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**The American University in Cairo**

**School of Global Affairs and Public Policy**

**GET OUT!  
THE HOST STATE'S OBJECTIVE PERSPECTIVE AND  
"VOLUNTARY" REPATRIATION: A CASE STUDY ON LIBERIAN  
RETURNEES**

**A Thesis Submitted to the**

**Department of Law**

**in partial fulfillment of the requirements for the degree of  
Master of Arts in International Human Rights Law**

**By**

**Danielle Renee Beasley**

**May 2011**

The American University in Cairo  
School of Global Affairs and Public Policy

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in partial fulfillment of the requirements for the  
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## DEDICATION

For those Liberians who have yet to find their way “home” and for those that have I dedicate this to you. Your smiles and your love of life have shown me what it means to persevere, to survive, and to live. Oh Liberia, you and your people shall forever be a part of me (me-oh).

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I know it's common to thank family last but I feel the need to thank my parents first because if it was not for them I never would have found the independence to go off exploring into the world. Without their continuous "understanding" and support I would not be where I am today.

I would like to thank my adviser, Alejandro Lorite, for his guidance this past semester and for recognizing (and understanding) that my thesis was not the only thing on my plate this semester. His support and advice throughout the entire process has been invaluable.

This could not have been done without my sidekick, Amanda Slobe. Your friendship has made this all so worth it and more. Looking forward to our next adventure, wherever and whenever it may be!

Thank you to all my friends and family back in the States and abroad. Your encouragement and love have been a source of strength for me these past two years.

Finally, I would like to thank my Grandma Grace. She passed away before she could see me finish this but was and continues to be with me every step of the way. I could not have asked for better thesis breaks than her late-night Skype calls with gossip from home. I hope your "gypsy granddaughter" continues to make you proud Grandma –  
I love you!

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Danielle Renee Beasley

Supervised by Professor Alejandro Lorite

ABSTRACT

The current refugee crisis has created an influx of refugees, primarily in the developing world, which has caused an issue of burden-sharing amongst the global North and South. Some states are hindered in their capacity to offer assistance and protection while other states avoid participating in the refugee realm all together. Repatriation remains the only solution for the majority of refugees and can occur after residing for short or long periods of time in the host country. Voluntary repatriation is a key element to the foundation of international refugee law. The concept's basis lies in the notion of "voluntariness" resulting in its promotion as the ideal solution to solve refugee problems. The current criteria for the promotion of repatriation programs, as outlined by UNHCR and monitored by states, are based solely on their objective perspectives. The failure to include the subjective perspective of the refugee undermines voluntary repatriation not only of its voluntary nature but also as a durable solution. The decision to voluntarily repatriate should be based on the refugees' own criteria, not those which are dictated by states and other stakeholders. The absence of the refugee perspective has led to the present day situation in which states interpret refugee law for themselves, using acts of coercion, persuasion, encouragement and other methods to force refugees home under the auspices of voluntary repatriation. The designation of such objectivity as the primary decision-making factor in refugee protection has led to the erosion of the entire international refugee law regime.

## TABLE OF CONTENTS

I. Introduction	1
II. Repatriation as a Durable Solution	7
A. History of Durable Solutions	7
B. The Legal Framework of Voluntary Repatriation	7
1. The Legal Language	7
2. UNHCR's Role in Voluntary Repatriation	10
3. The Repatriation Criteria	11
4. The 1951 Convention's Ceased Circumstances	12
C. Voluntary Repatriation in Practice	14
1. Important Factors Often Never Considered	17
2. Other Challenges	18
3. The Need for Re-evaluation	20
D. Conclusion	22
III. The Value of Perspectives in International Refugee Law	25
A. Which is it, Subjective or Objective?	25
1. The Objective and Subjective in the 1951 Convention	27
2. The Objective and Subjective in the African Context	29
3. Case Examples	30
B. The Right to Remain: Temporary vs. Permanent	32
C. The Cessation Clause and Involuntary Repatriation	34
D. Is There Really a Difference?	36
E. Who Decides Where Home Is?	37
F. A Return in Safety and Dignity	40
G. Conclusion	41
IV. A Case Study of Former Liberian Refugees from Ghana	44
A. Methodology	44
1. Purpose and Goal of Research	44
2. Necessity for Liberian Case Study	45
3. Importance of the Narrative Inquiry	46
B. Liberia: A Brief History of the Lone Star State	47
C. Buduburam Refugee Camp in Context	49
1. Prospects of Integration in Ghana	51
2. Liberian Women Protest for Improved Repatriation Packages	52
3. Ghana Invokes the Cessation Clause	56
4. The Condition of Liberia in 2008	57

D. The Voices of Former Liberian Refugees	60
1. Common Everyday Harassment	61
2. Access to Education	62
3. Issues with Resettlement	64
4. Safety Concerns in Buduburam	65
5. The 2002 Camp Invasion	67
6. The 2008 Camp Invasion	67
7. The Process Home to Liberia	69
8. Back “Home” in Liberia	70
E. Narrative Conclusion	72
V. Policy Recommendations	74
VI. Conclusion	81
VII. Appendix	83



“You see, refugees are just like you and me. Except for one thing. Everything they once had has been left behind. Home, family, possessions, all gone. They have nothing. And nothing is all they’ll ever have unless we extend a helping hand.”<sup>1</sup>

## I. INTRODUCTION

The current discourse in international refugee law revolves around the common viewpoint that refugee law is “not in firm commitments to durable refugee protection.”<sup>2</sup> This stems from the argument that the 1951 Convention relating to the Status of Refugees and 1967 Protocol<sup>3</sup> and refugee law norms are rooted in the post-WWII and Cold War era and are no longer relevant to the causes for refugee protection today.<sup>4</sup> Some posit that the refugee regime is in “crisis”<sup>5</sup> while others affirm the need to “acknowledge the distinction between legal standards and policy recommendations” because we cannot make states “respect norms that they have not accepted.”<sup>6</sup> General observations of international refugee law conclude that it is “increasingly not respected”<sup>7</sup> and that the current practice of the United Nations High Commissioner for Refugees’ (UNHCR) maintenance of refugee protection “cannot substitute for effective action, political will and full cooperation on the part of States”<sup>8</sup> since refugee protection is state responsibility.

According to UNHCR, in 2009 there were over 16 million refugees with more than 26 million displaced individuals.<sup>9</sup> The number of protracted refugee situations

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<sup>1</sup>As quoted by UNHCR in Nezvati Soguk, *States and Strangers; Refugees and Displacements of Statecraft*, 28 (University of Minnesota Press, 1999).

<sup>2</sup>Michael Barutciski, *Involuntary Repatriation when Refugee Protection is no Longer Necessary: Moving Forward after the 48<sup>th</sup> Session of the Executive Committee*, 10 INT’L J. REFUGEE L. 252 (1998).

<sup>3</sup>1951 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6276, 189 U.N.T.S. 137 [hereinafter 1951 Convention] at art. 33 and the Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267.

<sup>4</sup>*supra* note 2.

<sup>5</sup>James C. Hathaway and R. Alexander Neve, *Making International Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection*, 10 HARV. HUM. RTS. J., 115 (1997).

<sup>6</sup>*supra* note 2 at 253.

<sup>7</sup>*Id.* at 238.

<sup>8</sup>[hereinafter UNHCR]. Para. (d) “emphasizes that refugee protection is primarily the responsibility of States, and that UNHCR’s mandated role in this regard cannot substitute for effective action, political will, and full cooperation on the part of States, including host States and countries of origin, as well as other international organizations, and the international community as a whole,” as described in UNHCR Executive Committee Conclusion No. 81 (XLVIII), 48<sup>th</sup> Sess., UN doc. A/AC.96/895, 20 Oct. 1997,

<sup>9</sup>UNHCR, *UNHCR Annual Report Shows 42 Million People Uprooted Worldwide*, (16 June 2009) available at <http://www.unhcr.org/4a2fd52412d.html>.

across the globe increased from 22 in 1999 to 30 in 2008.<sup>10</sup> The majority of refugees originate from the developing world. The majority of states hosting large refugee populations are located in the developing world. Between the years of 1997-2001 these countries hosted more than 66% of the individuals of concern to UNHCR.<sup>11</sup> It is primarily these developing countries that use their fears of national security issues as a justification to involuntarily repatriate refugees.<sup>12</sup> They also blame the heavy burden that flows of refugee populations place on their local resources and the high costs of providing aid and protection. Unfortunately, solidarity efforts between states and the international community to address these problems have thus far proved to be fairly ineffective.<sup>13</sup> There has been a recent shift in focus from examining the consequences of conflict to analyzing the root causes so that “international refugee protection can be reconceived to minimize conflict with the legitimate migration control objectives of states, and dependably and equitably to share responsibilities and burdens.”<sup>14</sup> While the direction in which international refugee law is heading remains uncertain, it is important to maintain focus on its intent: to respect state sovereignty while affording protection to the persecuted.

Upon arrival, refugees are often treated as “others” in the host society; they are strangers, unequal to their host counterpart, never fully able to cross the threshold of acceptance. Their only hope lies with UNHCR’s “durable solutions:” resettlement to a third country, integration within the host country or repatriation to country of origin.<sup>15</sup> Unfortunately, resettlement is considered a conservative solution afforded to few, leaving repatriation and integration as the only reality for most refugees. However, as host states

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<sup>10</sup>Samuel K. M. Agblorti, *Refugee integration in Ghana: The Host Community’s Perspective*, 1 (UNHCR New Issues in Refugee Research, Working Paper No. 203, 2001).

<sup>11</sup>UN High Commissioner for Refugees, *Framework for Durable Solutions for Refugees and Persons of Concern*, (May 2003), available at <http://www.unhcr.org/refworld/docid/4124b6a04.html>.

<sup>12</sup>The more recent trend of mass influxes causes a great deal of concern due to the mix of individuals which are included in these groups: asylum-seekers who are protected under the 1951 Convention, others in need of international protection as well as those who fall within the Convention’s exclusion clauses.

<sup>13</sup>These include: collectivized administration, operational burden sharing, responsibility sharing and repatriation and development assistance as described in Hathaway et al., *supra* note 5 at 145.

<sup>14</sup>*Id.* at 118.

<sup>15</sup>The UN Refugee Agency, *Durable Solutions*, UNHCR, (2010), available at <http://www.unhcr.org/pages/49c3646cf8.html>.

often implement laws and policies to mitigate challenges<sup>16</sup> posed by refugees, integration is a nearly impossible solution as it fails to bestow rights equal to those of citizens of the asylum state and path to citizenship. Governments often use refugees as scapegoats for economic and social hardships as well as crimes (theft, prostitution and illegal trading across borders) which leaves the host environment hostile in the reception of refugees in their communities.<sup>17</sup> Thus, repatriation is often perceived as the only viable option, and the most preferred solution, when the circumstances in the home country have improved significantly. Although, it too possesses various challenges and risks.

The UNHCR Executive Committee's Conclusion No. 74 recognizes that it is essential for rehabilitation, reconstruction and national reconciliation to be addressed in both a comprehensive and effective manner if repatriation is to be a sustainable and thus truly durable solution to refugee problems.<sup>18</sup> While UNHCR's handbook, *Voluntary Repatriation: International Protection*, states that "repatriation which is voluntary is far more likely to be lasting and sustainable,"<sup>19</sup> states continue to divert from the "voluntariness" character of the principle of voluntary repatriation. Voluntary repatriation is not legally-binding as "it does not represent a universal obligation that States have actually assumed,"<sup>20</sup> rather it is a policy recommendation derived "from the text of the UNHCR Statute, not from the Refugee Convention which binds States."<sup>21</sup> States have thus "mistakenly felt free to impose sometimes sweeping restrictions on

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<sup>16</sup>These challenges are often perceived to be social, economic and political.

<sup>17</sup>Gaim Kibreab, *Revisiting the Debate on People, Place, Identity and Displacement*, 12 J. REFUGEE STUD. 400 (1999).

<sup>18</sup>Executive Committee, Sess. 55<sup>th</sup>, *Conclusion 74 (XLV) on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees*, (2004), available at <http://www.unhcr.org/refworld/docid/417527674.html>.

<sup>19</sup>"*Reaffirming* that voluntary repatriation, local integration and resettlement are the traditional solutions for refugees, and that all remain viable and important responses to refugee situations; *reiterating* that voluntary repatriation, where and when feasible, remains the preferred solution in the majority of refugee situations; and *noting* that a combination of solutions, taking into account the specific circumstances of each refugee situation, can help achieve lasting solutions, *Reaffirming* the voluntary character of refugee repatriation, which involves the individual making a free and informed choice through, inter alia, the availability of complete, accurate and objective information on the situation in the country of origin; and *stressing* the need for voluntary repatriation to occur in and to conditions of safety and dignity." *Id.*

<sup>20</sup>Barutciski, *supra* note 2 at 250.

<sup>21</sup>James C. Hathaway, *The Rights of States to Repatriate Former Refugees*, 20 OHIO ST. J. ON DISP. RESOL. 189 (2005).

freedom of movement, access to employment and other protected interest and left to their devices to decide how refugee repatriation should be structured.”<sup>22</sup>

According to the 1951 Convention’s Article 33, refugees are defined as *ex definitio* or unrepatriable persons; this prohibits states from forcibly returning refugees, otherwise known as *refoulement*.<sup>23</sup> Through the recognition of the principle of *non-refoulement* in international customary law, all countries are bound, regardless of ratification status, to this principle.<sup>24</sup> It is only with the implementation of one of the 1951 Convention’s cessation clauses that refugees lose their protection but until then they “are entitled to benefit from dignified rights-regarding protection *until and unless* conditions in the State of origin permit repatriation without the risk of persecution.”<sup>25</sup> Therefore, if the situation is not covered by a cessation clause, return cannot be forced by the state.<sup>26</sup>

In 2008, after almost two decades, the Ghanaian government determined the conditions in Liberia suitable enough for Liberian refugees in the Buduburam Refugee Settlement to return home. This decision was relayed to the refugees through a camp invasion by Ghanaian forces, resulting in the detainment of hundreds of women and men, physical and verbal abuse and in some cases, deportation. The tension and fears that enveloped the camp led many Liberian refugees to register with UNHCR’s voluntary repatriation program. Narratives conducted during a two-week time period in Monrovia, Liberia elaborate on the situation of the camp at the time and the experiences of eleven former refugees. Their stories illustrate that while they may not have been ready to return to Liberia they felt as though they were left with no other choice *but* to voluntarily repatriate as they feared their lives were in greater danger if they remained in Ghana.

The voluntary nature of repatriation is established as “an inherent safeguard against *forced* return.”<sup>27</sup> However, currently no real requirements or measurements exist to determine the degree of “voluntariness” of repatriation because of the inability to

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<sup>22</sup>James C. Hathaway, *Meaning of Repatriation*, 9 INT’L J. REFUGEE L. 554 (1997).

<sup>23</sup>1951 Convention, *supra* note 3.

<sup>24</sup>L. Catherine Currie, *The Vanishing Hmong: Forced Repatriation to an Uncertain Future*, 34 N.C.J. INT’L L. & COM. 340 (2008).

<sup>25</sup>*supra* note 22 at 551.

<sup>26</sup>Barutciski, *supra* note 2 at 249.

<sup>27</sup>G.S. Goodwin-Gill, *The Refugee in International Law*, 274(Oxford University Press 1996).

determine whether or not a return is truly based on an individual's own self-will to voluntarily repatriate. Once the host state concludes that there have been significant improvements *then* it is within its right to eliminate refugee status.<sup>28</sup> However, many of these circumstances and decisions are based on the objective perspectives of the state and do not reflect the refugees' subjective perspectives or their notion of "home." Refugees have their own voice and often their own set of criteria for return which are not reflected in that outlined by UNHCR and host states. The absence of fora for refugees to voice their concerns and opinions frequently results in their hesitation or resistance when faced with the decision to repatriate. Such reluctance, along with a state's unwillingness to host refugees for short or even long periods of time, often leads to harassment, discrimination, refoulement and acts of encouragement or persuasion by government officials to "push" refugees to return to their countries of origin. As state attitudes shift in refugee law, authorities have begun to rely solely on objective factors, rather than a combination of both the subjective and objective perspective, deeply crippling the principle of voluntary repatriation. This paper asserts that while repatriation is based on its "voluntariness," host states' objective perceptions commonly result in the forcible return of refugees to their home states under the guise of voluntary repatriation.

Part I presents the history of durable solutions and the legal framework of voluntary repatriation including the role of UNHCR in the implementation of this solution. It identifies and examines the difficulties and challenges of voluntary repatriation in refugee law. Part II analyzes the subjective and objective perspectives of international refugee law to elucidate the state's ability to create higher and lower thresholds of requirements, reflective of these perspectives, in order to abstain from or evade refugee protection. Part III offers a brief background on Liberia's history, its civil conflicts and the situation in the Buduburam refugee settlement for Liberian refugees. This section also discusses the events which led up to the mass repatriation program in April 2008. Narratives are then provided to offer agency to the refugee voice, by illustrating the refugees' subjective perspective of life in Ghana. Through state practice it

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<sup>28</sup>B.S. Chimni, *From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems*, 7 (UNHCR News in Refugee Research, Working Paper No. 2, 2004).

is evident that these voices are ignored in current policies. Their stories and experiences exemplify the necessity to include such perspectives in policy-making if repatriation is to remain a durable solution. Part IV offers some suggested policy changes and recommendations for all stakeholders in the refugee field to consider before promoting repatriation programs. They also address some of the gaps within the concept of voluntary repatriation and the entire realm of refugee law. Part V summarizes the problems with voluntary repatriation, its “incoherence as a legal standard”<sup>29</sup> in today’s world, and the inability for refugee law to continue in its current state if it is to realize its fundamental purpose.

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<sup>29</sup>Barutski, *supra* note 2 at 249.

## II. REPATRIATION AS A DURABLE SOLUTION

### A. History of Durable Solutions

The concept of durable solutions was first introduced in the post-WWII era to address the mass numbers of refugees in Europe. From 1945 to 1985, resettlement was the most promoted solution in practice to address the needs of refugees across the globe even though repatriation was viewed as the preferred solution.<sup>30</sup> It was only at the beginning of the Cold War era that the right for an individual “to flee from political persecution and to choose where he or she wanted to live was recognized.”<sup>31</sup>

It was not until the late 1980s that states began to actively promote voluntary repatriation as the response to solve the increasing global refugee problem. In 1983, voluntary repatriation officially acquired an ‘absolute character’ through those resolutions by the United Nations General Assembly which focused specifically on refugees.<sup>32</sup> The 1990s was declared the “decade of voluntary repatriation” due to the increase of civil conflicts in Southeast Asia and Africa. During this time, voluntary repatriation became “*the* durable solution, with an emphasis on ensuring the voluntary character of repatriation.”<sup>33</sup> Whilst voluntary repatriation has remained *the* durable solution ever since, it is the one in which the UNHCR, states and the international community have had “the greatest limitations of mandate, influence, time and resources.”<sup>34</sup>

### B. The Legal Framework of Voluntary Repatriation

#### 1. *The Legal Language*

In international human rights law, the principle of voluntary repatriation is the basic right to return to one’s own country.<sup>35</sup> During the period in which the 1951

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<sup>30</sup>*supra* note 28 at 1.

<sup>31</sup>*Id.* at 3.

<sup>32</sup>*Id.* at 2.

<sup>33</sup>*Id.* at 1.

<sup>34</sup>*Id.* at 2.

<sup>35</sup>UNHCR, *Handbook: Voluntary Repatriation and International Protection*, Sec. 2.1. (1996).

Convention was drafted, refugee law was “firmly wedded to an exilic bias”<sup>36</sup> and thus the idea of repatriation as being of a voluntary nature was obsolete in the language of the 1951 Convention. Since the concept of “voluntariness” did not make it into the legal framework of refugee protection the task of ensuring state adherence to the idea was assigned to the International Refugee Organization (IRO), the predecessor to the United Nations High Commissioner for Refugees (UNHCR). When the IRO dismantled and UNHCR was formed, the concept of voluntary repatriation was the main principle outlined in its mandate. The preamble of this statute also called upon states to assist the Office of the High Commissioner for Refugees to promote the voluntary repatriation of refugees.<sup>37</sup>

The General Assembly’s Resolution 428(V) of 14 December 1950, adopting the UNHCR Statute, requests governments to cooperate with the High Commissioner by assisting in efforts to promote the voluntary repatriation of refugees.<sup>38</sup> Voluntary repatriation should be facilitated by “providing for the protection of refugees by assisting governmental and private efforts to promote voluntary repatriation as a solution.”<sup>39</sup>

- Repatriation should be voluntary.
- UNHCR, governments and private organizations (NGOs) have a joint role to play in voluntary repatriations.
- Voluntary repatriations should be both facilitated and promoted.<sup>40</sup>

It was not until thirty years later that the Executive Committee of the High Commissioner’s Programme closely examined voluntary repatriation for the first time. Their analysis resulted in the drafting of Conclusion 18 (XXXI) which states the desirability for UNHCR to be involved in the process of repatriation. Conclusion 18 both consents to and outlines the primary role of UNHCR in regards to voluntary repatriation: to maintain the voluntary character of repatriation, assist and cooperate with governments in the facilitation of those refugees who wish to repatriate, to provide guarantees by the country of origin, to monitor the country of origin and any substantial changes that may

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<sup>36</sup>Chimni, *supra* note 28.

<sup>37</sup>*Id.* at 6.

<sup>38</sup>UNHCR, *Statute of the Office of the United Nations High Commissioner for Refugees*, General Assembly Resolution 428 (V) of 14 December 1950, available at <http://www.unhcr.org/3b66c39e1.html>.

<sup>39</sup>*Id.* at Par. 8(c).

<sup>40</sup>*supra* note 35 at Sec. 1.1.



be fundamental to the well-being of refugees, advise refugees on the conditions of the home country and the guarantees that have been laid out, and to receive, monitor and assist returnees in their reintegration in the country of origin.<sup>41</sup>

Five years later, the Executive Committee re-examined voluntary repatriation and adopted Conclusion 40 (XXXVI) which reiterated the basic doctrine of protection for refugees and principles for the promotion of voluntary repatriation. Conclusion 40 further instilled the important role that UNHCR plays in refugee situations and the need for unhindered access, in both the state of origin and the state of asylum, to the populations of concern. Other important points which stemmed from this included: to maintain “the possibility of repatriation ‘under active review’ from the outset of a refugee situation” and to pursue the promotion, when appropriate, of a solution.<sup>42</sup> From this, UNHCR’s mandate expanded to include the assistance in reintegration and rehabilitation of returnees and to act as a mediator and promote dialogue between all stakeholders. Conclusion 40 also emphasizes the continual need for repatriation to remain of a voluntary character under conditions of absolute safety and dignity.

UNHCR’s *Handbook on Voluntary Repatriation* confirms that in order for safe repatriation to exist three requirements must be satisfied: safety guaranteed by the law, physical safety and material security.<sup>43</sup> The former two are usually “easier” to ensure while the latter is nearly impossible and is also one of the factors which hampers the promotion and facilitation of repatriation. Material security includes access to land and opportunities to acquire and sustain a livelihood. Many countries of origin have engaged in years of armed conflict, thus resulting in the destruction of a majority of the infrastructure. These states face difficulties providing basic services, lack progress in development, and educational and employment opportunities for returnees. Security concerns are also an apprehension for many refugees when considering a return home.<sup>44</sup> It is difficult to promote repatriation when these still unstable countries are at risk of

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<sup>41</sup>Executive Committee 31<sup>st</sup> session, U.N.G.A., No. 18 (XXXI), 1980.

<sup>42</sup>Executive Committee 36th session, U.N.G.A. No. 40 (XXXVI), Oct. 1985.

<sup>43</sup>Frederiek De Vlaming, *Guidelines for NGOs in Relation to Government Repatriation Projects*, 11 J. OF REFUGEE STUD. 184 (1998).

<sup>44</sup>UNHCR, *supra* note 11.

renewed violence or are unable to provide basic services and methods of income-generating support to returnees.

## ***2. UNHCR's Role in Voluntary Repatriation***

The primary responsibility for managing refugee crises lies in the hands of states who must work together to provide effective protection and standards of safety for all refugees. States must cooperate with each other and form partnerships to devise both legal and practical measures when responding to refugee situations until appropriate and sustainable solutions can be found. Unfortunately, this is not often the case and UNHCR has thus needed to step in to fill the gaps where states have been unwilling to fill. UNHCR has the responsibility to ensure that the conditions in the country of origin have improved to guarantee the safe and dignified return of refugees and to guarantee that they do not feel compelled to return.

The role UNHCR plays in repatriation programs depends upon the extent of involvement that the government of asylum is willing to offer. UNHCR can actively promote and/or facilitate voluntary repatriation. “A body of *leges speciales* constituted by numerous bilateral and tripartite agreements”<sup>45</sup> between UNHCR, the country of origin and the country of asylum are established to control the method of refugee return. While these agreements emphasize the voluntary nature of repatriation and for the return to be conducted safely and in a dignified fashion, they are not always detailed in aspects specific to the given group of refugees and the transition from host to home state. The safety, security and dignity of the refugee population reside in the hands of the host government until they are no longer in their territory. Upon entering the country of origin the protection of refugees is then transferred to the home country, releasing the host government of any further involvement or responsibility. While the country of origin must then step in, often times these states are unable or unwilling to commit to the reintegration of the returnees. The increasing need for UNHCR to play a participatory role in these various stages of reintegration, rehabilitation and reconciliation has

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<sup>45</sup>Chimni, *supra* note 28 at 10.

diminished its capacity to fulfill its core mandate.<sup>46</sup> Its mandate was not created for nor is it suitable “for engaging in the tasks which would need to be implemented to ensure the requisite re-establishment.”<sup>47</sup> In other cases, UNHCR must “strike a delicate balance between fulfilling its protection and solutions mandate without seriously compromising basic protection tenets, including those which frame”<sup>48</sup> voluntary repatriation as a durable solution.

### ***3. The Repatriation Criteria***

UNHCR’s mandate outlines four conditions that must be examined before the consideration of repatriation: fundamental change in circumstances, voluntary nature of the decision to return, tripartite agreements between the state of origin, the state of asylum and UNHCR, and the ability to return in safety and with dignity with unhindered access by UNHCR upon their return.<sup>49</sup> While these are all considered to be standard criterion they cannot be preconditioned. Disturbingly, the current criteria lacks a viable method to determine how many conditions must be fulfilled and the threshold that must be met in order to be considered a safe and sustainable return and thus a durable solution.

UNHCR’s role, with respect to seeking durable solutions notably voluntary repatriation, is far from a mere tangential one. Apart from the fact that its mandate *ratione personae* is more encompassing than the scope *rationae personae* of the 1951 Convention, UNHCR often actually implements this particular solution, especially in the case of operations that are promoted rather than facilitated.<sup>50</sup>

The current trend of normalizing voluntary repatriation by UNHCR has left some to believe that it is more of a political tool, dominated by mostly western states and their

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<sup>46</sup>Robyn Lui, *World Order and UNHCR’s “Comprehensive” Approach to Refugees*, 14REV. QUEBECOISE DE DROIT INT’L. 112 (2001). See also UNHCR, *supra* note 11; “Enabling refugees to regain their homes and land, through fair and effective property restitution mechanisms, is often a related challenge, in which UNHCR has become increasingly involved over the years.”

<sup>47</sup>Marjoleine Zieck, *Voluntary Repatriation: Paradigm, Pitfalls, Progress*, 23 REFUGEE SURVEY Q. 46 (2004).

<sup>48</sup>UNHCR, *Global Consultations on International Protection*, 4<sup>th</sup> Meeting, Doc. EC/GC/02/5 (2002), 23 REFUGEE SURVEY Q. 256 (2004).

<sup>49</sup>*supra* note 35 at Sec. 3.1.

<sup>50</sup>Marjoleine Zieck, *Doomed to Fail from the Outset? UNHCR’s Convention Plus Initiative Revisited*, 395 (Oxford University Press, 2009).

needs, rather than a humanitarian agency.<sup>51</sup> Others claim that its current role as a key provider of refugee protection is inadequate and palliative and that repatriation must reflect the refugees' own subjective criteria with a decision which is made at their own pace of comprehension and consideration.<sup>52</sup> Its function as a humanitarian agency to ensure solutions are durable and to offer adequate protection has shifted from a focus on protection to the process of return, including the stages of reintegration, reconstruction and reconciliation. UNHCR's focus of voluntary repatriation as *the* durable solution threatens the principle of *non-refoulement* and the right to seek asylum because it creates a situation where states avoid refugee situations or deter from human rights and refugee law obligations because of their unwillingness to host refugees for long periods of time. It also diminishes the demands for resettlement in third countries. This both instills and confirms the "belief" that voluntary repatriation is the only viable solution, reaffirms that resettlement is nearly impossible and reintegration is unrealistic. Refugees are then faced with the decision to return "home" or to be stuck in an eternal state of limbo.

#### ***4. The 1951 Convention's Ceased Circumstances***

The 1951 Convention's Article 1(C) expresses six conditions from which refugee status ceases.<sup>53</sup> The most widely recognized of these six, as being applicable to a majority of refugee situations, is Article 1(C)(5):<sup>54</sup> "He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased

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<sup>51</sup>*supra* note 49.

<sup>52</sup>*supra* note 46 at 95.

<sup>53</sup>"(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or (2) Having lost his nationality, he has voluntarily re-acquired it; or (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or (5) He can no longer, because the circumstances in connexion 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; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality; (6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence." The 1951 Convention, *supra* note 3 at art. 1(C).

<sup>54</sup>To date there have only been fifteen cases resulting in the application of formal cessation within the past twenty years. However, the application did not stem from the 1951 Convention's article 1(C) but rather from the UNHCR Statute. Joan Fitzpatrick, *The End of Protection: Legal Standards for Cessation of Refugee Status and Withdrawal of Temporary Protection*, 13 GEO. IMMIGR. L. J. 377 (1999).

to exist, continue to refuse to avail himself of the protection of the country of his nationality.”<sup>55</sup> In cases where refugee status is considered no longer applicable, the change in circumstances must be fundamental, stable, durable and effective.<sup>56</sup>

This principle of special circumstances is further reiterated in the United Nations Executive Committee’s Conclusion 69 which affirms the right of refugees to be granted reconsideration, on an individual basis, before the cessation clause applies to them, to ensure that no one continues to possess a well-founded fear before being forced to return home.<sup>57</sup> The clause would also not necessarily apply to those who have “strong family, social and economic links to the state of refuge.”<sup>58</sup> In the case of African refugees, the cessation clause can be invoked from either the 1951 Convention or the 1969 Organization of African Unity’s Convention Governing the Specific Aspects of Convention on Refugee Problems in Africa.<sup>59</sup>

In order for the cessation clause to be invoked there must be a fundamental political change which must be “truly effective,” durable and long-lasting, rather than temporary.<sup>60</sup> The current system does not provide a method to measure the changes of state conditions in order to determine whether they are fundamental and stable. There is also no way of ensuring that these changes are relative to invoking the cessation clause. These are all ambiguous factors in refugee law policies and areas of great concern which

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<sup>55</sup>1951 Convention, *supra* note 3.

<sup>56</sup>*supra* note 54 at 354. *See* The 1951 Convention *supra* note 3; although, it is important to note that these provisions are not applicable to a refugee who is able “to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence” and thus, shall continue to be covered under art. 1(A).

<sup>57</sup>Executive Committee of the High Commissioner’s Programme, *Conclusion No. 69 (XLIII) on Cessation of Status*, (1992), available at <http://www.unhcr.ch/refworld/unhcr/excom/xconc/excom69.htm>.

<sup>58</sup>*supra* note 54 at 377.

<sup>59</sup>Art. 1(4) states, “4. This Convention shall cease to apply to any refugee if: (a) he has voluntarily re-availed himself of the protection of the country of his nationality, or, (b) having lost his nationality, he has voluntarily reacquired it, or, (c) he has acquired a new nationality, and enjoys the protection of the country of his new nationality, or, (d) he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution, or, (e) he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality, or, (f) he has committed a serious nonpolitical crime outside his country of refuge after his admission to that country as a refugee, or, (g) he has seriously infringed the purposes and objectives of this Convention. The 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S. 45, 8 I.L.M. [*Hereinafter* 1969 OAU Convention].

<sup>60</sup>Jeremy R. Tarwater, *Analysis and Case Studies of the “Ceased Circumstances” Cessation Clause of the 1951 Refugee Convention*, 15 GEO. IMMIGR. L. J. 565 (2001).

have yet to be fully addressed. The 1951 Convention provides little guidance on how to determine whether or not the risks of persecution and the foundation for well-founded fear have been eliminated or reduced to a level which would justify return. Unfortunately, the current practice of invoking the cessation clause is through the host state's objective perspective of these change in circumstances to decide if the changes would validate return and does not include the a subjective perspective of the affected refugee.

### **C. Voluntary Repatriation in Practice**

In order to address state concerns for national security there has been a demand to examine the root causes of conflicts with the aim of determining the generating factors of refugees rather than the consequences. This shift in focus away from possible solutions has added to the erosion of the durable solutions' foundation as the current norm is to promote voluntary repatriation as the only solution, under conditions which may or may not be voluntary. This is also a challenge because the "insistence on voluntariness as the only acceptable guarantee that return does not amount to refoulement is likely to simply fortify the resolve"<sup>61</sup> of states to avoid aiding refugees in the first place. While there is a need to look at refugee crises beyond just being a humanitarian issue, to include a political response and solution,<sup>62</sup> we cannot move so far beyond it that states no longer adhere to human rights obligations and deter from providing refugee protection.

Voluntary repatriation is an integral part of international refugee law, especially since it is considered *the* durable solution for refugee situations. The nature of voluntary repatriation as a durable solution relies on the principle that refugees are not only able to return but are also able to re-establish themselves in their home country.<sup>63</sup> The process of repatriation is divided into three distinct phases: 1) the preparation of refugees to leave the state of asylum to return to their country of origin, 2) the actual process of repatriation and the act of reception in the home state and 3) the reintegration process that occurs in

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<sup>61</sup>Hathaway, *supra* note 22 at 555.

<sup>62</sup>Lui, *supra* note 46 at 101.

<sup>63</sup>Zieck, *supra* note 47 at 44.

the home state. All three steps are fundamental to the overall success of voluntary repatriation. It is important that these phases and refugee law policies are implemented according to basic human rights principles and standards to maintain the effectiveness and durability of voluntary repatriation as a permanent solution. The failure to do so in any one of the steps could result in disastrous effects as it is the refugees' lives at stake. As observed, the objective of the voluntary repatriation framework clearly extends beyond the assistance of UNHCR and can only be realized through the cooperation and cohesive efforts between the countries of origin and asylum and UNHCR.

Since its inception UNHCR has looked for ways to ensure that refugees return home under durable conditions in order to prevent them from returning only to be forced to flee once again. However, the failure of states to share in the “burden” that refugee influxes place on the countries of asylum seldom allows for refugees to return under such idyllic conditions. The inability of states of the geographic South to host refugees in the long-term has led states to impose return on refugees in order to ease their economic, political and social burdens. The unwillingness of Northern states to share this burden further adds to the demise of refugee protection. Nowadays, voluntary repatriation has become a priority for states, not because it is regarded as the best of the durable solutions, but because states of asylum do not allow refugees to remain in their territory on a permanent basis.<sup>64</sup>

In practice, the voluntary nature of repatriation scarcely exists because there are no other viable options *but* repatriation for the large majority of refugees. When a refugee crisis shows no sign of abating, there is a lack of encouragement by the host state to integrate and resettlement is rarely offered as a realistic solution. Refugees are left with no other choice but to return, and therefore repatriation fails to be an absolute durable solution based on an absolutely voluntary nature.<sup>65</sup> In addition, the failure to recognize that there is no mention of “voluntariness” in the 1951 Convention, but rather only mentioned in UNHCR’s Statute, only further discourages states from adhering to the principle of *voluntary* repatriation since one cannot “superimpose” this principle on an

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<sup>64</sup>Kibreab, *supra* note 17 at 389.

<sup>65</sup>Lauren Fouda, *Compulsory Voluntary Repatriation: Why Temporary Protection for Sudanese Asylum-Seekers in Cairo Amounts to Refoulement*, 14 GEO. J. ON POVERTY L. & POL’Y 516 (2007).

international Convention. Furthermore, one also cannot “superimpose” such a principle on states that may have ratified the 1951 Convention but yet have no legal obligations to the UNHCR Statute.<sup>66</sup>

In some instances, UNHCR may implement and facilitate repatriation programs “when the life or physical integrity of refugees in the country of asylum is threatened to the point that return is the safer option.”<sup>67</sup> Such deterioration of conditions in the host country includes assault on the physical security of refugees: acts of physical attacks and rapes, harassment, arbitrary detainment, extortion and increasing xenophobia in the countries of asylum.<sup>68</sup> Refugees who do not choose to repatriate “voluntarily” face forced deportation – *refoulement*- or are left to languish indefinitely in camps where they have to struggle to survive or live indefinitely on the assistance of handouts. In many cases, because the situations are often so dangerous and the availability of protection and aid are inadequate, refugees have preferred returning home, regardless of whether or not it is safe, rather than to languish in the host state.<sup>69</sup>

It is important to note that, in the African context, the 1969 OAU Convention also affirms the right to repatriate on a voluntary basis. Article 5 of the Convention outlines five conditions to guarantee the voluntary nature of repatriation.<sup>70</sup> These conditions not only illustrate the rights of the refugee but also the obligations of the African state to guarantee voluntary return. Unfortunately, with the crises that currently plague the

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<sup>66</sup>Chimni, *supra* note 28 at 6.

<sup>67</sup>*supra* note 48 at 255.

<sup>68</sup>Kibreab, *supra* note 17 at 390.

<sup>69</sup>Chimni, *supra* note 28 at 12.

<sup>70</sup>1. The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will. 2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation. 3. The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations. 4. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum. 5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies. 1969 OAU Convention, *supra* note 59 at art. 5.



continent consisting of primarily developing states, voluntary return is more the exception rather than the norm in Africa.

### ***1. Important Factors Often Never Considered***

The pressure from states to repatriate refugees causes voluntary repatriation to be promoted out of context, campaigned as a “social and spatial phenomenon” rather than a legally durable solution.<sup>71</sup> In pursuance of releasing states from the burden of aiding and assisting large and/or protracted refugee situations, UNHCR’s current strategy to promote repatriation, through the creation of idealized images of home to compel refugees to return, delegitimizes the voluntary nature of voluntary repatriation.<sup>72</sup> In addition, many advocates of this durable solution have, over the years, assumed that all refugees long to return home and thus fail to give authority to the refugee voice. It is important to consider the following points before the promotion of repatriation programs:

1. Passage of time: Most importantly, second generation refugees do not want to return to a home that they do not know and of which they have no memories.<sup>73</sup>
2. The effects of spending years in exile profoundly affects refugees that home is nothing more than a place of nostalgia.<sup>74</sup>
3. “A gendered view of exile and return contested the ‘cozy image of home’ projected by advocates of repatriation.”<sup>75</sup>

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<sup>71</sup>Chimni, *supra* note 28 at 5.

<sup>72</sup>Chimni goes on to state that the promotion of repatriation “should not be given an ambitious meaning – repatriation assistance is where UNHCR have their greatest limitations.” While it is beyond the scope of this paper, it is important to mention that UNHCR is, and has been, clearly acting beyond its mandate; limited to solely refugee protection. This has since changed, from maintaining humanitarian and non-political characteristics to acting in a strong political capacity. It not only now offers protection to individuals who are not covered under the 1951 Convention but it participates in preventative measures rather than exclusively protection. The fact that they are also aiding in the development and transition from conflict to peace also goes beyond their original functions. There is a blurring of its responsibilities and role in the humanitarian field as it has shifted from protection to assistance. There is now clearly a political nature to its function. If such responsibilities are going to be permanently endowed to UNHCR then their current statute should reflect these changes so all state and humanitarian actors, including UNHCR, know in which capacity they should or should not be acting. B.S. Chimni, *The Meaning of Words and the Role of UNHCR in Voluntary Repatriation*, 5 INT’L J. REFUGEE L. 458 (1993).

<sup>73</sup>This is known as the Nostalgia Model, which is relevant to many refugee situations across Africa, and refers to the idea that returning to the country of origin does not necessarily equate to going “home”. *Id.* at 457.

<sup>74</sup>*Id.*

<sup>75</sup>Chimni, *supra* note 28 at 5.

Refugees may be reluctant to return home for a variety of reasons. Some may eventually, after witnessing the return of friends and family members and receiving news of improved conditions from returnees, be more inclined to return. For others, the idea of returning home is more an impossibility than a reality due to the failure of aid organizations and home and asylum states to recognize and consider the psychological issues that one may relate to “home” as a result of past traumatic events. There are also social aspects which often fail to be accounted for such as the natural tendency for refugees to develop ties to the community where they reside and to create a new life for themselves after the traumatic events that they have endured.<sup>76</sup>

It is important for states to acknowledge that if refugees return on a less than voluntary basis there is a significant risk that they are returning to areas which are ‘ill-prepared or incapable’ of receiving them.<sup>77</sup> There is also the danger that the countries of origin will be less than interested in their return and will thus put little effort into the facilitation of their re-integration. Repatriation does not end when a refugee returns to the state but rather when here is successful reintegration into the home state as reintegration is “the anchor of repatriation.”<sup>78</sup> Refugees may find themselves in conditions worse than that in which they found themselves in the host state, if their return is premature. To force these individuals to return home compromises not only their dignity and safety but also the refugee protection system as a whole. It is also important to recognize that “home” for refugees is no more than a legal fiction as the majority of returnees will be unable to return “home” and instead will just *re-enter* their country of origin.<sup>79</sup>

## **2. Other Challenges**

Refugees are entitled to certain rights and protection as stated in the 1951 Convention. At the same time, however, as a human being they are also entitled to

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<sup>76</sup>Vlaming, *supra* note 43 at 185.

<sup>77</sup>*supra* note 72 at 446.

<sup>78</sup>Hathaway and Neve, *supra* note 5 at 186.

<sup>79</sup>Zieck, *supra* note 47 at 49. This discussion on the meaning of “home” will be discussed later in the paper.

specific human rights, as detailed in other documents such as the International Convention on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). The ICCPR offers asylum-seekers and refugees rights such as the right to self-determination and the right to pursue economic, social and cultural development.<sup>80</sup> The UDHR affords them the right to both seek asylum and return to their country of origin, the right to nationality, the right to life, liberty and security of person, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, the right not to be subjected to arbitrary arrest, detention, or exile and the right to freedom of movement.<sup>81</sup> The UDHR also outlines specific rights, as would be applicable to returnees in their state of origin, such as the right to work, to education, health care, social security and other social benefits.<sup>82</sup> The 1951 Convention entitles refugees specifically to the rights to obtain employment and access to public elementary education.<sup>83</sup> Regrettably, many of these rights are not granted to refugees during their stay in the country of refuge. Current state practice clearly demonstrates that “humanitarian factors do not shape the refugee policies of the dominant states in the international system.”<sup>84</sup>

An additional issue of concern relates to the fact that refugees, especially those in protracted situations, often rely solely on humanitarian assistance. To confine refugees to humanitarian assistance as the only means of survival deprives them of the opportunities to become educated or work in order to acquire skills, improve their situation and to create more self-dependency. This deprivation of self-reliance prevents them from participating in income-generating opportunities, “from developing their human potential and limits their ability to systematically make a positive contribution to the economy and

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<sup>80</sup>International Covenant on Civil and Political Rights, G. A. Res. 2200A (XXI), U.N. GAOR, 21<sup>st</sup> Sess., Supp. No. 16, U.N. Doc. A/6316 (1967) (*adopted* Dec. 16, 1966, *entered into force* Mar. 23, 1976) [hereinafter ICCPR].

<sup>81</sup>Universal Declaration of Human Rights, G.A.Res.217A, U.N.GAOR, 3rd Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec. 12, 1948) at art. 3, 5, 9, 13, 14 and 15 [hereinafter UDHR]. *See also* Alice Edwards, *Human Rights Refugees and the Right ‘to Enjoy’ Asylum*, 17 INT’L J. REFUGEE L. 293 (2005); “The UDHR is a non-binding agreement, although it is understood as being international customary law between States and has become a set of moral standards and ethics to which states have agreed to implement and promote in their practices within their territories.”

<sup>82</sup>*Id.* at art. 22, 23, 25 and 26.

<sup>83</sup>1951 Convention, *supra* note 3 at art. 17 and 22.

<sup>84</sup>Chimni, *supra* note 28 at 3.

society of the asylum country.”<sup>85</sup> By maintaining refugees as passive recipients their lives will remain idle and in perpetual conditions of despair. “Training and education are important factors in providing repatriates with realistic prospects for the future in the receiving country.”<sup>86</sup> The failure of states of asylum to recognize this only aids in prolonging the stay of refugees in their territory. When the situation does arise for return there can be both psychosocial and economical reasons for their decision to remain and even hesitation or skepticism.

When repatriation programs are promoted refugees should be allowed sufficient time to prepare for their return. The current trend of expedited “removal” threatens the integrity of repatriation programs. The state of origin and asylum, along with the assistance of UNHCR and other humanitarian agencies, should offer practical assistance and access to resources and information. They should be well-informed of the conditions of their home country and the situation that they will find themselves in upon their arrival. Refugees should receive psychological treatment both prior to and after the return to their country of origin in order to facilitate an easier transition from living in exile to returning to their place of origin.

### ***3. The Need for Re-evaluation***

It is apparent that there is an urgency to re-examine the legal language and framework of the 1951 Convention and UNHCR’s Statute to determine how such language can be interpreted. For example, if UNHCR’s mandate is to promote and facilitate repatriation when does the promotion end and facilitation begin?<sup>87</sup> No guidelines or regulations exist to differentiate between encouragement, promotion and facilitation. The lack of burden-sharing between the geographic North and South has left the “burden” of refugee crises largely to the Southern states to endure. How long must they be willing to provide and protect refugees if they are already facing their own problems? If stakeholders wish to transfer efforts in humanitarian assistance to looking at more preventative protection, how does this actually happen and what happens to the

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<sup>85</sup>UNHCR, *supra* note 11.

<sup>86</sup>Vlaming, *supra* note 43 at 185.

<sup>87</sup>Chimni, *supra* note 72 at 445.

refugee populations and their human rights? How do global bodies act prior to the escalation of situations which will result in refugees and will it really make any difference if we can foresee such conflicts? Again, these questions illustrate the need to re-examine the 1951 Convention and modify it to reflect the current situation of refugee problems and attempt to diminish these gaps.

The current detriment to the principle of refugee protection is the notion that involuntary repatriation can occur under a variety of auspices of voluntary repatriation. In due time, “involuntary repatriation will become the norm” and acts such as “promotion, facilitation and encouragement will, despite the best intentions of UNHCR, be interpreted by governments to suit their narrow interests.”<sup>88</sup> The improvement of home conditions should not be used as an excuse to coerce refugees to return to their country of origin and to the situations from which they fled in the first place.<sup>89</sup> Voluntary repatriation cannot be considered voluntary when refugees are deprived of their basic rights to life and freedom through outright acts of persuasion, coercion or other forceful measures from the government. These acts and measures by states often include limiting aid and assistance, encouraging anti-refugee sentiment and behavior from nationals as well as relocating refugees to unsympathetic communities or remote locations, far from access to services.<sup>90</sup> The less room allowed for states to interpret refugee law to suit their own needs and interests the better it will be for the refugees and the refugee system, with a greater possibility to attain a truly sustainable and durable solution. The UNHCR has already concluded that repatriation is extremely difficult to implement and that “a successful and relatively problem-free return is more often the exception rather than the rule.”<sup>91</sup>

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<sup>88</sup>*Id.* at 446.

<sup>89</sup>*Id.* at 442.

<sup>90</sup>Other examples of when voluntary repatriation cannot be considered voluntary is: “(1)Factions among the refugee population or exiled political organizations influence the refugees choice either directly by physically pressuring them to return, or indirectly by activities such as disinformation campaigns about the risk of remaining in the country of asylum or dangers related to returning home. (2)Certain interest groups in the host country actively discourage voluntary repatriation by disseminating false information including incorrect promises of assistance, economic opportunities or improvement of the legal status” *as described in* UNHCR VR Handbook, *supra* note 35 at Sec. 4.1.

<sup>91</sup>Chimni, *supra* note 72 at 457.

A crucial factor which still needs to be considered is that substantial political changes do not necessarily mean that a return to the home state can be considered safe. Currently, however, the majority of refugees are “voluntarily” repatriating based on the argument that the political change is enough to advocate for return. Are the current standards truly reflective of human rights norms? For example, can repatriation occur when the judicial system does not meet international minimum standards thus allowing criminals who committed war crimes to go unpunished? Can a country be considered *relatively* safe for return and how does one measure or determine this? More importantly, is a country relatively safe enough for return when the state of refuge is no longer tolerant of the refugees’ presence?<sup>92</sup>

Most often, voluntary repatriation “operates within a highly politically-charged environment” which leads states to commit various pressures or acts of coercion in order to facilitate the refugees’ return.<sup>93</sup> The motivation for these pressures are often due to the economical, social and even sometimes political costs of hosting large refugee populations and/or hosting for extended periods of time. If voluntary repatriation is to remain a durable solution then a normative framework for state responsibilities and clearer refugee law standards must be established. The lack of burden-sharing amongst states and inability to offer durable solutions to protracted refugee situations has led many states to revert away from not only refugee law instruments but also human rights standards and principles.

#### **D. Conclusion**

UNHCR’s 1997 *The State of the World’s Refugees* states, “A large proportion of returnees have repatriated ‘under some form of duress’.”<sup>94</sup> As this chapter has revealed the current blurring of distinction between acts of *refoulement* and voluntary repatriation is destabilizing not only the possible durable solutions to refugee situations but also international refugee law. The absence of guidelines to illustrate which acts of pressure,

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<sup>92</sup>Fitzpatrick, *supra* note 54 at 345.

<sup>93</sup>Zieck, *supra* note 47 at 47.

<sup>94</sup>Vlaming, *supra* note 43 at 182.

coercion, suggestions, encouragement, persuasion and inducement are acceptable and unacceptable and legal and illegal as well as a legal framework for repatriation has left states to act according to their own free will. The shift from UNHCR's non-political identity to one which very much maintains a political character has further allowed states to derogate from the 1951 Convention's Principle of Refoulement and taint the integrity of voluntary repatriation. If states are allowed to continue on this committed path of implementing defensive strategies and policies "designed to avoid international legal responsibility toward involuntary migrants"<sup>95</sup> then we need to look at changing the traditional approach of voluntary repatriation. We must move away from the decrepit 1950s refugee law framework to one which reflects the modern-day refugee with a focus on the current gaps in the refugee regime, including clear and realistic guidelines and protocols for voluntary repatriation with a larger focus on the needs of returning refugees. When acts of repatriation occur as a result of a fundamental and durable change and is conducted on a wholly voluntary basis then the lives of returnees may improve substantially however this self-determined act is rarely the norm.<sup>96</sup> As observed, involuntary returns can actually act as a destabilizing factor which can prompt renewed tension and violence in the country of origin and lead returnees to flee once again.<sup>97</sup>

In the era of globalization states are focusing less on the rights of individuals and more on the needs of national security and protection of state sovereignty. As people continue to cross borders into lands in which they do not hold citizenship states become more preoccupied with determining ways to rid their territories of these non-nationals rather than offer the legal protection and assistance that may be required of them. The plight of refugees "threatens the entire system that can only be resolved through the concerted and coordinated efforts of diverse means and agencies."<sup>98</sup> Thus in recent decades, the value of human security has diminished as national security assumes priority in state agendas. The existing state perception is that its national security is a

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<sup>95</sup>Hathaway and Neve, *supra* note 5 at 116.

<sup>96</sup>Kibreab, *supra* note 17 at 407.

<sup>97</sup>UNHCR Office of the High Commissioner, *Protracted Refugee Situations*, High Commissioner's Dialogue on Protection Challenges, (December 2008) available at: <http://www.unhcr.org/pages/4a12a4016.html>.

<sup>98</sup>Lui, *supra* note 46 at 98.

precondition for the enjoyment of human security by nationals.<sup>99</sup> This has narrowed the options and possible solutions for refugees, since refugee law has transcended its legal realm and has crossed into the disciplines of human rights and human security issues.<sup>100</sup>

The next section will examine the state perspective of refugee law to reveal the central role that it plays in affording or restricting refugee protection. It will expose how the state's objective perspective is ultimately the deciding factor for the application of the cessation clause. More importantly, it will demonstrate the need to examine the effects that it has on voluntary character of repatriation and its current position as a durable solution. It further substantiates the claim that the act of voluntary repatriation is seldom based on the refugee's independent decision.

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<sup>99</sup>*Id.*

<sup>100</sup> "The inclusive and indeterminate character of so-called humanitarian practices has led to the blurring of legal categories, principles, and institutional roles. These practices are threatening legitimate boundaries between international refugee law, human rights law and humanitarian law. Their distinctive and separate spaces are increasingly being transgressed in a bid to exclude and incarcerate those who seek to escape the consequences of a brutal globalisation process. The universal and protective label 'refugee' has, as a result, fragmented and translated into the curtailment of rights. Those who now seek refuge find that they represent security threats to states and regions and that all roads lead quickly home" *as described in* B.S. Chimni, *Globalisation, Humanitarianism and the Erosion of Refugee Protection*, 3 (Refugee Studies Centre Queen Elizabeth House University of Oxford, RSC Working Paper No. 3, 2000), *available at* <http://users.ox.ac.uk/~rspnet/PDFs/workingpaper3.pdf>.



### III. THE VALUE OF PERSPECTIVES IN INTERNATIONAL REFUGEE LAW

As the previous section presented voluntary repatriation as a key component to the foundation of refugee law the following section will reveal how refugee law is contingent upon the elements of objectivity and subjectivity from the perspectives of states and refugees. While many legal instruments are applied preliminarily upon the subjective perspective of the refugee, the complete interpretation and full application are based on the state's objective perspective, and at times even the state's own subjective perspective. The focus on these two key elements will illustrate the refugee law system's current incoherence and disorder. While these terms together create the framework for international refugee law, an in-depth examination reveals how the current system allows the protection of state rights to supersede the protection of refugees. The rights of refugees are too ambiguously reflected in policy-making allowing states to deter from legal obligations of refugee protection and distort the understanding and use of central concepts, such as voluntary repatriation. Beyond the disparities in the legal language, in its current state, voluntary repatriation cannot be considered a durable solution because of the sole accommodation for the state's objective perspective in policy-making with no regard for the refugee's subjective perspective.

#### A. Which is it, Subjective or Objective?

Refugee protection is deeply-rooted in the roles of the subjective and objective perspectives as they are the determining factors in the refugee status determination process and hence, subsequent right to protection. The subjective perspective refers to an opinion, assumption or judgment while the objective refers to assumed knowledge or information from elements which can be seen, observed, touched and is factual.<sup>101</sup> The objective perspective is already pre-conditioned because it suggests a pre-supposition by the state that because of state powers and sovereignty it is the ultimate entity of the all-knowing. This also proposes that the state, as an outside observer of the refugee experience, is cognizant of what is truth and reality better than the refugee.

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<sup>101</sup>Barbara T. Doyle and Emily Doyle Iland, *Objective vs. Subjective Information*, (2004), available at <http://www.asdatoz.com/Documents/Website-%20Objective%20vs%20subjective%20ltr.pdf>.

The question that arises is how does international refugee law differentiate between a state's subjective and objective perspective? The argument presented in this paper concludes that while there may be a way to distinguish between the two no attempts have yet been made to do such. Rules and laws are not concrete but rather intangible concepts which, in determining how to apply them, require a "subjective process."<sup>102</sup> In the case of international refugee law, the subjective perspective of the state is treated as the objective. States, based on their own subjective perceptions of the application of laws and policies, decide when and under which conditions refugee status is granted and terminated. The current criterion for repatriation objectifies the state's perspective as the essential key to initiate return. It can therefore be argued that the state's subjective perspective is weighted equally with its objective in international refugee law, with no need to distinguish between the two because in all cases they will be treated and considered as objective perspectives. This overarching objectivity "disenfranchises the refugee through eliminating his or her voice in the process leading to the decision to deny or terminate protection."<sup>103</sup> The objective perspective further eliminates the refugee voice by "substitut[ing] the subjective perception of the State authorities for the experience of the refugee."<sup>104</sup> This discredits the refugee's subjective perspective which is dangerous as it reduces the likelihood of attaining protection.

It is important to consider the difficulties in testing the objective perspective with the current framework of refugee law and guidelines for voluntary repatriation, or lack thereof. While the refugee's subjective assessment of the necessity of protection is proved to be well-founded after an objective assessment of credibility and plausibility, there is a lack of clarity as to just how to evaluate such an assessment. States are thus left with the liberty to "devise their own, and at times unduly restrictive, standards of assessment."<sup>105</sup> This freedom of decision greatly debilitates the integrity of the system and creates an extreme degree of injustice within the refugee regime.

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<sup>102</sup>Duncan Kennedy, *Freedom and Constraint in Adjudication: A critical Phenomenology*, 16 J. Legal Educ. 561 (1986).

<sup>103</sup>Chimni, *supra* note 28 at 7.

<sup>104</sup>*Id.* at 8.

<sup>105</sup>James C. Hathaway, *The Law of Refugee Status*, 76 (Buttersworth Law 1993).

## *1. The Objective and Subjective in the 1951 Convention*

First alluded to in the refugee definition of Article 1 in the 1951 Convention, the subjective perspective is based on the validity of fear that a refugee perceives to threaten his existence and which causes him to flee his country of origin. While the asylum-seeker may be able to judge his personal well-being and aspects of this fear, this alone is insufficient to warrant the right to protection. In order to qualify for protection this fear is scrutinized by the legal framework of refugee law to evaluate and determine if an objective element is attached to this fear. The current system mandates that this fear is only legally recognized and entitled to protection if there is a standard of proof to validate the claim of fear, based on the objective concept of well-founded, as further outlined in Article 1: hard evidence that this fear of persecution is based on one of the five objective grounds.<sup>106</sup> While the subjective fear may be the motive to seek protection it is not the fear alone which grants protection if it is unaccompanied by the objective risk of persecution.

The cessation clauses outlined in Article 1(C) also highlight the importance of the objective and subjective perspectives. Paragraphs 1 through 4, illustrate the subjective perspective through the refugee's self-assessment of the home state and results in the cessation of refugee status when he voluntarily re-avails himself to the protection of his home state: through means of return, re-acquired nationality, acquisition of a new nationality or voluntary re-establishment in the home country. Paragraphs 5 and 6, however, allude to the objective aspect of cessation clauses, based upon decision by the host state, where the refugee

can no longer, because the circumstances in connexion 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; (6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee

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<sup>106</sup>“[O]wing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” as described in The 1951Convention, *supra* note 3 at art. 1(A)(2).

have ceased to exist, able to return to the country of his former habitual residence.<sup>107</sup>

Articles 12 through 30 of the 1951 Convention outline numerous refugee rights (housing, employment, freedom of movement, for example) during the duration of their stay in the state of refuge. The majority of these articles call for the Contracting Parties “to accord to refugees the same treatment as is accorded to nationals.”<sup>108</sup> The application of such rights, in all cases, is based on the state’s subjective and objective perspective. While the state has the legal obligation to afford such rights, many signatory states have made reservations to these particular rights. Even those states that have not made any reservations often create situations where refugees are unable to access such services easily; they subjectively perceive that refugees do not deserve access to such state benefits or objectively exemplify that they are unable to provide such services.

Articles 32 and 33 of the 1951 Convention also rely on the subjectivity and objectivity of the state in regards to the acts of expulsion and *non-refoulement*. Contracting states are prohibited from expelling a refugee “save on grounds of national security of public order” and are further prohibited from acts of refoulement unless the refugee is perceived to be a “danger to the security of the country [or who has] been convicted by a final judgment of a particularly serious crime [and] constitutes a danger to the community of that [host] country.”<sup>109</sup> These are based on the perspective of the state of refuge due to the fact that there is no shared definition of such crimes and danger amongst states nor are they defined in the 1951 Convention. States are therefore left to their own restrictive interpretations, with the capability to validate them either subjectively or objectively, as to when and how such services and rights are offered to the refugees’ under their protection.<sup>110</sup>

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<sup>107</sup>*Id.* at art. 1(C).

<sup>108</sup>*Id.*

<sup>109</sup>*Id.* at art. 32 and 33.

<sup>110</sup>No given definition of “persecution” is provided in the 1951 Convention. States are therefore, left to their own interpretations of “persecution”. In the United States, for example, the “courts have held that mere harassment or discrimination and generalized conditions of violence do not constitute persecution.”

Holly Buchanan, *Fleeing the Drug War Next Door: Drug-related Violence as a Basis for Refugee Protection for Mexican Asylum-Seekers*, 27 MERKOURIOUS CRIM. JUST. AND HUM. RTS. 40 (2010), available at

<http://www.merkourios.org/index.php/mj/article/viewFile/21/25>.

## *2. The Objective and Subjective in the African Context*

The 1969 OAU Convention is credited for having extended the scope of the refugee definition from that defined in the 1951 Convention. The OAU Convention has become one of the world's most "flexible and innovative refugee instruments"<sup>111</sup> Its expansion of the refugee clearly includes any who fit the present definition as well as those 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.<sup>112</sup>

Even with the expansion of the definition in an apparent attempt to "Africanize" this legal instrument, so as to meet the needs of the crises in Africa, the context in which it is written is based in the objective perspective of the state.<sup>113</sup> While the first part of the definition, as replicated from the 1951 Convention, retains the subjective-objective perspective, the second part, which extends its scope, is based solely in the objective with its four additional causes of flight: external aggression, occupation, foreign domination, and events seriously disturbing public order. The refugee's asylum claim is therefore not based on a subjective perspective to fulfill this extended definition but rather "an objective assessment of whether a factual situation discloses the existence of persecution."<sup>114</sup> Therefore, this broader refugee definition still relies primarily on the objective perspective of UNHCR and states.

Unlike the numerous articles in the 1951 Convention, the 1969 OAU Convention consists of only sixteen articles, the first six of which pertain specifically to refugees and the relationship between states and refugees. It does not present that rights, such as the right to employment or education, must be bestowed upon the refugees. However, its content does include the use of vague and ambiguous language as found in the 1951

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<sup>111</sup>Michah Bond Rankin, *Extending the Limits or Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years On*, 1 (UNHCR News in Refugee Research, Working Paper No. 113).

<sup>112</sup>1969 OAU Convention, *supra* note 59 at art. 1(2).

<sup>113</sup>*supra* note 111 at 2.

<sup>114</sup>*Id.* at 6.

Convention. While Article 1 of the 1969 Convention is considered to be the principle article of the Convention, due to its broadened scope of the refugee definition, it is important to note Article 2(4) which elucidates on the process states must take when they are unable to grant asylum:

Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international cooperation take appropriate measures to lighten the burden of the Member State granting asylum.<sup>115</sup>

While the 1951 Convention does not possess such a concept, the ability for African states to use this article, on an objective basis, to deter from affording refugee protection only proves to further destabilize the overall refugee regime.

### ***3. Case Examples***

In many cases, there seems to be an apparent “objective trump”<sup>116</sup> over the subjective assessment of the refugee claim. In the case of *Maria Beatriz Maldonado Vega*,<sup>117</sup> the subjectivity of her asylum claim was not questioned but rather “trumped” by the objective perspective based on the grounds that her “concerns were ‘exaggerated’.”<sup>118</sup> This case demonstrates the “accepted view that subjective fear ‘must and can be assessed objectively’.”<sup>119</sup> Asylum cases, such those claimed in the United States by Mexican asylum-seekers who have crossed the border, have also faced this higher objective threshold. Many claimants affected by Mexico’s drug war have difficulties proving that their fear is well-founded and linked to one of the five Convention grounds.<sup>120</sup> There are also claims which are denied because the individual did not seek asylum in a timely

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<sup>115</sup>1969 OAU Convention, *supra* note 59 at art. 2(4).

<sup>116</sup>Hathaway, *supra* note 105 at 71.

<sup>117</sup>“*Maria Beatriz Maldonado Vega* suffered from neurotic anxiety due to instances of taunting, ridicule and surveillance because of her political opposition to the military dictatorship in Chile” *as described in* Immigration Appeal Board Decision 79-9002, C.L.I.C. Notes 6.16, March 22, 1979.

<sup>118</sup>*Id.*

<sup>119</sup>*supra* note 105 at 71.

<sup>120</sup>*See Ochoa v. I.N.S.*, 254 F.3d 859, 865 (9th Cir. 2001) “In particular, since much of the drug-related violence on behalf of the drug trafficking organizations is indiscriminate, asylum-seekers must prove that they have been singled out for persecution on account of an eligible ground,” *as described in* Buchanan, *supra* note 110 at 44.

manner thus resulting in the application of “an objective evaluation of credibility [and] not to the assessment of a subjective fear.”<sup>121</sup>

Another example is illustrated in the cases of Haitians fleeing, for various reasons, to the U.S. by boat in the 1990s. The U.S. Coast Guard intercepted these boats and forced their return to Haiti without even allowing the Haitians to seek refuge, not only in the U.S. but in other Caribbean islands as well. The U.S. Supreme Court confirmed that this forced return by the Coast Guard was not illegal<sup>122</sup> and thus demonstrated the subjective assessment by the US government and their concerns for such persons entering the U.S. with the perspective that they were all economic migrants rather than asylum-seekers. UNHCR spoke publicly during this time affirming their concerns over such restrictive applications of the 1951 Convention’s Article 33 and court judgments stating, “The obligation not to return refugees to persecution arises irrespective of whether governments are acting within or outside their borders.”<sup>123</sup> States unfortunately continue to apply their own restrictive interpretations to refugee law and their policies. “[T]he convention, like many international and municipal instruments, does not necessarily pursue its primary purpose at all costs. The purpose of an instrument may instead be pursued in a limited way, reflecting the accommodation of the differing viewpoints, the desire for limited achievement of objectives, or the constraints imposed by limited resources.”<sup>124</sup>

While these are just a few examples, they help to reveal the lower threshold that is placed on a state’s subjective and objective perspective to afford full refugee protection compared to the higher threshold which must be met by an asylum-seeker’s claim. The subjective perspective, while necessary to begin the process of an asylum claim, is not the determining factor for full-fledged protection. This approach is observed by some as being flawed because those who have experienced traumatic events “are often unable [to]

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<sup>121</sup>Hathaway, *supra* note 105 at 73.

<sup>122</sup>Supreme Court of the United States, *Sale v. Haitian Centres Council, Inc.*, 21 June 1993, ILM 32 (1993), 1039 et seq.

<sup>123</sup>*Id.*

<sup>124</sup>*Minister for Immigration & Multicultural Affairs v Sarrazola [1999] FCA 1134*, FCA 1134, Australia: Federal Court, 6 October 1999, available at <http://www.unhcr.org/refworld/docid/3ae6b76320.html> [last visited 10 April 2011].

adequately...recall information [and] much less relate it in an articulate manner.”<sup>125</sup> It is further flawed since, as previously mentioned, states are capable of using their own objective and subjective perspectives to easily negate claimants’ fears and self-assessment of concerns of loss of life and safety due to their ability to restrictively assess these cases. The use of ambiguous language and the lack of concrete definitions only further allows for states to create a higher threshold in determining protection status for persons of concerned.

## **B. The Right to Remain: Temporary vs. Permanent**

While the right to flee is based on the element of fear and lies within the rights of the individual, the right to cross the border and remain ultimately lies within the power of the state and their objective perspective. Refugee protection is gained once these the subjective and objective elements are fulfilled and remain available to the refugee until the risk of persecution no longer exists. The individual should then *voluntarily* re-avail himself of the protection of his home state, thus releasing the host state from any further responsibility. This reiterates the notion that refugee protection is only temporary in the eyes of refugee law and states. The granting of asylum by host states is “made conditional upon an understanding that it would not lead to a long-term presence.”<sup>126</sup> Once the duration of the risk of persecution ends it is presupposed that they will return home and the home state will assume guardianship of these individuals and provide them with their rights.<sup>127</sup>

While there is no indication or duration of time assigned to this concept of temporary stay there is a clear emphasis on minimizing the time in which refugees spend outside of their own state and in that of the state of refuge.<sup>128</sup> There are many factors which substantiate the inability for permanent admission. The national legislation laws of many host states illustrate the inability to receive such status as the majority of refugees would find the requirements to acquire citizenship unattainable. The restricted

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<sup>125</sup>Hathaway, *supra* note 105 at 72.

<sup>126</sup>G. Schneider, *The Cooperation Duties of Asylum Seekers*, 558.

<sup>127</sup>*Id.*

<sup>128</sup>Stefanie Riess, *Return is Struggle, not Resignation’: Lessons from the Repatriation of Guatemalan Refugees from Mexico*, (UNHCR New Issues in Refugee Research, Working Paper No. 21, 2000).



rights and services offered, usually none of which reflect the rights afforded to citizens of the said state, solidify a state's unwillingness to accept refugees on a permanent basis. Work and educational opportunities, which would normally help to facilitate such possibilities, are rarely presented to refugees. This lack of assistance exemplifies the impossibility of integration as a durable solution because again, refugees are considered guests in host states until the risk of persecution no longer exist in which case the "friendly" guest relationship concludes.

There is an intrinsic link between the theory of voluntary repatriation and the objective element of refugee law as the refugee status definition is linked "to neither humanitarian need [or] respect for human rights, but rather an an individuated examination of fear in relation to objective conditions [so that] only truly exceptional claimants ought to benefit from international protection."<sup>129</sup> Refugee protection is inherently dictated by the objective perspective of the state and based on its characterization of protection and safety. For example, refugees who flee from certain states may face a higher objective threshold, dependent upon the human rights records of the home state, and thus have greater difficulties in establishing the well-founded element of their fear.<sup>130</sup> This factor alone reveals the invaluable weight placed on the objective perspective of that fear and the lesser importance of the individual's subjective fear. This objectivity affirms the right to refugee protection and when the state no longer recognizes this element, refugees are "urged" to repatriate.

As the "cornerstone of international protection with respect to the return of refugees,"<sup>131</sup> voluntary repatriation is grounded in the notion of being a durable solution. Refugees are thus granted the right to make the decision to return, based on their own free will after being well-informed of the situation in the home state. It can therefore be assumed that the idea of "voluntariness" is the necessary prerequisite for voluntary repatriation, based on the subjective perspective and ultimately "choice" to return, which

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<sup>129</sup> Alan E. Nash, John P. Humphrey, *Human Rights and the Protection of Refugees Under International Law*, 187 (Canadian Human Rights Foundation 1988).

<sup>130</sup> Hathaway, *supra* note 105 at 80.

<sup>131</sup> UNHCR VR Handbook, *supra* note 35 at Sec. 2.3.

“overshadows the objective one relating to the situation in the country of origin.”<sup>132</sup> Unfortunately, this notion works more in theory than in actual practice as the objectivity of state perspectives often overshadows the subjective element of fear and concerns for returning home. The concept of voluntariness is nothing more than a “moralistic” label given to repatriation to protect state actions and is more in name than in actual meaning.

The real issue lies with the shifting of boundaries from voluntariness, which equates to an individual’s subjective choice, to an objective element where the well-founded fear no longer exists and thus refugees *must* return, whether they so desire to or not. This has diverted the refugee’s authority to make an informed decision to return to a decision that is led by an “institutional and state-based direction.”<sup>133</sup> Determination factors for return have shifted, now based solely on objective factors, rather than a combination of both objective and subjective, ultimately undermining the validity of the voluntariness of repatriation.

### **C. The Cessation Clause and Involuntary Repatriation**

The 1951 Convention’s cessation clause allows for involuntary repatriation to occur under specific circumstances, normally resulting from changed circumstances in the country of origin.<sup>134</sup> The unmistakable linkage between refugee status and the cessation clause “and the elimination of the factual basis for a well-founded fear of persecution...is simply too tight and too obvious.”<sup>135</sup> The termination of refugee protection that follows “forced” return is only lawful in the realm of international refugee law when the conditions in the state of origin have met “a standard of human rights protection that would justify initial denial of protection.”<sup>136</sup> This only asserts the need for

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<sup>132</sup>Vincent Chetail, *Voluntary Repatriation in Public International Law: Concepts and Contents*, 23 REFUGEE SURVEY Q. 114 (2004).

<sup>133</sup>Katie Long, *State, Nation, Citizen: Rethinking Repatriation*, 21 (Refugee Studies Center, Working Paper Series No. 48, 2008).

<sup>134</sup> However, returns are often mandated by states prior to the implementation of a cessation clause, due to the absence of a concrete repatriation framework and the seldom use of the cessation clause, but under the auspice of “voluntary” repatriation.

<sup>135</sup>Fitzpatrick, *supra* note 54 at 379.

<sup>136</sup>*Id.* at 379.

individuals to be screened to determine if anyone has a legitimate and compelling reason to unwillingly return to their country of origin.<sup>137</sup>

When the cessation clause is invoked, the burden of proof needed to maintain refugee status affirms that the subjective element of fear has no grounds in the current system of refugee law. It is this “objectivistic interpretation of the cessation clause...which permits the argument that it is for the state alone to decide when there has been a sufficient change in the circumstances in the country of origin.”<sup>138</sup> Furthermore,

cessation clauses in the cases of re-entrustment allow the authorities to deduce from his behaviour the lack of the subjective element of fear. By this presumption the burden of going forward with evidence is transferred to the asylee. It is up to him to produce evidence to the contrary. He bears the onus of demonstrating that he is objectively unable to benefit from protection in his country of origin and thus continues to be a refugee.<sup>139</sup>

It is important to consider the fact that the commencement of repatriation programs or spontaneous return by refugees does not warrant denial of refugee status to new asylum-seekers. Nor does it imply that the conditions in the country of origin have satisfactorily improved enough to require the application of the cessation clause.<sup>140</sup> It is important that states continue to adhere to the legal protection standards that are afforded to refugees.

As briefly discussed earlier, UNHCR has observed the need to, at times, invoke the cessation clause, due to the lack of alternative solutions to offer refugees other than to repatriate to the country of origin.<sup>141</sup> The voluntary repatriation programs which are promoted and facilitated by UNHCR occur at times which would pertain to a lower threshold than that which is needed for the application of a cessation clause. The

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<sup>137</sup>As mentioned in the previous chapter, the United Nations Executive Committee’s Conclusion 69 affirms the right of refugees to be granted reconsideration, on an individual basis, before the cessation clause applies to them, to ensure that no one continues to possess a well-founded fear before being forced to return home *as described in ExCom. Con.69, supra* note 57.

<sup>138</sup>Chimni, *supra* note 28.

<sup>139</sup>Schneider, *supra* note 126 at 557.

<sup>140</sup>Zieck, *supra* note 47 at 48.

<sup>141</sup>*Id.* at 42.

indicator of this fact is that the invocation of a cessation clause has, in practice, been implemented after the conclusion of a voluntary operation.<sup>142</sup>

#### **D. Is There Really a Difference?**

While voluntary repatriation is promoted as the ideal solution for concluding refugee protection the current blurring of distinction between involuntary and voluntary has led to a complete breakdown of international refugee law. The voluntariness of repatriation remains a concrete international safeguard in that it frees states from committing acts of forced return. It also equates to refugees *wanting* to go home although, in the instances where there is no desire to return, little attention is given to the refugee agency.<sup>143</sup> Involuntary return is also embedded in the objective element of a well-founded fear of persecution because unless there is a substantiated fear and an unwillingness to return, refugees will in fact be forced to go back home. The refugee regime, specifically states, honor the significance and authority of subjectivity when it “translates into the spontaneous return of the refugee [but neglect this subjectivity] when it involves a decision to stay.”<sup>144</sup> As mentioned, the state’s proponents for return adequately substitute the “objective change of circumstances for the refugee’s subjective assessment.”<sup>145</sup> If the meaning of involuntary is also grounded in the well-founded fear of persecution then in actuality the current practice of voluntary repatriation is conducted in ambiguous terms and at times through unethical method in which case we can no longer make a distinction between the two.

Voluntary return is not truly a choice based on free will but rather mandated by the structure of the current refugee system. The voluntariness of repatriation seems to be a humanitarian characteristic artificially imposed on the concept of repatriation so that returns are not considered forced and states are not accused of acts of *refoulement*. As already stated, UNHCR can invoke the cessation clause due to a lack of viable options. Such actions should be considered involuntary when refugees are forced to return

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<sup>142</sup>*Id.* at 37.

<sup>143</sup>Chimni, *supra* note 28.

<sup>144</sup>*Id.*

<sup>145</sup>*Id.* at 6.

because no other possible solutions are available. The concept thus releases states from any legal repercussions for the termination of their protection and responsibility for the refugees. For refugees, there is no option for refusal to voluntarily repatriate. Whether one chooses to repatriate or not, a decision to remain will only result, eventually, in a forced return home.

#### **E. Who Decides Where Home Is?**

It is the primary responsibility of countries of origin to create conditions within their territories which are conducive to the return of their nationals, keeping in line with the concept of repatriation as a durable solution. It is then primarily the host state's duty to determine when these conditions are to a certain standard that would both enable and justify return. From the onset of refugee protection a relationship between the refugee's subjective and the state's objective perspective is created since it is the combination of these two elements which award refugee status. Although, it is the host state's objective and subjective perspectives which are the determining factors in the continual assessment of possible termination, and underlying temporary element, of refugee status. It is when refugees do not wish to voluntarily repatriate that this dual-relationship between the subjectivity of the refugee and the objectivity of the state ends. In situations such as these, the cessation of protection relies solely on the state perspectives if the conditions have improved and the subjective perspective of the refugee if he will re-avail himself to the protection of his home state by voluntarily returning home. The facilitation of repatriation programs are based on these objective conditions as predetermined by host states and other agencies.<sup>146</sup>

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<sup>146</sup>Spontaneous return, according to UNHCR, refers to "when refugees decide to return spontaneously without UNHCR assistance, UNHCR has no input into the choice of their repatriation method. In situations where a repatriation operation is planned by UNHCR and its partners, the choice of the repatriation method is an important decision which should be taken in consultation with refugee women and men considering factors such as safety en route (including landmines), distances to intended destinations, arrangements for vulnerable groups and availability of commercial transport between the two countries. It may be advisable to consider officially adopting both repatriation methods in one operation, inter alia because repatriations often go through different phases in which the two types of return are combined. Thus those who need transport assistance will receive it and those who make their own arrangements to return are still covered by all other provisions and possibly assistance related to their return," *as described in UNHCR, supra* note 35 at Sec. 3.3. However, the discussion of this concept is beyond the scope of this paper.

While refugees are offered the chance to voluntarily repatriate home it is in the hands of the state to decide where home is as there is no legal concept of home; return equates to the country of origin but not necessarily the home and/or area of land from which they fled. “*Home* is essentially a subjective phenomenon, it is not easily quantifiable, and consequently the value of a home to its occupiers is not readily susceptible to legal proof.”<sup>147</sup> One aspect of this is explained further through the already mentioned concepts of temporary and permanent. Host states deny basic rights to refugees which would enable their integration into local communities. This automatically limits refugees from choosing host states as “home.” The other aspect of this stems from the objective perspective of the state. The state views home as the legal concept of a state and its citizens, with an “abstract conception of national belonging, and its overarching emphasis on homogenous group political identity within bounded territories.”<sup>148</sup> States view this definition of home as the “key to stability and international security.”<sup>149</sup> Furthermore, there is an “implicit assumption [by states] of a previously existing relationship between [the] territorial entity, political nation and refugee-citizen”<sup>150</sup> which may not have existed prior to the events which caused the individual refugee to flee.

In most cases, refugees are unable to return to their actual home due to the destruction that results from civil conflict. Many homes and villages are destroyed and certain areas may still be considered unstable and dangerous for returnees; for others the psychological trauma of truly returning “home” is too much to bear. While states view home in terms of borders, rights and responsibilities, refugees perceive home as being a particular physical location with a community of shared traits or beliefs. For many cultures there is an “inextricable link relationship between [the] homogenous group and the land as the basis of home.”<sup>151</sup> Return does not necessary “return” the returnee to the life that he once had; it cannot be recreated to what it was prior to the events which led

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<sup>147</sup>Lorna Fox, *The Meaning of Home: A Chimerical Concept or a Legal Challenge?* 29 J. OF LAW AND SOCIETY 581 (2002).

<sup>148</sup>Long, *supra* note 133 at 10.

<sup>149</sup>*Id.*

<sup>150</sup>Riess, *supra* note 128.

<sup>151</sup>Daniel Warner, *Voluntary Repatriation and the Meaning of Return to Home: A Critique of Liberal Mathematics*, 7 J. OF REFUGEE STUDIES 163 (1994).

the individual to flee. Home often becomes a distorted memory over time and results in a feeling of nostalgia for home without an actual desire to return.

What is thus missing from this negotiation of refugee/citizen exchange between the host state and home state is the refugee agency as a participatory actor. Refugees are perceived to be incapable of processing their refugee experience and consequently unable to exert any power of the circumstances from which they flee, to which they find themselves in (in the host state) and finally to which they return. The states, through their subjective and objective perspective, determine and establish the terms and conditions under which refugees arrive, stay and leave. The refugee agency or voice is negated as the system revolves solely around the state's perspective and excludes the refugee's subjective perspective. While they may seemingly be granted the right to decide whether to return or not there is no true decision-making process when either decision will ultimately result in the return to the state of origin.

Some argue that the lack of progress with voluntary repatriation lies in the inability to yet provide returnees with the "basic requirements for return, that is, physical safety and the restoration of national protection."<sup>152</sup> This argument alone reflects only one aspect of what it means to return home. More importantly, the current system of refugee law neglects the human element to voluntary repatriation. The current solution as being a "mere insertion in a country"<sup>153</sup> is in actuality secondary to the needs and desires of the refugees. They do not want to just return home but they want to *be* home with the ability to be self-sufficient, no longer depending on humanitarian assistance to support them.

It is the refugee's voice, their subjective perspective, which ultimately secures the renewed link between the state and refugee. Returnees also want to feel as though they are a part of the political, social, economic and cultural aspects of home and to feel as though they are a participant in the re-building and development phases of home. These factors can only be based on the refugee's own personal assessment and cannot be dictated by any state perspective or state implemented policy. Currently, the refugee's

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<sup>152</sup>UNHCR, *supra* note 48 at 247.

<sup>153</sup>Nash et al., *supra* note 129 at 197.

subjective perspective of fear is not considered to be a part of the “willingness to return” notion. Many of these subjective fears are grounded in material safety of returnees, “which includes means of survival and basic services:”<sup>154</sup> concerns for safety, home, access to health care, education and clean and safe drinking water, infrastructure and the capacity for self-sustainability. Current practice shows that the offered material conditions are minimal to promote return and that there is a tremendous gap between voluntary repatriation as a durable solution and the refugee experience.<sup>155</sup> Unfortunately, such human rights standards do not currently address many of these concerns which are specific to refugee circumstances. States of refuge therefore release their responsibility of such securities, either in providing or ensuring that such securities are provided in the home state, and “encourage” their return.

## **F. A Return in Safety and Dignity**

The repatriation discourse has recently changed from the concept of voluntary repatriation to the consideration of the idea of “return in safety and dignity.” Return in safety and dignity is an approach recommended by those in the field who have recognized the crisis in refugee law and the challenges in the legal framework of voluntary repatriation, with all of its gaps, ambiguities and misconceptions. While it too provides obstacles it may illustrate the willingness to confront this crisis and attempt to diminish some of the current problems.

Return in safety is the process of return which “takes place under conditions of legal safety, physical security and material security.”<sup>156</sup> The notion of return in dignity is more ambiguous than its counterpart but refers to the idea that “refugees are not manhandled; [they] can return unconditionally and if they are returning spontaneously they can do so at their own pace; not arbitrarily separated from family members; and treated with respect and full acceptance by their national authorities, including the full restoration of their rights.”<sup>157</sup> This approach situates the notion of safety “within a

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<sup>154</sup> UNHCR, *supra* note 48 at 254.

<sup>155</sup> *supra* note 151 at 161.

<sup>156</sup> UNHCR VR Handbook, *supra* note 35 at Sec. 2.4.

<sup>157</sup> *Id.*



paradigm of ‘dignified return’ as opposed to one of external objective assessment: by providing refugee groups with the political space in which to shape some of the conditions of their return to country of origin.” Safety is then transformed from the current condition as state-led objective assessment to a subjective-assessment evaluated by the refugee.

While there are still gaps in this suggested approach, such as blurring the legal standards of voluntary repatriation, the portrayal of “untheorised concept[s] of home” and a failure to require substantial changes in the home before promoting repatriation,<sup>158</sup> some suggest that it offers more meaning to the concept of return than the current definition of voluntary repatriation.<sup>159</sup> A return in safety and dignity focuses more on the return to local areas of origin since it eliminates the concept of political identity and belonging and the inextricable link of the nation-state and territorial boundaries. The strategy of a dignified return allows refugees “to shape some of the conditions of their return to country of origin” and creates the aspect of safety as a “refugee-led subjective assessment” rather than state-based decision-making.<sup>160</sup> It would allow refugees to decide upon the conditions and the timing of the return. Not only would it mean a safe return but it would prevent forced returns.<sup>161</sup>

## **G. Conclusion**

This discussion offers the subjective and objective perspectives as the true building-blocks of the entire refugee protection regime. These concepts not only determine when protection is granted but also when protection concludes. As legal instruments and case law have shown there has been a shift towards “objectivism in interpreting the definition of refugee and the cessation clause contained in the 1951 Convention.”<sup>162</sup> The existence of the subjective perspective in international refugee law

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<sup>158</sup>Long, *supra* note 133 at 22.

<sup>159</sup>Nash et al., *supra* note 129 at 144.

<sup>160</sup>*Id.* at 142.

<sup>161</sup>The debate surrounding return in safety and dignity and voluntary repatriation is still a much heated topic in international refugee law. It was presented as an insight to some acknowledgement that the current use of voluntary repatriation as a durable solution is not working; however, its true capabilities and legal framework are beyond the scope of this paper.

<sup>162</sup>Chimni, *supra* note 28 at 3.

has, in most cases, become secondary to the objective element.<sup>163</sup> While the current system functions on the basis of these two notions the examination of their role in refugee protection shows the instability of the system. The ambiguities that result from their understanding and application only further destabilize the refugee system in view of the fact that other aspects of refugee law are also pre-determined by these facets.

The legal concept of voluntariness, while a precondition to repatriation, is abstract and vague as the current system allows it to be “overridden by the objective conditions prevailing in the country of origin.”<sup>164</sup> The discrepancy between the current legal definition and implementation only creates further ambiguity to its relevance in today’s refugee context. Voluntary repatriation is no longer an integral part of the system because its primary objective has become more of a political negotiation between the state and the refugee rather than an individual’s choice. This has led to the disintegration of the distinction between involuntary and voluntary repatriation. It has assumed a role in practice that it was initially created to prevent; voluntariness was an added component to repatriation in order to prevent forced return now it only further enables it under a humanitarian guise. While international refugee law may evolve around the protection of refugees, the underlying truth is that it was created “to protect national interests, not defend humanitarian principles”<sup>165</sup> and thus could never result in the human right to return or to stay based on an individual’s choice.

The lack of empirical research on voluntary repatriation only further obscures it as a durable solution since it allows state assumptions to develop policies and initiate action.<sup>166</sup> The fact that not all refugees want to go home, and those that do require a different set of objectives and standards to which they will return rather than those which have been created for them and dictate their return, further delegitimizes voluntary repatriation. Refugees should be the primary actors in the contemporary practice of

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<sup>163</sup>*Id.*

<sup>164</sup>Chetail, *supra* note 132 at 17.

<sup>165</sup>*supra* note 153 at 188.

<sup>166</sup>Long, *supra* note 133 at 22.

voluntary repatriation and as a result should determine “the modalities of movement and the conditions reception.”<sup>167</sup>

The following section exhibits one source of empirical research as the narratives provide the voice of the refugee experience from repatriated Liberian refugees. Their voices substantiate the need for the standard of voluntary repatriation to rely heavily on the subjective perspective of the refugee. Refugees, in maintaining the integrity of voluntary repatriation, should have the right to “apply their own criteria to their situation in exile and to conditions in their homeland and will return home if it is safe and better by their standards.”<sup>168</sup> The existing criteria for repatriation no longer address the needs of today’s refugees, as the experiences of Liberian returnees confirm, as many choose this *durable* solution because of external pressures and, in reality, because there are no other viable alternatives. While voluntary repatriation is non-binding its counterpart *non-refoulement* is a legally binding-standard to which states are clearly not adhering to by enforcing “voluntary” returns. These actions affect the entire legitimacy of the refugee law system and its sustainability.

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<sup>167</sup>Chimni, *supra* note 72 at 448. *See also* Hathaway and Neva, *supra* note 5 at 184; “With appropriate support, and with ready access to impartial information regarding conditions in the country of origin, refugees themselves will generally be the best judges as to when it is safe enough to return and when the home country offers reasonable prospects for economic survival.

<sup>168</sup>*Id.* at 448.

## IV. A CASE STUDY OF FORMER LIBERIAN REFUGEES FROM GHANA

“What stamps the refugee as a man apart, justifying his classifications in a specific social category, is his inferiority; he is inferior both to the citizens of the country which gives him shelter and all the other foreigners, not refugees, living in that country.”

- Jacques Vernant<sup>169</sup>

The previous section outlined the role that voluntary repatriation plays under the umbrella the objective and subjective perspective in the international refugee law regime. Although its role has been central to this system, a closer examination of voluntary repatriation in practice, based on these two perspectives, questions this centrality. As we have seen, many refugee situations are no longer temporary, and unfortunately, refugees have become victims of the outdated 1950s legal framework. The narratives presented in this chapter challenge the standard voluntary repatriation and unsettle its status as a durable solution for modern-day refugees; refugees who no longer fit within the scope of the 1950s refugee law arena. They provide agency to the returnees as they express their experiences during their time of asylum in Ghana and the determining factors which led to the decision to return to Liberia. Their subjective perspective demonstrates the importance of providing a forum to voice the concerns, questions and suggestions of the refugees.

### A. Methodology

#### *1. Purpose and Goal of Research*

The purpose of this research is to address the lack of accountability for repatriation which does not always occur under voluntary conditions. This study identifies some acts of coercion that host states commit as a means to influence refugees' decision to repatriate and in effect, undermine the concept of *voluntary* repatriation. Through the identification of these acts the aim is to demonstrate the difference between a voluntary decision to repatriate (a decision based solely on the individual's choice) and a decision to repatriate that is a result of direct or indirect coercion. It also aspires to shed light on the subjective perspective of refugees, giving an authoritative voice to such

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<sup>169</sup>Soguk, *supra* note 1 at 11.

disadvantages and marginalized groups which, as thoroughly discussed, are not acknowledged in the policy-making process. From such research this we will have a greater capability to recognize the influence of a state's objective perspective over refugee situations and ways in which they commit acts of refoulement under the auspices of voluntary repatriation. This research and the concluding policy recommendations seek to influence and demonstrate the need for a more concrete and legal framework in respect to voluntary repatriation and for state adherence to international refugee law and human rights norms.

## *2. Necessity for Liberian Case Study*

Very little literature currently exists on the topic of the “involuntariness” of voluntary repatriation and what is written fails to include the refugee voice. Furthermore, there has been little investigation into the types and varying degrees of coercion that governments use to encourage repatriation. The majority of information is based on reports by UNHCR, host countries and other refugee organizations, rather than first-hand accounts and studies that include detailed information from individual refugee perspectives. There are a few cases studies on refugees who currently reside in a camp and face hostilities from host governments as a means to “force” their return home but none on returnees and their experiences with voluntary repatriation.<sup>170</sup>

This case study aims to provide the opportunity to fill the current void of knowledge and information in refugee law pertaining to the refugee's subjective perspective of their experiences in exile and the process of repatriation. As previously discussed, in most cases only the objective element is researched and considered but it is essential to recognize the great importance of the subjective element of the refugee's

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<sup>170</sup>Two examples would be the Burundian refugees in Tanzania *see* Zachary Lomo, *Forcible Repatriation Threat for Burundian Refugees*, All Africa, (21 May 2009), available at <http://allafrica.com/stories/200905220170.html> and the deportation of Rwandan refugees from Uganda *see* Elias Biryabarema, *Uganda Defends Deportation of Rwandan Refugees*, Reuters, (20 July 2010), available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/MUMA-87K2CH?OpenDocument&RSS20=02-P&Click=>.

perspective.<sup>171</sup> Each participant in this case study provides an in-depth look at the camp's atmosphere during the 2008 camp invasion by Ghanaian authorities, how refugees coped with the situation and a look at the decision-making process on whether to repatriate or not. By assessing their subjective perspective, Ghana's actions and treatment of Liberian refugees reveals how they were directly affected by the return process, thereby demonstrating how Ghana's pressures indeed forced refugees to leave its territory.

### ***3. Importance of the Narrative Inquiry***

The narrative inquiry is becoming the leading form of research methodology due to its emphasis on the subjective perspective and its ability to produce a rich body of sociological information. Its method transcends cultures and attaches meaning and understanding to both individual and group experiences. The narrative gives us a "cumulative, multifaceted and panoramic view" of each participant and insight into social and communal aspects of their life.<sup>172</sup> Life histories and personal narratives, such as the ones documented in this paper, are invaluable tools for conducting research because many of their advantages cannot always be found in other forms of methodology. They highlight the concerns, challenges and problems in society, provide ways to discover gaps in current knowledge, offer empowerment to the vulnerable and marginalized and aid in restoring agency.<sup>173</sup> The narrative challenges current conventional research standards by obtaining knowledge through the identification and examination of important elements acquired from the individual perspective in a much larger social context. Through direct

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<sup>171</sup>It is often "suggested that UNHCR does not know enough about the refugees it is mandated to protect, particularly the social dynamics of refugee situations. Life history and narrative could be very means to address this problem. They can uncover information that is not necessarily accessed by more formal approaches such as sample surveys or semi-structured interviews. They also allow space for unexpected subjects to emerge which can only be communicated through narratives, allowing them to express themselves and their experiences within their own terms (historical, social and cultural). They often relate to critical areas of UNHCR's work such as repatriation...and protection" *as described in* Julia Powles, *Life History and Personal Narrative: Theoretical and Methodological Issues Relevant to Research and Evaluation in Refugee Contexts*, 20 (UNHCR Evaluation and Policy Analysis Unit, Working Paper No. 106, 2004).

<sup>172</sup>*Id.* at 3.

<sup>173</sup>Mulki Al-Sharmani, *Refugee Livelihoods: Livelihood and Diasporic Identity Constructions of Somali Refugees in Cairo*, 1 (UNHCR New Issues in Refugee Research, Working Paper No. 104, 2004).

and powerful ways, the narrative not only affords an opportunity to analyze how people understand their stories and lives but also gives muted voices and stories, outside the “normal” realm of understanding, such as refugees, a forum to be heard.

## **B. Liberia: A Brief History of the Lone Star State**

Many say that Liberia is another example of a failed State.<sup>174</sup> Whether that is true or not remains to be seen as the people of Liberia move on from two civil wars and more than two decades of civil strife in search of their own identity. The Republic of Liberia inhabits 43,000 square miles, bordering the countries of Guinea, the Ivory Coast and Sierra Leone.<sup>175</sup> The various ethnic groups and its location in this tumultuous region of West Africa have hindered the success of the Liberian state.

Founded by freed slaves from America, Liberia’s unique history has been the root cause for conflict within the country. In 1816, the American Colonization Society (ACS) was formed by Quakers and slaveholders from Washington, D.C.<sup>176</sup> While “the Quakers opposed slavery, and the slaveholders opposed the freedom of Blacks” they did agree “on one thing: that Black Americans should be repatriated to Africa.”<sup>177</sup> Their union stemmed from the Quakers’ ideas that those freed would face better chances of absolute freedom and as a way to spread Christianity while the slaveholders saw the repatriation to Africa as a necessary preventative measure to avoid a slave rebellion.<sup>178</sup> The first repatriation program, funded by ACS, began in 1822 with eighty-six volunteers who landed on present day Cape Montserrado, Liberia.<sup>179</sup>

The colony was officially recognized as the Republic of Liberia and over the next forty years more than 19,000 African American repatriates, later known as Americo-

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<sup>174</sup>Kenneth L. Cain, *The Rape of Dinah: Human Rights, Civil War in Liberia, and Evil Triumphant*, 21 HUM. RTS. Q., 267 (1999).

<sup>175</sup>Encyclopedia of the Nations, *Liberia: A Country Overview*, 2011 available at <http://www.nationsencyclopedia.com/economies/Africa/Liberia.html> [last visited 8 January 2011].

<sup>176</sup>Global Connections, *The Lone Star: The Story of Liberia*, (2002) available at <http://www.pbs.org/wgbh/globalconnections/liberia/essays/history/> [last visited 8 January 2011].

<sup>177</sup>*Id.*

<sup>178</sup>“Like what occurred on the then-island of Santo Domingo (present day Haiti).” *Id.*

<sup>179</sup>Gabriel I. H. Williams, *Liberia the Heart of Darkness: Accounts of Liberia’s Civil War and Its Destabilizing Effects in West Africa*, 22 (Trafford Publishing, 2002).

Liberians, landed on the West African soil.<sup>180</sup> While the number of immigrants increased so did the number of indigenous Africans of the land who were enslaved, creating a hierarchy of power, similar to that which the freed slaves had themselves fought against.<sup>181</sup> The settlers created their own nation by recreating what they knew from America; homes, schools and churches were built, resembling the structures found in the U.S and even established English as the official language.<sup>182</sup> Their attempt at “civilizing” the native population came through the means of intermarriage, enslavement and by imposing their western ideals and values.<sup>183</sup> The state was declared independent in 1847 and Joseph J. Roberts, from Virginia, became Liberia’s first president. President Roberts and his government, all American-born individuals, agreed to “create a country based on the principles of justice and equal rights.”<sup>184</sup> However, this agreement never fully took fruit while “Liberia expanded its borders, [the] government of repatriates located largely on the coast attempted to establish control over a growing native population located largely in the interior.”<sup>185</sup>

Despite its political, economic, and social troubles, Liberia became the model state for those African colonies struggling to gain independence; it was a founding member of the United Nations and the Organization of African Unity.<sup>186</sup> Unfortunately, the gap between the ruling elite and the indigenous populations only increased as time passed. The majority of Liberians were poor and lacked basic amenities such as safe water and electricity. During the presidency of William R. Tolbert, Jr., from 1971-1980, an attempt to liberalize Liberian society and his 1979 proposal to increase the price of imported rice - a staple food in Liberia - in order to encourage local rice production, only provided the match for the fire that had been brewing within the country.<sup>187</sup> People gathered to protest against the government and its policies but the demonstrations quickly

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<sup>180</sup>*Id.*

<sup>181</sup>*Id.*

<sup>182</sup>*supra* note 176.

<sup>183</sup>*Id.*

<sup>184</sup>*Id.*

<sup>185</sup>*Id.*

<sup>186</sup>*Id.*

<sup>187</sup>*Id.*



grew out of control and turned violent. From that point on the situation in Liberia only deteriorated.

On 12 April 1980, Samuel Doe, from the Kahn tribe and a Master Sergeant in the Liberian army, staged a military coup against President Tolbert and the ruling Americo-Liberian elite.<sup>188</sup> The coup marked the beginning of more than two decades of internal conflict. In 1989, Charles Taylor aided in overthrowing President Doe and later became President of Liberia in August 1997, ending the first civil war.<sup>189</sup> The second civil war began soon after Taylor's election as President, due to rebel factions wishing to overthrow his regime, and lasted until 2003. The fourteen years of conflict left more than 200,000 Liberians dead, created 250,000 refugees and displaced more than 350,000.<sup>190</sup>

### **C. Buduburam Refugee Camp in Context**

In 1990, UNHCR established the Buduburam Refugee Camp, outside of Accra, Ghana, to accommodate the influx of Liberian refugees fleeing Liberia after the coup which ousted Doe. While primarily a haven of refuge for Liberians, the camp also hosted a number of refugees from Sierra Leone, Cote d'Ivoire, Togo and various other African nationalities. At the height of the civil conflicts in West Africa, the camp maintained a population of more than 40,000 refugees and asylum-seekers. UNHCR initially pulled out of the camp in 2007 after the declaration of a cease-fire but soon returned after Charles Taylor's instatement as President of Liberia and the quick deterioration in the country once again. In 2003, the camp was changed to Buduburam Settlement due to the "improved infrastructure coupled with the fact that it [had] been in existence since 1990."<sup>191</sup>

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<sup>188</sup>*supra* note 179 at 23.

<sup>189</sup>*Id.* at 31.

<sup>190</sup>Rena L. Scott, *Moving from Impunity to Accountability in Post-War Liberia: Possibilities, Cautions, and Challenges*, 33 INT'L J. LEGAL INFO. 347 (2005).

<sup>191</sup>Suzanne Y. A. Tete, *Narratives of Hope? Displacement Narratives of Liberian Refugee Women and Children in the Gomoa-Buduburam Refugee Camp in Ghana*, 13, Norwegian University of Science and Technology, (May 2005), available at [13http://202.198.141.77/upload/soft/0-article/+++++01/103.pdf](http://202.198.141.77/upload/soft/0-article/+++++01/103.pdf).

In 2003, Charles Taylor resigned as Liberia's president and a peace agreement was signed by all the warring factions.<sup>192</sup> On 22 September 2004, the governments of Ghana and Liberia with UNHCR signed the first tripartite agreement. This agreement outlined the legal framework for the repatriation of Liberian refugees; free choice to repatriate, the modalities of the repatriation process, etc. This was the third time that UNHCR had organized a repatriation campaign, after conducting earlier operations in 1991 and 1997.<sup>193</sup> This third round of repatriation began in October 2004 and ended on 30 June 2007. The agreement aimed to repatriate 14,000 Liberian refugees but due to various factors including security concerns, a lack of infrastructure and economic instability in Liberia,<sup>194</sup> only 4,000 voluntarily returned.<sup>195</sup> Hesitations to return also stemmed from those refugees who returned after earlier cease-fires only to have to flee again due to the resumption of violence. As of 31 December 2007, an official residual caseload of 75,509 Liberian refugees remained in neighboring West African countries, specifically Ghana, Cote d'Ivoire, Sierra Leone and Guinea.<sup>196</sup>

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<sup>192</sup>“Fourteen years of conflict and two civil wars left Liberia in shambles with more than 200,000 dead, 250,000 refugees and more than 350,000 displaced” as described in Scott, *supra* note 190.

<sup>193</sup>Center for International Disaster Information, *OCHA Situation Report No. 119 on Liberia*, (24-30 Sept. 2004), available at <http://www.cidi.org/report/8836>. See also *supra* note 191 at 55; “The UNHCR admits that this failure was a result of not doing its homework properly as people returned to a non-rehabilitated Liberia with inadequate infrastructure and other essential facilities. Many thus became disillusioned since there were no follow-ups as to how they could sustain a living back in Liberia. There was also very little disarmament.

<sup>194</sup>Liberians do not have adequate access to clean and safe drinking water as well as access to basic health care. The Liberia Electricity Corporation only operates on a temporary system to provide limited electricity while the majority of the country runs on generators or small hydropower plants. Many of the roads are unusable or are in desperate need of repair. Education facilities are either unavailable or they do not meet the standard need to host the population sizes. Corruption, fraud and security are still major threats to the development of the infrastructure in the country. There is a major issue of housing as there is a lack of housing in Monrovia as it is still not completely safe outside of Monrovia and the unemployment rate is between 80-85%. Dorsey and Whitney LLP for Minnesota Advocates for Human Rights, *Liberia is not ready: A Report of Country Conditions in Liberia and Reasons The United States Should not End Temporary Protected Status for Liberians*, (August 2007) available at [http://www.dorsey.com/files/upload/DorseyProBonoReport0807Liberia\\_is\\_not\\_Ready.pdf](http://www.dorsey.com/files/upload/DorseyProBonoReport0807Liberia_is_not_Ready.pdf). See also Dorsey and Whitney LLP for Minnesota Advocates for Human Rights, *Liberia is not Ready: 2010: A Report of Country Conditions in Liberia and Reasons the United States Should Extend Deferred Enforced Departure for Liberians*, The Advocates for Human Rights, (2010), available at [http://www.theadvocatesforhumanrights.org/uploads/liberia\\_is\\_not\\_ready\\_2010\\_2.pdf](http://www.theadvocatesforhumanrights.org/uploads/liberia_is_not_ready_2010_2.pdf).

<sup>195</sup>Agblorti, *supra* note 10 at 6.

<sup>196</sup>Liberian Refugee Repatriation and Resettlement Commission, *Appeal for Financial Support for the Liberian Reintegration Program*, available at [ww.lrrrc.org/doc/Donor%20Appeal%20for%20Website.pdf](http://ww.lrrrc.org/doc/Donor%20Appeal%20for%20Website.pdf).

## *1. Prospects of Integration in Ghana*

Ghana visibly opened its doors in the early 1990s to accommodate the large influx of refugees fleeing the plague of crises that consumed many neighboring West African countries. The large reception of refugees at the time proved challenging to the politically stable state as it had no legislation or policies pertaining to refugees in place at the time. It was not until 1992 that the state established the Ghana Refugee Board with a mandate to oversee Ghana's refugee populations. The Ghana Refugee Board maintained "that the government is committed to the integration of refugees locally," however no precise policy prescriptions were provided to substantiate its commitment.<sup>197</sup>

Liberian refugees had the option to either voluntarily repatriate or integrate into the local host community as possible solutions to their situation. Integration is defined as "the ability to participate fully in economic, socio-cultural and political spheres in the host country without relinquishing one's ethno-cultural identity and culture."<sup>198</sup> Refugees must be afforded the opportunity to adapt to their host society, through integration programs, without being required to relinquish their own cultural identity. The three possible forms for integration in Ghana were:

- Naturalization through the Ghana Immigration sector
- Citizenship gained by marriage to a Ghanaian national
- Acquisition of residence permits or extended stay as a member of the Economic Community of West African States (ECOWAS)<sup>199</sup>

While these three options are legally possible for refugees, in practice, the process of acquiring citizenship is evidently much more challenging. Intermarriage is not common and one requirement of the naturalization process is the ability to speak at least one of the Ghanaian national languages. Liberians did not have the opportunity to learn one of the Ghanaian dialects as they existed within their own Liberian community and only communicated with Ghanaians when necessary, like in the market, for example.

Since the creation of the Ghana Refugee Board there has been no clear evidence of the state's willingness to offer integration into Ghanaian society as a prospective

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<sup>197</sup> *supra* note 10 at 6.

<sup>198</sup> K. Valtonen, *From the Margin to the Mainstream: Conceptualising Refugee Settlement Processes*, 17 J. REFUGEE STUDIES 74 (2004).

<sup>199</sup> *supra* note 191 at 56.

*Note:* ECOWAS is a regional group of 15 countries, including Liberia, to promote economic integration.

solution for refugees. Section 14 of the Ghana Refugee Law (PNDC Law 305D) also outlines the viability for refugees to become naturalized.<sup>200</sup> While this law is in place there are no clearly defined implementation policies or approaches to realize such naturalization rights. One poster, observed in a refugee camp in Ghana, concerning integration offered fairly ambiguous details regarding rights of refugees who decided to integrate.<sup>201</sup> Concerns of security issues and the burden of providing resources for these individuals have both been mentioned as reasons for the lack of the promotion of integration.<sup>202</sup> Public statements by government officials have also clearly shown Ghana's lack of support of integration as a durable solution. In 2008, in response to demonstrating Liberian refugees, the then-Minister of Interior publicly stated, "[L]et me once again reiterate that Government has not decided to integrate them [refugees] nor does it have any intention to do so."<sup>203</sup>

The strained relations between refugees and the host state only increased the hostility between the two entities. The common perception that refugees and nationals are in competition for resources and aid only further validates claims that integration is *not* a possible solution. With resettlement packages no longer a possibility,<sup>204</sup> repatriation remained as the only possible solution.

## ***2. Liberian Women Protest for Improved Repatriation Packages***

On 19 February 2008, hundreds of Liberian women organized a sit-in to display their dissatisfaction with the repatriation package offered by UNHCR and the Ghana Refugee Board. The repatriation package allotted US\$5 to every refugee who returned

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<sup>200</sup> "The Law specifically states that 'Subject to the relevant laws and regulations relating to naturalisation, the Ghana Refugee Board may assist a refugee who has satisfied the conditions applicable to the acquisition of Ghanaian nationality,'" *as described in Agblorti, supra* note 10 at 7.

<sup>201</sup> "[I]ssues such as where they would be allowed to settle, working rights in the formal sector and other rights they would be entitled to, were not clearly defined." *Id.*

<sup>202</sup> *Id.* at 5

<sup>203</sup> *Id.* at 6.

<sup>204</sup> Major resettlement programs ceased as third countries closed off their resettlement programs to refugees of Buduburam since the civil war was declared over. Now, only a few individuals identified as extremely vulnerable are afforded such an opportunity. See also Rebecca Napier-Moore, *Long-Term Refugees: Encamped in Ghana*, Development Research Center on Migration, Globalisation & Poverty, (2003), available at <http://www.migrationdrc.org/research/projects/Buduburam/Buduburam.html> [last visited 19 May 2011].

under UNHCR's repatriation program and free return to Liberia. The women submitted a petition to the two agencies, outlining their requests: resettlement in a third country or an increase from US\$5 to US\$1000. The women aimed to conduct a peaceful protest, with only female participants so as not to give the Ghanaian government "an excuse to employ violent measures against the protesters."<sup>205</sup> The women held banners and signs which read "Integration? NO! Repatriation plus \$1000? YES! YES!", "Geneva Help US", and "Ghana Refugee Board, STOP THE OPPRESSION."<sup>206</sup> These peaceful and non-violent actions called not only for a better repatriation package but also an end to intimidation by Ghanaian authorities. There were rumors spreading around the camp at the time that UNHCR was offering the Ghanaian government US\$1500 for every Liberian refugee that integrated into Ghanaian society. The women advocated for better use of this money by using it for refugees to return to Liberia and help to rebuild their lives, in a country not only plagued by civil strife for more than fourteen years but one which many had left more than a decade ago.

Days after the protests began, the Ghanaian media reported many unfounded facts: Liberian women were undressing and protesting naked, naked women were running around the streets and stopping traffic and refugees had attacked a UNHCR and Ghana Refugee Board delegation to the camp. These statements only enhanced the animosity of the Ghanaian nationals towards the refugees. In an effort to deter the Liberian women from protesting further and to calm the rising tensions, UNHCR increased the repatriation monetary offer from \$5 per person to \$100 per adult and \$50 per child. At the time, "the secretary to the [Ghana Refugee] board, Abdulai Bawumia, told IRIN news network that integrating Liberian refugees into Ghanaian society [was] out of the question."<sup>207</sup>

The protest continued for weeks before the Ghanaian government deemed the actions a "contravention of the Public Order Act (Act 491)."<sup>208</sup> On 17 March 2008, they

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<sup>205</sup>Erinch Sahan, *Residual Liberian Refugee Population in Buduburam, Ghana*, 2 (Australian Refugee Rights Alliance, Draft Discussion Paper, 2008).

<sup>206</sup>*Id.*

<sup>207</sup>Integrated Regional Information Networks (IRIN) Africa, *Ghana-Liberia: Refugees Protest Repatriation*, (13 March 2008), available at <http://www.irinnews.org/report.aspx?ReportID=77264> [last visited 10 Sept. 2010].

<sup>208</sup>Liberia Refugee and Repatriation and Resettlement Commission, *Briefing Notes*, 17 July 2008, available at <http://www.lrrrc.org/doc/Briefing%20Notes.pdf>.

subsequently arrested over six hundred of the peacefully protesting women, including elderly women, lactating mothers, and even small children who were with their mothers at the time. The government detained the women for weeks in a remote location. UNHCR quickly demanded access to these women but while their request was still pending, in the early morning hours of 22 March, Ghanaian security officials entered the camp and arrested 107 individuals, the majority of whom were males. They eventually released seventy-seven of these individuals while fourteen remained in detention facilities and sixteen were forcefully expelled to Liberia; UNHCR recognized thirteen of these deported individuals as refugees.<sup>209</sup> The security officials claimed to have entered the camp in order “to arrest a number of identified ringleaders of the demonstrations and some of the people who posed a threat to the security of the State.”<sup>210</sup> UNHCR urged Ghanaian officials to “cease any further forcible removal”<sup>211</sup> of Liberian refugees, however in early April, the government deported twenty-three more Liberians. Legal aid organizations had previously challenged this round of deportation but to no avail.<sup>212</sup> At the time, UNHCR did successfully secure the release of ninety of the detained women, including pregnant women and unaccompanied children. The remaining detained women were all released at a later date.

These events left the refugee camp, with a population around 40,000 at the time, in a state of fear and chaos. The ensuing turmoil of widespread fear and panic amongst the camp’s inhabitants resulted in a mass influx of registration for UNHCR-administered repatriation program to Liberia. Liberia’s President Ellen Johnson Sirleaf sent a government delegation to Ghana in order to find an amicable solution to the demonstrations and release of those detained. The delegation did express their concerns

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<sup>209</sup>UNHCR: The UN Refugee Agency, *Ghana: Deportation to Liberia*, UNHCR, 25 March 2008, available at <http://www.unhcr.org/news/NEWS/47e8f5722.html>.

<sup>210</sup>Integrated Regional Information Networks (IRIN), *Ghana-Liberia: Cessation clause invoked over refugee demos*, UNHCR Refworld, (20 March 2008), available at <http://www.unhcr.org/refworld/docid/47ea1fcea.html>.

<sup>211</sup>*supra* note 209.

<sup>212</sup>While they were unable to stop the deportations they did sue the government for “gross violations” of the refugees’ rights as under Ghanaian law no one may be detained for longer than 48 hours without being arraigned and for being a ‘blatant violation of the rules of natural justice’. Integrated Regional Information Networks (IRIN), *Ghana-Liberia: Human Rights Groups Sue Government over Detained Refugees*, UNHCR Refworld, (26 March 2008), available at <http://www.unhcr.org/refworld/country,,IRIN,,GHA,,47ecd2f4c,0.html>.

over the negative impact that the large returnee population would have on the recovering Liberian economy.<sup>213</sup> A new tripartite agreement was signed between the governments of Liberia and Ghana and UNHCR.<sup>214</sup> Repatriation operations resumed, less than a month later, on 13 April with adults and children receiving US\$100USD and US\$50 respectively. Between April 2008 and April 2009, 9,703 recognized Liberian refugees repatriated<sup>215</sup> through UNHCR's repatriation program; more than one-third of the camp's recognized Liberian refugee population.<sup>216</sup> More than 7,000 of these returnees returned to Liberia within the first five months of the repatriation program.<sup>217</sup> Less than a year later the population of the camp was thought to be around 10,000.

As the Liberians left, their empty homes were quickly filled with Ghanaian citizens. Given the lack of development in Liberia, many Liberians had hoped to attain some sort of training skills or higher educational opportunities during their time in Ghana; they wanted to be able to return to Liberia where they could live off of their own means, no longer having to rely on humanitarian assistance. Even UNHCR's established programs in Liberia, to aid in the facilitation of reintegration, had concluded. They previously offered skills-training programs (tailoring, computer literacy, baking, hairdressing, etc.), created shelters for vulnerable returnees and IDPs and offered micro-loan and grant scheme program. However, these services ended as the UNHCR began phasing out of its country operations in Liberia.<sup>218</sup>

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<sup>213</sup>Integrated Regional Information Networks (IRIN), *Ghana: Postponed Deportation of Liberians Over Refugee Status*, (9 April 2008), available at <http://www.unhcr.org/refworld/country,,IRIN,,GHA,,47ff682d1a,0.html>.

<sup>214</sup>The Ministerial Delegation...held open and candid consultations: a) Termination of the month-long demonstration by the Liberian refugee women in the camp as of 24<sup>th</sup> March 2008; b) The decision by the UNHCR to resume its Norman humanitarian assistance in the camp as well as the voluntary repatriation program; c) Recognition and acceptance by the Liberian refugees that repatriation back to Liberia is the only viable option. LRRRC, *supra* note 208.

<sup>215</sup>Liberia Refugee and Repatriation and Resettlement Commission, *Voluntary Repatriation Update*, (April 2009), available at <http://www.lrrrc.org/doc/Microsoft%20Word%20-%20Voluntary%20Repatriation%20Update%20February%2020.pdf>.

<sup>216</sup>At the time there were 26,967 registered Liberian refugees. The number of those that repatriated does not account for the hundreds, if not thousands, who left by their own means and not through a UNHCR administered repatriation program *as described in* Sahan, *supra* note 205.

<sup>217</sup>LRRRC, *supra* note 196.

<sup>218</sup>*Id.*

### ***3. Ghana Invokes the Cessation Clause***

On 20 March 2008, the Ghanaian government invoked the 1951 Convention's cessation clause, signaling the end of protection assistance for the Liberian refugees remaining in Ghana. Ghana's Minister of Interior stated that the refusal of Liberian refugees to integrate into the Ghanaian society, after having spent so many years in the country, was "very insulting"<sup>219</sup> and that the detained protesting women would be "stripped of their refugee status and forcibly deported to Liberia by the end of the week."<sup>220</sup> He further illustrated his discontent with the refugees' "unruly behaviour" and commented that such behavior created "an anarchic state at the Buduburam settlement" and led to "grave security implications for the country."<sup>221</sup> The Ghanaian government therefore thought it was appropriate to enter the camp – on two separate occasions – to arrest hundreds of innocent and peacefully protesting women and men playing basketball.

Ghana invoked the cessation clause only *after* authorities invaded Buduburam on 17 March and arrested the protesting women and just two days before their invasion of the camp and deportation of Liberian males.<sup>222</sup> While UNHCR did "hope" that the government would change their stance on the Liberian situation at Buduburam, there seemed to be a real breakdown of communication and attempts to facilitate more peaceful arrangements by all stakeholders did not prove successful. This lack of communication was mainly observable in the media's portrayal of the situation and speeches made by head Ghanaian government officials. Even refugees within the camp began to divide, as those involved in the discussions with UNHCR and the Ghana Refugee Board were thought, by many, to be acting out of their own self-interests rather than for all refugees of the camp.

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<sup>219</sup>This statement contradicts his speech, given on 1 April 2008, where he reiterated Ghana's position on the possibility of integration, "that Government [sic] has not decided to integrate them nor does it have any intentions to do so" *as described in* Republic of Ghana: Ministry of the Interior, *A Statement by Hon. Kwamena Bartels, Minister for the Interior on Demonstration by Liberian Refugees at the Buduburam Settlement on Tuesday, 1<sup>st</sup> April, 2008*, (2007) available at [http://mint.gov.gh/index.php?option=com\\_content&task=view&id=38&Itemid=2](http://mint.gov.gh/index.php?option=com_content&task=view&id=38&Itemid=2) [last visited 20 Feb. 2011].

<sup>220</sup>*supra* note 210.

<sup>221</sup>*Id.*

<sup>222</sup>Ghana invoked the cessation clause only on March 20, 2008 but only after the invasion of the camp and the arrest of the six hundred and thirty individuals. *Id.*



Such invocation of the cessation clause, as previously discussed, allows for individuals to undergo reconsideration, on an individual basis, before the cessation clause applies to them. This reaffirms the right to refugee protection by guaranteeing that no one is at risk of persecution before being forced to return home.<sup>223</sup> The failure to adhere to such policies and treatment of refugees is a breach of international refugee law. Acts such as this must be condemned by the international community if we are to ensure the protection of refugees and if refugee law is to be taken seriously by states as true legal obligations.

After some external pressures the Ghanaian government finally halted the deportations in order to “draw up a roadmap to repatriate the 40,000 Liberian refugees.”<sup>224</sup> A UNHCR Global Agenda Update on Ghana reported, “In 2009 the Government may seek to close Buduburam camp and remove the remaining refugees into Ghanaian communities.”<sup>225</sup> However, more recently, UNHCR, and the governments of Liberia and Ghana re-examined the concerns for the fate of those Liberian refugees who have continued to remain in Ghana. The cessation clause, outlined in this agreement, indicated that if the electoral process, planned to take place in October 2011, is “successful and peaceful according to international standards” and that a democratic president and legislative members satisfy the international community then Liberia will be “declared safe and peaceful.”<sup>226</sup> Then “Liberian refugees in Ghana will be left with no other option rather to opt for repatriation, local integration and left to fight there [sic] own cause.”<sup>227</sup> Regardless of positive political developments in Liberia, Ghana needs to reaffirm its legal obligations in light of the necessary safeguards in cases of all refugee nationalities.

#### ***4. The Condition of Liberia in 2008***

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<sup>223</sup>ExCom Con. 69, *supra* note 57.

<sup>224</sup>IRIN, *supra* note 213.

<sup>225</sup>2009 UNHCR Global Agenda Update, *Ghana: Operational Highlights*, UNHCR, 109 (2009).

<sup>226</sup>Joseph N N Swen, *The Nightmare of Liberians in Ghana, An Eye Witness Account - After the Death of Five Liberians*, Global News Network, (16 Feb. 2011), available at [http://gnnliberia.com/index.php?option=com\\_content&view=article&id=1523:the-nightmare-of-liberians-in-ghana-an-eye-witness-account&catid=34:politics&Itemid=54](http://gnnliberia.com/index.php?option=com_content&view=article&id=1523:the-nightmare-of-liberians-in-ghana-an-eye-witness-account&catid=34:politics&Itemid=54) [last visited 5 Dec. 2010].

<sup>227</sup>*Id.*

In 2008, at the time of the Ghanaian government's invasion of Buduburam camp, the situation in Liberia could be considered dire.<sup>228</sup> The unemployment rate was at 85% and 80% of population lived below the poverty line.<sup>229</sup> The life expectancy at birth was at 41.12, down from 51.8 in 2002.<sup>230</sup> A lack of development five years after the end of the civil war resulted in only 10.6 Km of paved roadways with no electricity and access to clean and safe running water.<sup>231</sup> An increase in food prices led to an increase in food insecurity in Monrovia, from 4% up to 8% in just a year and a half.<sup>232</sup> It is estimated that another 40,000 households, or about a quarter of a million people across Monrovia, have reduced the quality and frequency of their food intake over the past year and a half.<sup>233</sup> Liberia had an external debt of \$3 billion USD and UNMIL had, and continues to maintain, a presence with 15,000 UN peacekeepers in the country.<sup>234</sup>

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<sup>228</sup>The United States also recognized the dire situation in Ghana and thus decided to extend the Temporary Protected Status (TPS) to all eligible Liberians residing in the United States. "U.S. Senator Amy Klobuchar announced today that President Obama has extended Deferred Enforced Departure (DED) status to eligible Liberians residing legally in the U.S., granting them a twelve month reprieve from imminent deportation. More than 30,000 Liberians reside in Minnesota and an estimated 1,000 currently are living under DED status as refugees from a devastating civil war in Liberia. Since 1991, these refugees have been granted Temporary Protected Status (TPS) or Deferred Enforced Departure (DED) status under Presidents Bill Clinton and George W. Bush. The refugees are currently under DED status, which was set to expire on March 31, 2009. 'It was the right decision to grant Liberians extended DED status. The Liberian Community has become an important part of the social fabric of Minnesota - they are our neighbors and our co-workers,'" said Klobuchar. "While Liberia continues to be unstable, it is important that Liberians who are here legally are able to continue to call Minnesota home. This extension will allow us to continue our pursuit of a more permanent solution." Klobuchar says that an influx of thousands of Liberians from the United States could easily overwhelm and reverse the advances that Liberia has made in recent years. She also points out that Liberians in the United States are providing financial support to Liberia through remittances to their families currently in the country, *as described in* The African News Journal, Obama Administration Extends Protective Status for Liberians Residing Legally in the U.S., ANJ Online, (21 March 2009), *available at* <http://www.anjnews.com/node/1168> [last visited 5 March 2011].

<sup>229</sup>Such high unemployment rates and population below the poverty line but yet Liberia remained very expensive; the average rent for one room with a cooking/sitting area was US\$50 *as described in* Index Mundi, *Liberia*, (14 March 2011), *available at* <http://www.indexmundi.com/g/g.aspx?c=li&v=74>.

<sup>230</sup>*Id.*

<sup>231</sup>This creates an inability to travel to former places of home. *Id.*

<sup>232</sup>The price of a 50 kg bag of butter rice (the cheapest and most widely consumed) increased by 40 percent since the beginning of 2008 thus leaving most with the ability to only buy a cup at a time, *as described in* United Nations in Liberia, *Food Price Hike Hits Hard in Liberia*, 2 The Newsletter of the UN in Liberia, 1 (March 2008).

<sup>233</sup>*Id.*

<sup>234</sup>On 1 August 2003, the Security Council adopted resolution 1497 (2003), authorizing the establishment of a multinational force in Liberia and declaring its readiness to establish a follow-on United Nations stabilization force to be deployed no later than 1 October 2003. On 18 August 2003, the Liberian parties signed a Comprehensive Peace Agreement in Accra. By that Agreement, the parties requested the United Nations to deploy a force to Liberia under Chapter VII of the Charter of the United Nations to support the

Clearly inadequate attention has been given to both the security of home countries and the voluntary nature of repatriation by both international aid agencies and policy-makers in the realm of refugee law. Some argue that beyond the basic criteria, as outlined by UNHCR, there must be a close examination of social issues: access to health care, education, as well as any possible barriers to self-sufficiency. It is evident that the current conditions for the implementation of voluntary repatriation programs fail to examine any of these issues or any of the outlined challenges faced in Liberia in 2008. Furthermore, as previously mentioned the cessation clause should not necessarily apply to those who have “strong family, social and economic links to the state of refuge.”<sup>235</sup> In many cases, this would prove applicable to the Liberian refugees in Ghana since a large portion of the Buduburam population had resided there for more than a decade.

It is evident that states do not consider which conditions are suitable for the individual refugees but rather which conditions create a “good enough” situation for them to relinquish further protection. It is reasonable to declare, as will be illustrated in the narratives below, that this objective criterion fails to consider what the individual refugee deems as essential or important for returning “home,” the subjective perspective of the refugee. Other factors may be considered important but not vital and thus will not appeal to a refugee since the home environment is not one which contains the elements to which they will *want* to return. In a camp, they have created a home where many of the issues in their home country are not necessarily problems in the camp, or perhaps not to such a degree. While there may be an urge to return home, as the following narratives will illustrate, the reluctance to voluntarily repatriate stems from various political and social problems as well as a lack of development and basic services available. These deficiencies do not enable the individual refugee to return home with the necessities for re-establishment.

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National Transitional Government of Liberia and assist in the implementation of the Agreement. The Secretary-General recommended that the Council, acting under Chapter VII of the United Nations Charter, authorize the deployment of a United Nations peacekeeping operation with a troop strength of up to 15,000, including 250 military observers, 160 staff officers, up to 875 civilian police officers and an additional five armed formed units each comprising 120 officers, and a significant civilian component and necessary support staff.” The mandate was initially established for 12 months and has been extended every year. It is now set to expire on 30 September 2011 *as described in* United Nations Mission in Liberia, *History*, UNMIL, (2011), *available at* <http://unmil.org/2content.asp?sub=22&main=19&pgt=2>.

<sup>235</sup>Fitzpatrick, *supra* note 54 at 355.

#### **D. The Voices of Former Liberian Refugees**

In the refugee context, the term emplacement refers to the transformation of “an unfamiliar physical space into a personalized, socialized place” with the formation of a community “through creative action and structural transformation.”<sup>236</sup> This is exactly what Liberian refugees achieved in Buduburam as they transformed an empty field into their own Liberia. From the preliminary materials they received from UNHCR (tents, sticks, blankets, etc.) they took it upon themselves to gather money to buy the materials to create homes out of mud walls and tin roofs. Along with the help of aid organizations and community-based organizations (CBOs) within the camp they began to recreate “home” by building schools, movie houses, shops, restaurants, barbershops and even a few bars. While permanent settlement was not their objective, the idea of not knowing how long they would be displaced created the need for an existence of a community feel; a way to move on from the traumatic experiences from which they had fled.

The concept of voluntary repatriation is grounded in the idea that it is the desire of the individual to go home. In the case of Liberian refugees in Ghana, after a series of events took place in March 2008, they truly felt as though they had no other choice. Having spent years in Ghana, Liberian refugees seemed to be waiting for their time, either to return home or travel to a third country. Ultimately, they were waiting for their time to finally experience living. Suddenly, this indefinite time was determined for them; the Ghanaian government’s refusal to host the refugee population any longer created a state of fear amongst the refugees. Their fate had been decided without consulting them but ultimately, many opted to return to their homeland rather than face further abuse or even death in Ghana. The following narratives will provide an insight into the life of a Liberian refugee living in Buduburam, Ghana to illustrate the challenges they faced and their experiences there.

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<sup>236</sup>Laura C. Hammond, *This Place Will Become Home: Refugee Repatriation to Ethiopia*, 3 (Cornell University Press, 2004).

## *1. Common Everyday Harassment*

Harassment by locals is common for refugees as there is often an “us vs. them” dynamic caused by misunderstandings and misperceptions of the reasons why refugees are in the locals’ own country. For some it originates from the uneasiness of having large numbers, often in the thousands, of outsiders suddenly in one’s community while for others it derives from jealousy and anger because international aid and attention is given to the specific group of “outsiders.” Harassment and discrimination are also common from immigration and police officials as they are able to use their authoritative power to permit and deny entry and regulate movement in the state of asylum. They often abuse this authority by demanding bribes and at times commit physical and sexual abuse.<sup>237</sup>

There was no shortage of complaints from the eleven participants who volunteered to describe their experiences living in Buduburam. Their Liberian nationality and status as refugees in the country only added to the misconceptions and negative attitudes from the host communities, who believed that aid was going to Liberians when it should have been going to Ghanaians. Their inability to communicate with the Ghanaians in their local dialect did not ease in their assimilation and left the majority of refugees vulnerable to abuse and exploitation. Liberian refugees were often used as scapegoats for many of the challenges and problems in Ghana; “Everything that happens, whether that happens in a different place, they will say that Liberians do it.”<sup>238</sup> Ghanaians often accused Liberians of being rebels and of assisting in the civil war in Cote d’Ivoire. A large portion of the harassment took place in the Ghanaian market areas or on public transportation. One participant described his experience in the *tro-tro* – common transportation in Ghana – and how Ghanaians in the bus screamed insults at him about Charles Taylor and how *all* Liberians are rebels. Another participant described how she would always have to observe sellers and buyers in the marketplace so that she would not be charged more than the normal prices just because she was Liberian.

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<sup>237</sup>The Advocates for Human Rights, “*Everyone Scattered*” *Experiences of the Liberian Diaspora*, 319 available at: <http://www.theadvocatesforhumanrights.org/uploads/chapter+13+-experiences+of+the+liberian+diaspora.pdf> [last accessed 3 March 2011].

<sup>238</sup>Interview with Participant A2, in Monrovia, Liberia (January 2011).

The majority of participants displayed frustration with UNHCR, composed of Ghanaian nationals, and other aid organizations and their lack of interest in understanding the cultural dynamics of Liberians.<sup>239</sup> As earlier noted in the portion on Liberia's history, rice is the staple part of a Liberian diet – not corn. