶¹ the prohibition against torture,⁶² personal liberty and security,⁶³ health,⁶⁴ education,⁶⁵ and the rights of the accused and convicted.⁶⁶ To the extent to which states are obligated to provide for these rights to their own citizens, which includes the obligation to both “recognize” and “undertake to adopt legislative or other measures to give [them] effect,”⁶⁷ states must also provide them to refugees. The African Commission has supported this position, holding that Article 2 of the Charter “imposes an obligation on the contracting state to secure the rights protected in the Charter to all persons within their jurisdiction, nationals or non-nationals.”⁶⁸

The right to freedom of movement has been supported by the OAU in a number of resolutions⁶⁹ and in the African Charter, which ensures that: “Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.”⁷⁰ In addition, the OAU Refugee Convention requires a State Party to issue travel documents “to refugees lawfully staying” in its territory so that they might travel outside of that territory.⁷¹ A Member State “may” issue travel documents to other refugees.⁷² It is bound, however, only to issue travel documents to persons who conform “with its laws and regulations as well as with measures taken for the maintenance of public order” and does not engage in “subversive activities” or “any activity likely to cause tension between Member States.”⁷³

The International Covenant on Economic, Social and Cultural Rights provides for compulsory and free primary education. Additionally it provides for secondary and higher education “generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.”⁷⁴

The 2002 Report of the Special Rapporteur on the right to education noted, “[e]xpansion of jurisprudence on the right to education at the domestic and international levels has been supplemented by the work of national human rights institutions.”⁷⁵ The report commented:

In its resolution 2001/29, the Commission on Human Rights reiterated the necessity to progressively ensure that primary education is compulsory, accessible and available free to all and identified those often denied education: girls (including pregnant girls and child-mothers); children in rural areas; minority, indigenous, migrant and **refugee children**; internally displaced children, children affected by armed conflicts, children with disabilities, children affected by HIV/AIDS and children deprived of

their liberty. . . The Commission's listing of categories often denied education illustrates how the initially simple and neat legal categorizations of prohibited grounds and types of discrimination have gradually become complex.⁷⁶ (emphasis added)

The African Commission has “underline[d]” the importance of States directing education towards the “need[s] of specific groups,” including refugees.⁷⁷

The Office of the UNHCR, established December 14, 1950, has as its primary purpose, “to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country.”⁷⁸

International law recognizes that providing for refugees can be a burden on host countries. The Preamble to the 1951 Refugee Convention specifically notes, “that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.”⁷⁹

The UNHCR engaged states in a new dialogue about protecting refugees in 2000 which resulted in a non-binding pledge, the “Agenda for Protection.” After reaffirming a commitment to the 1951 Convention, States committed “to providing, within the framework of international solidarity and burden-sharing, better refugee protection through comprehensive strategies, notably regionally and internationally, in order to build capacity, in particular in developing countries and countries with economies in transition, especially those which are hosting large-scale influxes or protracted refugee situations, and to strengthening response mechanisms, so as to ensure that refugees have access to safer and better conditions of stay and timely solutions to their problems.”⁸⁰

Unfortunately budget cuts have hindered UNHCR and other international organizations' abilities to provide for refugees. “In 2001, UNHCR reported that relief programmes assisting over 2.5 million refugees in West, East and Central Africa were severely under-funded leading to food shortages, unreliable drinking water, bare medical clinics, overcrowded schools, and other cuts in basic services to refugee populations throughout these regions.”⁸¹ The World Food Program (WFP) has continuously had to reduce food rations.⁸² These reductions can be linked not only to poorer health and malnutrition, but also to sexual exploitation and lower school attendance rates.⁸³

Notes

- 1 U.S. COMMITTEE FOR REFUGEES, *WORLD REFUGEE SURVEY* 2008 31.
- 2 *See* International Covenant on Civil and Political Rights Preamble, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), *entered into force* Mar. 23, 1976, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights Preamble, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), *entered into force* Jan. 3, 1976, 993 U.N.T.S. 3 [hereinafter ICESCR]; Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981 [hereinafter CEDAW]; International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987 [hereinafter CAT]; Convention on the Rights of the Child, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990 [hereinafter Conv. on Rights of the Child]; and Optional Protocol to the Conv. on Rights of the Child on Children in Armed Conflict, G.A. Res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III (2000), *entered into force* February 12, 2002 (providing protections to refugees who also fall within the scope of these specific treaties).
- 3 United Nations Treaty Collection, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&lang=en (last visited June 10, 2009).
- 4 Press Release, U.N. High Commissioner for Refugees, UNHCR Marks 50th Anniversary of U.N. Refugee Convention (July 26, 2001).
- 5 *Id.*
- 6 Convention relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 150, *entered into force* April 22, 1954 [hereinafter 1951 Refugee Convention].
- 7 *Id.* art. 1(F).
- 8 *Id.* art. 1(C).
- 9 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa art. 1(2), June 20, 1974, 1001 U.N.T.S. 45 [hereinafter OAU Refugee Convention].
- 10 8 U.S.C. § 1101(a)(42)(A) (2008).
- 11 REAL ID Act, Pub. L. 109-13, 119 Stat. 231 (May 11, 2005).
- 12 8 U.S.C. § 1158(b)(2) (2008).
- 13 8 U.S.C. § 1158(c)(2) (2008).
- 14 OAU Refugee Convention art. 33(1). *See also* *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies: Addendum ¶¶ 25-28*, U.N. Doc. HRI/GEN/1/Rev.7/Add.1 (May 4, 2005) [hereinafter Gen. Rec. 30] (containing General Recommendation 30 of the Committee on the Elimination of Racial Discrimination, outlining specific responsibilities vis-à-vis non-citizens in the context of expulsion and deportation, including ensuring that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment).
- 15 1951 Refugee Convention, *supra* note 6, art. 31(1).
- 16 *Id.* art. 32.
- 17 *Id.* art. 33(2).
- 18 “No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.” OAU Refugee Convention, *supra* note 9, art. 2(3).
- 19 In contrast, the 1951 Convention provides no geographic requirement over its *non-refoulement* obligation. Article 33(1) of the 1951 Refugee Convention reads:
No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
1951 Refugee Convention, *supra* note 6, art. 33(1). This formulation has “allowed” for controversial interpretations such as that of the United State Supreme Court in *Sale v. Haitian Ctrs. Council*, 113 S. Ct. 2549, 125 L. (92-344), 509 U.S. 155 (1993). In *Sale*, the Court ruled

- that interdicting Haitian refugees beyond the borders of the U.S. so that they might not enter U.S. territory and claim asylum did not violate the 1951 Convention's Article 33 *non-refoulement* obligation.
- 20 African [Banjul] Charter on Human and Peoples' Rights art. 12(5), June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986 [hereinafter African Charter]. *See also* Addis Ababa Document on Refugees and Forced Population Displacements in Africa, adopted at a 1994 OAU/UNHCR Symposium on Refugees and Forced Population Displacements in Africa (recommending that Member States "safeguard refugees against refoulement or expulsion").
- 21 8 U.S.C. § 1231(b)(3) prohibits "restriction" on removal. Prior to the Illegal Immigration and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 2009 (1996), this provision was known as "withholding of deportation" and continues to be referred to as "withholding" despite the change in the statutory language.
- 22 8 U.S.C. § 1231(b)(3)(A) (2008).
- 23 8 CFR § 208.16 (2009).
- 24 G.A. Res. 57/187, ¶ 10, U.N. Doc. A/RES/57/187 (Feb. 6, 2003) ("*Strongly reaffirms* the fundamental importance and the purely humanitarian and non-political character of the function of the Office of the High Commissioner of providing international protection to refugees and seeking permanent solutions to refugee problems, recalls that these solutions include voluntary repatriation and, where appropriate and feasible, local integration and resettlement in a third country, reaffirming that voluntary repatriation remains the preferred solution, supported by necessary rehabilitation and development assistance to facilitate sustainable reintegration"). *See also* G.A. Res. 62(I), Refugees and Displaced Persons A/RES/62(I) (Dec. 15, 1946).
- 25 OAU Refugee Convention, *supra* note 9, art. 5(1).
- 26 *But see id.* § d. Asylum from Persecution *infra* (noting that while there is no customary or conventional international legal obligation to offer permanent asylum, the OAU Refugee Convention and the African Charter on Human and Peoples' Rights do impose certain obligations upon member states to offer asylum).
- 27 David A. Martin, *A New Era for U.S. Refugee Resettlement*, 36 COLUM. HUM. RTS. L. REV. 299, 304-11 (2005).
- 28 *Id.* at 307.
- 29 GUY S. GOODWIN-GILL, THE REFUGEE IN INTERNATIONAL LAW 219 (1983); Martin, *supra* note 27, at 309.
- 30 GOODWIN-GILL, *supra* note 29, at 119.
- 31 GOODWIN-GILL, *supra* note 29, at 107 (noting that the 1951 Refugee Convention imposes no conventional obligation upon States Parties to provide asylum and observing that while states do grant asylum in individual cases, this is not done out of a sense of legal obligation and therefore fails to rise to the level of customary international law).
- 32 *But see* 1951 Refugee Convention, *supra* note 6, art. 34 (encouraging states to facilitate the assimilation and naturalization of refugees within their territory and to reduce as far as possible the costs of such processes).
- 33 OAU Refugee Convention, *supra* note 9, art. 2(1).
- 34 African Union, List of Countries that have Signed, Ratified/Acceded to the African Charter on Human and Peoples' Rights 2 (Jan. 28, 2009), <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20Human%20and%20Peoples%20Rights.pdf> (last visited April 20, 2008).
- 35 8 U.S.C. § 1158(a)(1) (2008).
- 36 *See, e.g.* 8 U.S.C. § 1158(a)(2)(2008) (providing exceptions to asylum eligibility for those who pass through a safe third country, fail to file for asylum within one year of arrival in the U.S., or who have previously applied for asylum); 8 U.S.C. § 1158(b)(2)(A)(2008) (providing that aliens who have participated in persecution of others, have been convicted of a particularly serious crime, are a danger to the security of the U.S., are inadmissible due to terrorist activities, and are firmly resettled in another country may not apply for asylum).
- 37 1951 Refugee Convention, *supra* note 6, art.16.
- 38 *Id.* art. 22(1).
- 39 *Id.* art. 23.
- 40 *Id.* art. 24.
- 41 *Id.* art. 20.
- 42 *Id.* art. 13.
- 43 *Id.* art. 15.
- 44 *Id.* art. 17.
- 45 *Id.* art. 18.
- 46 *Id.* art. 21.
- 47 *Id.* art. 22(2).

48 *Id.* art. 26.
 49 1951 UN Refugee Convention, *supra* note 6; OAU
 Refugee Convention, *supra* note 9, art. 4.
 50 Universal Declaration of Human Rights art. 2, G.A.
 Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen.
 mtg., U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter
 UDHR].
 51 ICESCR, *supra* note 2, art. 2.2 (“The States Parties
 to the Present Covenant undertake to guarantee that
 the rights enunciated in the present Covenant will be
 exercised without discrimination of any kind as to
 race, colour, sex, language, religion, political or other
 opinion, national or social origin, property, birth or
 other status.”).
 52 ICCPR, *supra* note 2, art. 2.1 (“Each State Party to
 the present Covenant undertakes to respect and
 to ensure to all individuals within its territory and
 subject to its jurisdiction the rights recognized in the
 present Covenant, without distinction of any kind,
 such as race, colour, sex, language, religion, political
 or other option, national or social origin, property,
 birth or other status.”).
 53 CEDAW, *supra* note 2. Although CEDAW does
 not include a specific non-discrimination provision
 similar to those included in other treaties, there are
 no restrictions or limitations on which women are
 covered; rather, is aimed to protect all women.
 54 Conv. on Rights of the Child, *supra* note 2 (Article
 1 defines a “Child” for the purposes of the
 Convention as “every human being below the age of
 eighteen years unless under the law applicable to the
 child, majority is attained earlier,” and Article 2(1)
 provides “States Parties shall respect and ensure the
 rights set forth in the present Convention to each
 child within their jurisdiction without discrimination
 of any kind, irrespective of the child’s or his or her
 parent’s or legal guardian’s race, colour, sex, language,
 religion, political or other opinion, national or social
 origin, property, disability, birth or other status.”).
 55 CERD, *supra* note 2, art. 1(2).
 56 Gen. Rec. 30, *supra* note 14, ¶ 2.
 57 African Charter, *supra* note 20, art. 3.
 58 *Id.* art. 2.
 59 It should be noted that territorial or jurisdictional
 scope of this obligation is undetermined. It
 appears less restrictive than that of the European
 Convention on Human Rights, Article 1 which
 restricts a State’s obligations to those within its
 “jurisdiction.” Convention for the Protection of

Human Rights and Fundamental Freedoms as
 amended by Protocol No. 11 art. 1, Nov. 4, 1950,
 213 U.N.T.S. 222.
 Perhaps more comparable would be
 Article 1 of the American Convention
 on Human Rights, which also prohibits
 discrimination against “any individual.”
 American Convention on Human Rights art.
 1, O.A.S.Treaty Series No. 36, 1144 U.N.T.S.
 123, *entered into force* July 18, 1978. The Inter-
 American Court has read this clause, and
 thus the Convention generally, to apply to all
 within the “authority and control” of the State
 Party. *See Coard and Others et al. v. the United
 States (US military intervention in Grenada)*, § 37,
 IACHR Report No. 109/99, Case No. 10.951,
 (Sept. 29, 1999). *See also* The Human Rights
 Committee, *General Comment 31: Nature of the
 General Legal Obligation Imposed on States Parties
 to the Covenant: 26/05/2004*, § 10, UN Doc.
 CCPR/C/21/Rev.1/Add.13. (May 26, 2004)
 on the jurisdictional scope of the International
 Covenant on Civil and Political Rights, article
 2, *and* The Committee Against Torture, *Draft
 General Comment 2: Implementation of article 2
 by States Parties*, § 16, [http://www.ohchr.org/
 english/bodies/cat/docs/AdvanceVersions/
 CAT.C.GC.2.CRP.1.Rev.2.pdf](http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.GC.2.CRP.1.Rev.2.pdf) on the
 jurisdictional scope of the Convention against
 Torture, article 2 (last visited April 20, 2008).
 60 African Charter, *supra* notes 20, 57 art. 4.
 61 *Id.* art. 5.
 62 *Id.* art. 5.
 63 *Id.* art. 6.
 64 *Id.* art. 16.
 65 *Id.* art. 17.
 66 *Id.* art. 7.
 67 *Id.* art. 1.
 68 African Commission on Human and Peoples’ Rights,
*Tenth Annual Activity Report of the African Commission
 on Human and Peoples’ Rights 1996/97*, Annex X, at
 49-69.
 69 The Resolution on Refugees, Returnees and
 Displaced Persons in Africa held that States should
 “encourage voluntary repatriation of refugees to
 their countries of origin, once the conditions that
 caused their exile have disappeared.” Organization
 of African Unity, Resolution on Refugees, Returnees
 and Displaced Persons in Africa, 18, CM/Res.1521

- (LX) (1994). In its Resolution on Voluntary Repatriation of African Refugees, the OAU called upon Member States to “Launch a campaign to encourage the refugees to return to their countries, of their own free will...” Organization of African Unity, Resolution on Voluntary Repatriation of African Refugees, CM/Res.399 (XXIV) (1975). In the Resolution on Africa Refugee Day, the Organization also called upon States to “[a]ccept and abide scrupulously by the international agreements and the OAU Convention on Refugees, particularly as regards the voluntary nature of repatriation...” Organization of African Unity, Resolution on Africa Refugee Day CM/Res.398 (XXIV) (1975). In the Addis Ababa Document, the OAU called upon States to “actively promote voluntary repatriation, respect the principle of voluntariness in repatriation...” Addis Ababa Document, *supra* note 20, rec. 5(ii).
- 70 African Charter, *supra* note 57, art. 12(2).
 71 OAU Refugee Convention, *supra* note 9, art. 6.
 72 *Id.* art. 6.
 73 *Id.* art. 3 (describing prohibition of subversive activities). Article 6 “Travel Documents” is subject to the conditions set forth in Article 3 of the convention. *Id.* at 6.
 74 ICESCR, *supra* note 2, art. 13(2)(b).
 75 The Special Rapporteur on the Right to Education, *Annual Report of the Special Rapporteur on the Right to Education, Katarina Tomaševski, submitted pursuant to Commission on Human Rights resolution 2001/29, at ¶ 1, delivered to the Economic and Social Council, U.N. Doc. E/CN.4/2002/60* (Jan. 7, 2002).
 76 *Id.* ¶ 32.
 77 African Commission on Human and Peoples’ Rights, Resolution on Human Rights Education, / Res.6(XIV)93, The African Commission on Human and Peoples’ Rights meeting at its Fourteenth Ordinary Session in Addis Ababa, 1 - 10 December, 1993 at ¶ 3 (1993).
 78 U.N. High Comm’r for Refugees: Basic Facts, <http://www.unhcr.org/basics.html> (last visited June 12, 2009).
 79 1951 Refugee Convention, *supra* note 6.
 80 U.N. High Comm’r for Refugees, *Agenda for Protection 28 & ¶ 12*, (3rd ed. 2003). *See also* Declaration, African Parliamentary Conference: Refugees in Africa: The Challenges of Protection and Solutions, Cotonou, BENIN, 1-3 June 2004 [hereinafter Refugees in Africa]. Full conference report including Cotonou Declaration and Programme of Action available at <http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=425e7ab14>.
 81 Ninette Kelley, *International Refugee Protection Challenges and Opportunities*, 19 INT’L J. REFUGEE L. 401, 415 (2007).
 82 *Id.*
 83 *Id.*

Appendix D



Key Events in Liberian History

1979

Liberia enters into a treaty of mutual defense with Guinea.

April 14, 1979 – President Tolbert’s proposal to increase the price of rice provokes the Rice Riots. Later, Tolbert grants general amnesty to those charged with instigating the events of April 14.

July 1970- Liberia hosts the 16th annual Organization of African Unity summit meeting.

1980

April 12, 1980 – Master Sergeant Samuel Kanyon Doe launches a bloody coup with a group of other noncommissioned officers, executing President Tolbert in the Executive Mansion.

April 22, 1980 – A firing squad publicly strips and executes 13 government officials at a beachside military base in Monrovia. Ellen Johnson-Sirleaf, along with other members of the educated elite, flee the country.

1985

October 15, 1985 – Amid claims that the voting was rigged, the Doe government holds and wins multi-party general elections.

