

Memo

To: Chairman Cecil T.O. Brandy; Commissioner Victor Helb; Commissioner Estelle K. Liberty; Stanley Toe; Counselor Kula Jackson; Dr. Jeanette Carter

From: Caleb Stevens

CC:

Date: 8/6/13

Re: Overview of International Refugee Law and Land

I. Introduction

In response to a request by the Chairman, this memo provides an overview of the relationship between international refugee law and land. It is intended as a guide or reference for issues related to returning Liberian refugees or Ivorian refugees and their land rights. It is organized according to the different sources of international law: from the most binding or concrete to the least. Therefore, the first section discusses treaty law, then international legal principles, and finally emerging principles.

II. Treaty Law

Liberia is a party to both the Refugee Convention and its Protocol.¹ They apply only to persons who meet the treaty's definition of refugee, which is a person who resides outside their country of origin due to a "well-founded fear" of persecution because of their race, religion, nationality, or membership in a particular group.² Formal recognition by the UN High Commissioner for Refugees or another body is not required in order to have refugee status.³ However, refugee status is barred if there are serious reasons to think a person has committed war crimes or acts

¹ The 1951 Convention originally applied only to events occurring in Europe prior to 1951 (i.e. the 1914 to 1945 crisis). The 1967 Protocol granted the Convention universal application.

² Refugee Convention (1951); The Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the Assembly of Heads of State and Government of the OAU on September 19, 1969, adopted the definition of refugee in the Convention but broadened it slightly to also include: "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country or 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."

³ Handbook of Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol relating to the Status of Refugees, para. 28.

contrary to the purposes and principles of the United Nations.⁴ Additionally, if a person obtains citizenship or permanent residence in their country of asylum, then they may not claim refugee status under the Convention.⁵ Refugee status is also denied or is no longer applicable if a person voluntarily returns to the country from which they fled or conditions change such that the person can no longer claim a “well-founded fear” (e.g. the civil conflict ends and peace is restored). Many of these exemptions apply to the Liberian context. Many Liberian refugees have voluntarily returned to be reunited with family, build homes, start businesses, or find work. Thus, their refugee status no longer applies. In addition, the civil conflict has ended and a sufficient level of peace and stability exists to remove any “well-founded fear.” Indeed, the US Department of State considers the underlying conditions necessary for a well-founded fear to have changed in Liberia, such that refugee status should cease.⁶

Elements of the Convention may apply to the land rights of Ivorian refugees in Liberia. The country of asylum or host country (i.e. Liberia) must treat refugees the same as they do foreigners with respect to housing and immovable property (i.e. land and buildings).⁷ In Liberia’s case, this would mean Ivorian refugees can be barred from owning land, but must be permitted possession and use rights. In addition, refugees must be afforded the right to move freely within the country of asylum/host country, although subject to the laws applicable to foreigners.⁸

III. International Legal Principles/Emerging Principles

In 2005, the UN Sub-Commission on Protection and Promotion of Human Rights adopted the Principles on Housing and Property Restitution for Refugees and Displaced Persons. While not as concrete or binding as treaty law, these principles are “explicitly based on existing international, regional and national law”⁹ and therefore do carry legal weight and should be considered indicative of international best practices.

The Principles are broader in scope than the Refugee Convention, applying to persons who meet the legal definition of refugee as well as to those who have been “arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.”¹⁰ Refugees and other displaced persons possess the right to restoration of their housing, land, and other property, whether commercial, agricultural, or residential, and regardless of the nature of the land right

⁴ Refugee Convention, art. 1F.

⁵ Id. art. 1E.

⁶ See US Department of State website at <http://www.state.gov/j/prm/policyissues/issues/protracted>. However, in March 2013 the US President deferred enforced departure for Liberians who arrived as refugees. These extensions have been granted since 2007.

⁷ Refugee Convention., arts. 13 and 21.

⁸ Id., art. 26.

⁹ FAO, Handbook on Housing and Property Restitution for Refugees and Displaced Persons, p. 19 (March 2007) [Handbook].

¹⁰ Principles on Housing and Property Restitution for Refugees and Displaced Persons, 1.2 [Principles].

(i.e. it is not limited only to ownership rights but also to social occupancy rights and other “legitimate occupants”).¹¹

The remedy by which this restoration occurs is restitution and/or compensation in order to return the refugee or displaced person to their original position as much as possible. Restitution can be return of the original property or sale of the property and then relocation to another area. Compensation can be an alternative or in combination with restitution depending on the circumstances (e.g. if the property was destroyed and thus returning to it, or its sale, would not make the refugee or displaced person whole).¹² Is there a statute of limitations on restitution? There is no definite answer to this question. Different cut-off dates apply in different settings. In at least one case the cut-off date went back 80 years. In general, the cut-off date cannot be “unreasonable, disproportionate, or unfair.”¹³

Concerning communities or current occupants of the land who might be affected by returning refugees or displaced persons, the Principles require “adequate consultation and participation.”¹⁴ If evictions are required of “secondary occupants” (e.g. squatters), they must be carried out only if “justifiable and unavoidable”¹⁵ and then consistent with international human rights law, and they must be afforded an “opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies.”¹⁶ The Government is also obligated to provide alternative housing and/or land for evicted persons.¹⁷ On this issue, the Principles are consistent with the directive of the UN Committee on Economic, Social, and Cultural Rights, “[F]orced evictions are prima facie [presumptively] incompatible with the requirements of the [International Convention on Economic, Social and Cultural Rights] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”¹⁸

Finally, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security, adopted by the FAO in 2012, could be considered emerging principles of international law and thus persuasive authority. The Guidelines call for refugees and displaced persons, and therefore not only those who meet the legal definition under the Refugee Convention, to be settled in a way that protects the tenure rights of host communities, but also recognizes the legitimate tenure rights of refugees and displaced persons.¹⁹ Thus, the Guidelines require a careful balancing of competing interests, consistent with the Principles discussed above.

¹¹ Id. 2.1., 16.1.

¹² Handbook, p. 27-28.

¹³ Id., p. 27.

¹⁴ Principles, 14.1.

¹⁵ Id., 17.4.

¹⁶ Id., 17.1.

¹⁷ Id., 17.4.

¹⁸ General Comment No. 7. NB: Liberia has ratified the Convention on Economic, Social and Cultural Rights.

¹⁹ Voluntary Guidelines, Sec. 25.4.