November 12, 1985 – General Thomas Quiwonkpa stages a failed coup, invading Monrovia and securing the national radio station before being overtaken by Doe’s military reinforcements. Within days, Quiwonkpa is executed, his corpse is mutilated by Doe’s soldiers, and his body is paraded around Monrovia amid celebrations by loyalist soldiers.

January 6, 1986 – Samuel Doe becomes the president of the Second Republic, inaugurating a new constitution.

December 24, 1989 – Charles Taylor, leading the National Patriotic Front of Liberia (NPFL), instigates a civil war upon launching an invasion from Cote d’Ivoire into Liberia’s northeastern Nimba County, supported by guerrilla fighters trained in Libya.

1990

May 30, 1990 – The Economic Community of West African States Monitoring Group (ECOWAS) heads of state convene in Banjul, Gambia on the Liberian civil war and institute a five-member

Standing Mediation Committee to bring about a peaceful settlement to the conflict.

June 1990 – Clashes in Monrovia between the NPFL and Doe's forces result in indiscriminate killings and mass displacement.

July 1990 – Roughly 600 men, women, and children who sought refuge from the violence are massacred at a Lutheran church in Monrovia by government soldiers.

July 6, 1990 – ECOWAS leaders gather in Banjul and approve sending a multinational peacekeeping force into Monrovia.

July 1990 – The Independent National Patriotic Front of Liberia (INPFL) forms under Prince Johnson after breaking from Charles Taylor and enters Monrovia.

August 7, 1990 – ECOWAS Standing Mediation Committee establishes a Military Observer Group (ECOMOG) and gives it the power of collective military action for the purposes of restoring peace in Liberia.

August 8, 1990 – The NPFL enters the Nigerian embassy in Monrovia, killing those taking refuge inside.

August 24, 1990 – 4,000 ECOMOG peacekeepers from Guinea, Sierra Leone, and Gambia, led by Ghana and Nigeria, land in Monrovia amidst shellfire from the NPFL.

September 9, 1990 – President Samuel Doe is abducted from ECOWAS headquarters and tortured to death by Prince Johnson and the INPFL, who then publicly display his corpse in Monrovia. A film is made of these events and then distributed around Monrovia.

November 27-28, 1990 – ECOWAS-organized peace talks are held in Bamako, Mali, with Professor Amos Sawyer being sworn in as Liberia's first interim head of state. The NPFL and Doe's soldiers sign Liberia's first ceasefire agreement.

January 1991 – In defiance of a ceasefire, Charles Taylor forms a parallel government based out of the central Liberian town of Gbarnga. At this point in the conflict, NPFL is in control of 90 percent of the country.

April 1991 – The United Liberation Movement for Democracy (ULIMO) is created by former Doe loyalists in Guinea and Sierra Leone committed to opposing Taylor's NPFL. Alhaji Kromah, formerly a member of Doe's administration, becomes ULIMO's leader.

October 15, 1992 – Charles Taylor launches Operation Octopus, leading to clashes between the NPFL and ECOMOG forces in Monrovia.

December 21, 1994 – The now five warring parties meet in Accra, Ghana for ECOWAS-sponsored peace talks and agree to a five-member Transitional Ruling Council.

1995

September 1995 – Leaders of fighting groups Charles Taylor, Alhaji Kromah, and George Boley are sworn in with three civilian representatives as part of a collective presidency that will head up a transitional government.

April 6, 1996 – The NPFL and ULIMO forces under Alhaji Kromah battle in Monrovia against a splinter ULIMO group led by Roosevelt Johnson, leading to 2,000 deaths and extensive looting.

August 17, 1996 – Another ECOWAS-brokered peace deal is signed in Abuja, Nigeria with representatives from civil society. Ruth Sando Perry is selected as chair for a new transitional government charged with organizing elections for May 1997.

November 22, 1996 – With help from the United Nations Observer Mission in Liberia, ECOMOG begins disarmament of armed groups.

July 19, 1997 – Charles Taylor wins ECOWAS-supervised presidential elections, in which Taylor garners an overwhelming majority of the approximate 80 percent of the population that turn out to vote. A song sung by young NPFL supporters goes: “He killed my Ma, he killed my Pa, I’ll vote for him!”

August 4, 1997 – Charles Taylor is sworn in for a six-year term as President in Monrovia before other West African heads of state.

September 18-17, 1998 – Taylor’s government forces clash with Roosevelt Johnson’s ULIMO faction.

July 1999 – In Freetown, Sierra Leone, a group of Liberians form the rebel faction Liberians United for Reconciliation and Democracy (LURD) in opposition to the Taylor regime.

2000

September 2000 – LURD launches an insurgency from inside Guinea, raiding Liberian villages in Lofa County.

May 2001 – U.N. Security Council renews an arms embargo on Liberia as punishment for Taylor's trading of weapons for diamonds with rebels in Sierra Leone.

February 5, 2002 – Charles Taylor declares a state of emergency when it appears that LURD rebels may be gaining on Monrovia.

June 4, 2003 – In Accra, Ghana, Liberian peace talks commence while the U.N.-mandated Special Court in Sierra Leone indicts Charles Taylor's on 17 counts of war crimes committed in support of rebels in Sierra Leone.

June 6, 2003 – First offensive by LURD rebels on Monrovia.

June 17, 2003 – In Accra, Ghana, representatives from LURD and another rebel group, the Movement for Democracy in Liberia (MODEL), sign a ceasefire agreement with the Taylor government.

June 21-22, 2003 – Breaking the ceasefire, LURD and Taylor's government forces continue fighting in Monrovia.

June 27, 2003 – Another ceasefire is signed in Accra, Ghana.

July 4, 2003 – ECOWAS approves sending 3,000 regional peacekeepers into Liberia in order to restore peace.

July 19, 2003 – LURD launches their final attack on Monrovia, leaving 1,000 dead and nearly 600,000 displaced.

August 4, 2003 – The first group of Nigerian peacekeepers under an ECOWAS mandate arrive in Liberia.

August 11, 2003 – Charles Taylor steps down from the presidency and leaves for asylum in Nigeria.

August 18, 2003 – Representatives from LURD, MODEL, and the Liberian government sign the Comprehensive Peace Agreement in Accra, Ghana.

Appendix E



TRC Diaspora Project Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is this 17 day of February, A.D. 2007 entered into between the Truth & Reconciliation Commission of Liberia (“TRC”) of the City of Robertsport, Republic of Liberia, represented by its Chairperson, Jerome J Verdier, Sr and Minnesota Advocates for Human Rights (“Minnesota Advocates”), a nongovernmental organization operating and existing under the laws of the State of Minnesota, United States of America, represented by its Executive Director, Robin Phillips, for the purposes herein stated;

WITNESSETH

PREAMBLE

WHEREAS, the TRC is an Independent Commission of the Government of Liberia established to redress years of human rights violations resulting from nearly two decades of protracted conflict in Liberia which displaced nearly half a million of its 3 million inhabitants in the west African sub-region, Europe and the USA; and

WHEREAS, the TRC plans to expand its program activities to incorporate the experiences and participation of Liberians in the Diasporas, including the State of Minnesota, USA, which is host to the largest Liberian refugee population in North America; and

WHEREAS, Minnesota Advocates is a nongovernmental human rights advocacy organization with vast experience in working with Liberian refugee and asylum communities in Minnesota and is interested in assisting the TRC with fostering its mandates and achieving its goals of reaching out to Liberians in the Diaspora, especially in the State of Minnesota; and

WHEREAS, pursuant to the foregoing, the TRC and Minnesota Advocates have agreed to work together to implement TRC programs in the USA, thereby enhancing its outreach objectives for the benefit of Liberian communities in the USA, especially in the State of Minnesota.

THEREFORE, and in consideration of the foregoing, the PARTIES AGREE AS FOLLOWS:

1. Background to the TRC

2. Designation The TRC Designates Minnesota Advocates as the representative institution to represent the interest of the TRC in working and coordinating with Liberians and Liberian community organizations in the implementation of the TRC programs in the USA, beginning in the State of Minnesota.

3. Contractual Rights This Memorandum is not intended to create contractual rights in any party, with the sole exception of the mutual releases and indemnities set forth herein, which are contractual. This Memorandum simply documents the mutual understandings and intentions of the parties so that a consistent approach to the issues and challenges of this project are adopted as it proceeds.

4. Scope of Minnesota Advocates Work Minnesota Advocates is responsible for the overall supervision and direction of the programmatic, administrative and operational implementation of the project; will work with the National Advisory Committee and Local/State or Community Advisory Committees, in the overall design and implementation of the project; recruit volunteer and other staff as and when necessary; solicit funding, whether jointly or separately with the TRC for the implementation of the project or other TRC programs; and work with local Liberian community organizations, groups, professionals and individuals to ensure the maximum feasible participation of Liberians in the project.

Minnesota Advocates is dependent for its funding and operations on donations and volunteers. Its ability to perform in this matter is dependent on, among other things, the scale of the operation and the amount of donated and volunteer resources that prove to be available.

5. The Project Subject of this memorandum, the Project involves sensitization, education, mobilization and participation of Liberians in the work of the TRC, in the following areas of the USA, namely New England, Minnesota, Staten Island & New York, DC and Maryland,

Pennsylvania and elsewhere as Minnesota Advocates may determine appropriate and feasible. The Project also entails the taking of voluntary statements from Liberians now resident in the United States of America; the compilation of such statements in a data base; the analysis of such statements; the holding of public and confidential hearings; community hearings and town hall discussions, workshops, seminars, etc on TRC thematic issues—women, children, human rights violations, prosecution, institutional reforms, economic crimes and corruption; and preparation of a Report to be submitted to the TRC responsive to the mandate of the TRC and that addresses the subjects set forth herein above.

The Project is piloted in Minnesota and will be extended to other parts of the USA, as envisaged, depending on the financial, material and human resource capacity of the parties.

6. Project Logistics The TRC bears ultimate responsibility for the leadership and implementation of the project, while Minnesota Advocates is at liberty to mobilize any amount of resources including logistics it deems appropriate or needed for the implementation of the project. Already, Minnesota Advocates have secured the services of a consortium of pro bono lawyers to work on the project as volunteers; Minnesota Advocates will establish a structure to provide project leadership at the global national level while the local community advisory committees will provide project leadership at the state/community level. Other resources already mobilized by Minnesota Advocates include the Law Firm of Fredrikson & Byron which have agreed to provide the technological support necessary to create and house the statement and thematic hearings data base for the project; the law firm of Faegre & Benson have agreed to provide meeting space for the Project training sessions and to take a first chair role in administering the Project.

Minnesota Advocates has, in conjunction with the TRC, facilitated training programs and will continue to do so as the project progresses and as needed. Working with the Community

Advisory Committee resources, Minnesota Advocates will also identify volunteers with professional knowledge and experience related to counseling victims of trauma, and other professional services to be available at the sites where statements will be taken. Minnesota Advocates will make available to statement takers a list of referrals to providers of legal, immigration and mental and public health services, for distribution to potential statement givers as may appear advisable. In conjunction with community resources, Minnesota Advocates will identify sites for statement taking that will be of optimal convenience for the Liberian community, such as in churches, schools and community centers. Sites will be staffed, on designated days and times, with statement takers and, if possible, with one counseling volunteer per site. Statement givers will be given opportunities both to sign up for appointments in advance, and to appear at the sites on a walk-in basis; Ensure that statements will be recorded in such a manner as to facilitate their input into the TRC data base and their subsequent analysis; Minnesota Advocates will identify a team of volunteers to analyze the data and draft the comprehensive project Report, reflecting analysis of statements, project recommendations and inputs from both the national and community advisory committees for submission to the TRC.

7. **Project Liaisons** The TRC will identify to Minnesota Advocates a single individual to act as a point of contact and liaison between the Parties with respect to the Project. Minnesota Advocates identifies its Deputy Director Jennifer Prestholdt as Minnesota Advocates point of contact and liaison with the TRC. Either organization may change its point of contact/liaison at will, by written notice to the other organization. The points of contact will endeavor to communicate regularly, and no less than weekly, on the status of their organizations' respective operations.
8. **Taking Statements** Statements will be taken using, as nearly as possible, the TRC Statement

Form with variations approved by the TRC when deemed appropriate to the uniqueness of the project. Project statements will be taken from individuals currently residing in the United States.

At the beginning of a statement session, the statement takers will read to statement givers a disclosure to be agreed upon between the TRC and Minnesota Advocates. It will inform the statement givers that the statement takers are not acting as their lawyers or representatives; that the giving of statements is entirely voluntary and must be truthful and will be confidential to the limits of US laws when applicable; statements may be given anonymously, but anonymous statements will be treated separately in the data base and if statement givers are anonymous, identifying information as to alleged perpetrators will be regarded with lesser probity unless supported by other leads.

9. **Confidentiality** The TRC will share with Minnesota Advocates any provisions it may put in place in Liberia to preserve confidentiality as to all or part of the statements taken there. Minnesota Advocates will, to the extent possible, adopt confidentiality procedures consistent with those of the TRC and applicable under US laws. Statement takers will record the names and other identifying information of statement givers and such information will be maintained in the Project data base. It will be maintained in such a way that names and addresses may be readily redacted for purposes of distributing statements without such identifying information. However, all information will be made accessible to the TRC which will be fully responsible for decisions and actions as to use of data.

As part of the project, statement takers and all staff connected to/with the project are under obligations of confidentiality not to disclose the identities or contents of statements to persons or institutions not connected or privy to the project unless otherwise required by law. Minnesota Advocates will make reasonable efforts to preserve and defend confidentiality

as stated herein, consistent with the expressed goals of the Project. Statements may be given anonymously and in which case they will be distinguishable in the report and recorded to preserve the identity of the anonymous statement giver from public disclosure.

10. **Professional Responsibility** The majority of the volunteer statement takers for the Project, and of the professional staff at Minnesota Advocates, are lawyers or paralegals. These individuals are providing their services to the Project as a matter of public service, and are not acting as attorneys for any particular individuals or entities in connection with this Project. In particular, none of the statement givers are the clients of any of the statement takers, and the statement givers will be so informed. If the statement givers have a need for legal services, the statement takers may refer them to appropriate resources. The statement takers will agree, as a condition to going forward on the Project, that they will not accept the representation of any statement giver as a result of the statement taking process. In addition, neither Minnesota Advocates, nor the law firms contributing resources to the Project, nor the individual statement takers and other volunteers, are acting as attorneys for the TRC or any of its members. The Project is undertaken entirely as a service to the public and to the people of Liberia.

11. **Liability** Neither party to this Memorandum intends that the other party shall incur any liability as a result of its participation in the Project. To the maximum extent allowed by law, the TRC and Minnesota Advocates mutually release and forever discharge each other, and the Project volunteers and their law firms, of and from any and all claims and lawsuits arising from or in any way connected to their activities connected with the Project. The mutual releases set forth in this paragraph specifically apply to claims that one entity was negligent or otherwise at fault, to the maximum extent allowed by applicable law. The mutual indemnifications shall be applicable to claims by either party that one party is negligent or otherwise at fault.

Responsibilities to third parties, if any, shall be assessed according to applicable law. If any portion of this paragraph is deemed unenforceable as a matter of law or public policy, the remainder of the obligations hereunder shall remain in full force and effect. This paragraph 11 of this Memorandum of Understanding shall be interpreted in accordance with the law of the State of Minnesota.

12. **Funding** The TRC and Minnesota Advocates will each be responsible for the funding of its own activities contemplated in this Memorandum, and neither will have any responsibility to fund the other, absent subsequent agreement.
13. **Data Base** The data base generated or created by the project is solely for the benefit of the TRC and shall be owned by it. Minnesota Advocates will not share it or distribute it to third parties without the prior consent of the TRC. Best efforts will be made to make the data base compatible with the corresponding data base used by the TRC for statements taken in Liberia, including consistency of coding to the extent possible. Upon submission of the Report, the data base will be provided in its entirety to TRC, with a copy retained by Minnesota Advocates under such terms and conditions as the parties may further agree, provided however that Minnesota Advocates will always preserve the confidentiality of the identifying information in the data base, to the best of its ability under applicable law.
14. **Reports** Regular reports including quarterly reports on the project performance will be made to TRC at least one week prior to the end of any particular quarter. The Final Report on the Project shall address the following:
 - A. Description of Project processes and activities;
 - B. Factual findings, based on thematic and public hearings, community seminars, recommendations and analysis of witness statements, concerning occurrences of and responsibilities for human rights abuses within the scope of the TRC's work;

- C. Recommendations, if appropriate, for further investigation and possible prosecutions of perpetrators;
- D. Recommendations concerning societal, legal and political factors contributing to the nation's vulnerability to human rights abuses;
- E. Recommendations for traditional, societal, legal or political initiatives to contribute to reconciliation, help victims of human rights abuses and assist in the building of a strong, stable and peaceful nation;
- F. Recommendations concerning possible reparations for victims;
- G. Other issues that may be requested by TRC or initiated by Minnesota Advocates.

15. Timeline The ability of Minnesota Advocates to adhere to any particular timeline will depend in part on factors beyond its control, such as the availability of volunteered resources and the ability of the LTRC to meet its own schedule and provide requested information and feedback. It is currently contemplated that Minnesota Advocates will train its volunteer statement takers through the fall of 2006, and will conduct a pilot program during that season, in which a limited number of statements will be taken by members of the Pro Bono Advisory Committee for purposes of trying out contemplated procedures.

It is expected that the full scale statement-taking program will begin in January of 2007, and will continue through the end of June, 2007. It is expected that a first draft of the Project Report will be provided for comment to the TRC by October 31, 2007, and that the final Report will be submitted to the TRC, along with the statement data base, thereafter. All of these deadlines are aspirational and subject to revision as necessary. Minnesota Advocates will continue to communicate regularly with TRC concerning its progress in accomplishing its tasks and its expectations for meeting the deadlines.

WHEREFORE, this Memorandum of Understanding is entered into effective this 17th day of

February, 2007.

FOR : TRUTH & RECONCILIATION COMMISSION OF LIBERIA



Jerome J Verdier, Sr. (Cllr)
Chairman

WITNESS

FOR: MINNESOTA ADVOCATES FOR HUMAN RIGHTS



Robin Phillips
Executive Director

WITNESS

APPENDIX:

1. constitution and qualification for membership of the National and State/Community Advisory Committees
2. functions, duties and roles of national and community advisory committees
3. functions, duties and roles of staff, volunteers generally and Liberian community associations.
4. statement/oath of confidentiality by all associated with the project.

Appendix F



Listing of Pro Bono Management and Advisory Committee Members

Members of the Pro Bono Management Team

Dulce Foster, Fredrikson & Byron, Minneapolis
 Dianne Heins, Faegre & Benson, Minneapolis
 Mark Kalla, Dorsey & Whitney, Minneapolis
 Jeff Keyes, Briggs & Morgan, Minneapolis
 Jim O'Neal, Faegre & Benson, Minneapolis

Members of the Community Advisory Committee

Anderson, Yende	Kiatamba, Abdullah
Badio, Harriett	Kugmeh, Patrick
Beh, Ada	Minikon, Patricia
Ben, Irvinton	Nyanwleh, Seyon
Brewer, Yeamah	Nyenie-Wea, Writhers
Brownell, John N.	Parker, Doris
Dakinah, Catherine	Qualah, James
Diahn, Kamaty	Russell, Wynfred
Doe, Wayne Douglas	Saydee, Williametta
Dolo, Emmanuel	Sesay, Mamadee
Dukule, Abdoulaye W.	Sherif, Muhammad
Elliot, Michael	Sinoe, Martha
Garsinii, Dennis	Sirleaf, Ahmed
Gaye, Artemus	Tarr Grimes, Benoni
Gbojueh, Beatrice	Watson, Arthur
George, Jackson	Weah, Kirkpatrick
Gray, Georgette	Wilson, James
Hayes, Marie	Wopea, Miamen
Jabbeh Wesley, Patricia	Zakama, Arthur
Kaine, Demenia	

Appendix G



Lessons Learned from the Diaspora Project

Sensitization and Outreach

1. **Outreach and sensitization required more resources than anticipated.** Coverage of the TRC in the diaspora press was minimal before the opening of the public hearings. There was also confusion about the process based on prior knowledge of how other TRC processes had worked elsewhere, such as in South Africa where amnesty was an important component of the process. This created a need for intensive outreach and education about the role of the TRC. In Minnesota, staff and volunteer resources were available to conduct widespread outreach and education, but outreach was a challenge in other cities where there was less capacity to do extensive outreach.
2. **Immigration policy, particularly in the United States, imposed an additional need for outreach and sensitization.** Perhaps the largest unforeseen obstacle to the TRC project was the U.S. government's decision to end Temporary Protected Status (TPS) for Liberians in October of 2006. Thousands of Liberians who were on TPS faced potential deportation by October of 2007. Even Liberians with pending asylum claims and legal permanent resident status were nervous about their status in the United States, and this anxiety had a chilling effect on participation.
3. **Implementation of the TRC process in some communities had important reconciliatory effects.** The TRC diaspora project activities encouraged the participation of Liberians from all walks of life. As a consequence, major Liberian diaspora communities in the United States benefited from these non-discriminatory interactions. For example, when the TRC process began, the Liberian community association of Staten Island, New York was in political disarray. Contentious community election results were in dispute, with lawsuits threatened and bitter disagreement on all sides. A similar situation was happening in Providence, Rhode Island. In these communities, although certain individuals were not on speaking terms, the Advocates encouraged them all to participate in the TRC process. This message resonated. As a result, Liberians who would not speak to each other, let alone work together, came together. During a TRC Rhode Island launching event, a Liberian cleric remarked that he saw many Liberians together in the same room who had not spoken in a long time. In Staten Island, previously opposing political groups were able to put their differences aside and work on outreach projects. These interactions led to the election of new community leadership, with many former "enemies" serving together on the board or as executive officers.

Statement Taking

1. **Modeling the statement taking protocol too closely on the in-country process misses important components of the diaspora experience.** Although certain modifications were made to the statement taking protocols in the diaspora, little change was made to the substantive nature of the questions asked of interviewees. It became clear later in the process

that rich information about the diaspora experience was being left out. This necessitated adjustment to the substantive questions asked during interviews. Extensive background interviews and group interviews also helped fill in the gap. This data collection focused on examining diaspora community dynamics and the interaction of Liberians in the diaspora with systems and communities where they had settled. This information, which proved important in conceptualizing recommendations for reconciliation within the diaspora itself, was not captured through the initial statement taking process.

2. **Multiple logistical models for statement taking were required to meet the varying needs of Liberian communities in the diaspora.** The Advocates adopted three main logistical models for statement taking that were used as appropriate in the different project locations. First, a legal clinic model, in which statement givers could walk in for appointments to meet with statement takers at certain designated times, was piloted in Minnesota. Although it met with limited success in Minnesota, the model worked well in Ghana, where word spread quickly through a small, dense community. The clinic model was also successful in Philadelphia and other cities where a clinic was set up for a one-time statement taking opportunity. Second, an individual appointment model was more successful in communities where Liberians lived at further distances from each other, such as in the United Kingdom or Washington, DC/Maryland. Finally, a door-to-door model operated well in communities where there was a large concentration of Liberians living in a single apartment complex, neighborhood, or other discrete area. In these areas, as in Liberia, volunteers went door-to-door explaining the process and offering to document experiences for the TRC that very day.
3. **Multiple process models for offering statement taking were required to meet the varying needs of statement givers in the Diaspora.** While the individual, signed statement of experiences and recommendations to the TRC was the staple method of gathering information for the Liberian TRC, several other processes were employed to reach out to those who were not comfortable presenting their individual statements as part of the official historical record of the TRC. Offering anonymous statements was an important part of getting many individuals who had safety or immigration concerns in the diaspora to participate. Group discussions were held around the United States and in Ghana, and the comments from Liberians were documented as part of the TRC record. This process allowed for information to be documented while at the same time minimizing the individual focus and allowing participants to support each other through discussion. Finally, The Advocates' staff and volunteers conducted background interviews with Liberians around the United States and the United Kingdom to fill in gaps in information gathered during the statement taking process.
4. **Liberians in the diaspora were sensitive to questions about their tribe/ethnicity and about the status of their children.** The process of interviewing Liberians to document their statements was first tested in Minnesota with members of the advisory committee and

with others who volunteered to participate. The forms initially used mirrored very closely the forms used in Liberia. During the pilot testing, it became clear that diaspora Liberians viewed questions about their tribal/ethnic identity as a political issue. Although this question was included in the final statement taking forms, statement takers made clear to statement givers that they could choose not to respond if they wished. Moreover, pilot testing revealed that Liberians in the United States had concerns about discussing the number and status of their children, possibly owing to immigration concerns. After much negative feedback, this question was deleted from the final forms used in the diaspora.

5. **Combatants who remained in refugee camps were more willing to participate in the statement giving process than were combatants who had been resettled in the United States.** Almost no former combatants came forward to provide statements to the TRC in the United States or in the United Kingdom. In contrast, former combatants made up an important part of the statement giver pool in the Buduburam refugee settlement. Given the immigration policy climate in the United States in particular, this discrepancy is not surprising. Admitted participation in an armed rebel group is an admission that can have serious immigration consequences for resettled refugees and other non-citizens. Admitted participation as a combatant can have consequences for refugees in the West African sub-region as well; thus, immigration consequences alone cannot explain this difference. Former combatants in the United States and United Kingdom chose not to take advantage of the anonymous statement option. Ultimately, this difference may be attributable to the feasibility of targeted outreach. Whereas in Ghana, former combatants – child soldiers in particular – have formed their own support organization and are a readily identifiable group, no similar support network has been established in the United States. When community members were asked to assist with identifying former combatants who might want to participate in the TRC process, there was extreme reluctance to do so.

Public Hearings

1. **Witnesses who participated in the public hearings process reported it as a positive experience.** While retraumatization is a major concern in TRC public hearings, witnesses who participated in the Diaspora Public Hearings did not report such retraumatization. Telephone follow-up was conducted with each witness in the weeks following the public hearings, and feedback was unexpectedly positive. Some witnesses did, however, express concern that they were unable to fully discuss all the topics they would have liked because of a lack of time. Others expressed frustration that certain questions were not explored with other witnesses.

Using *Pro bono* Resources to Support the TRC in the Diaspora

2. **Leveraging *pro bono* resources was a largely successful model to create a labor force for a TRC in the diaspora, in the United States and in the United Kingdom.** Non

governmental organizations, law firms, religious organizations, and academic institutions were extremely interested in volunteering on the project. The project has also created collaborations across professions and cultures as representatives from Liberian community organizations worked in coalition with large law firms and academic institutions toward the goal of engaging Liberians in the United States in the TRC process. One immediate and unanticipated benefit of this collaboration in every city has been to connect Liberians to existing legal and social services that many members of the Liberian community needed and were eligible for, but of which they were not aware.

Appendix H



Descriptive Statistics for Statement Givers in the Diaspora

Table 1. Number of Statement Givers by Project Area

Project Area	Statements	% of Total
United States	237	15.3%
Atlanta, GA	21	1.2%
Chicago, IL	8	< 1%
Minnesota	70	4.3%
Staten Island, NY	61	3.7%
Philadelphia, PA	30	1.8%
Providence, RI	23	1.4%
Washington, DC/ Maryland	9	< 1%
Other US – Southeast	15	< 1%
United Kingdom	15	< 1%
Buduburam, Ghana ¹	1379	84.6%
Total Diaspora Statements	1631	

Table 2. Participation of Statement Givers by Sex¹

Project Area	Women	Men
United States	99 (42%)	138 (58%)
United Kingdom	7 (47%)	8 (53%)
Ghana	819 (59%)	559 (41%)
Project Total	925 (57%)	705 (43%)

1 Additional statements were gathered in Ghana but were not included in The Advocates diaspora dataset.

2 One statement record did not have a sex entry, and sex could not be determined from the narrative.

Table 3. Participation of Statement Givers by Self-Reported County of Origin²

County of Origin	Project Area			% of Total
	United States	United Kingdom	Ghana	
Bomi	10	-	28	2.3%
Bong	22	2	100	7.6%
Gbarpolu	-	-	3	< 1%
Grand Bassa	21	3	126	9.2%
Grand Cape Mount	6	-	58	3.9%
Grand Gedeh	10	2	364	23.1%
Grand Kru	1	-	64	4.0%
Lofa	19	3	100	7.5%
Margibi	6	-	25	1.9%
Maryland	11	1	120	8.1%
Montserrado	50	-	80	8.0%
Nimba	39	1	121	9.9%
River Cess	3	1	18	1.3%
River Gee	1	-	12	< 1%
Sinoe	9	2	131	8.7%
Not Liberian	1	-	2	< 1%
Did Not Respond	3	-	1	< 1%

3 County data is missing for 24 records.

Table 4. Participation of Statement Givers by Ethnicity³

Tribe/Ethnicity	Project Area			% of Total
	United States	United Kingdom	Ghana	
Bassa	36	2	154	11.8%
Belleh	-	-	11	< 1%
Congo/Americo-Liberian	20	1	13	2.1%
Dei	1	-	3	< 1%
Gbandi	5	-	15	1.2%
Gio	10	-	27	2.3%
Gola	6	-	22	1.7%
Grebo	15	1	164	11%
Kissi	4	1	18	1.4%
Kpele	19	2	131	9.3%
Krahn	16	2	414	26.5%
Kru	11	1	156	10.3%
Lorma	6	2	50	3.5%
Mano	11	1	22	2.1%
Mandingo	22	-	19	2.5%
Mende	1	-	1	< 1%
Sarpo	2	1	31	2.1%
Vai	6	-	56	3.8%
Multiple Tribes	14	1	28	2.6%
Other	3	-	11	< 1%
Did not wish to answer	7	-	4	< 1%

4 Tribe/ethnicity data is missing for 20 records.

Appendix I



Public Hearings Witnesses by U.S. State of Residence

Minnesota

1. Samuel Kalongo Luo
2. Wilhelmina Tolbert Holder
3. Alfred K. Zeon
4. Marie Hayes
5. Miatta Adotey
6. Marie Vah
7. Doris Parker
8. Kerper Dwanyen
9. Miamen Wopea
10. Georgette Gray
11. Aicha Cooper
12. Harriette Badio
13. Tete Cole
14. Lynette Murray-Gibson
15. In camera witness
16. In camera witness

Georgia

17. Dr. Augustine Konneh
18. Hassan Kiawu
19. Rev. William B.G.K. Harris

Oklahoma

20. Bishop Bennie D. Warner

North Carolina

21. James Y. Hunder

Pennsylvania

22. Sackor Zahnee
23. Bai Gbala
24. Ali Sylla
25. Dr. Patricia Jabbeh Wesley
26. Sam Slewion

Illinois

27. Garswah Blacktom

New Jersey

28. Jane Samukai

New York

29. Telee Brown

Rhode Island

30. Pajibo Kyne

Washington, D.C.

31. Ambassador Herman J. Cohen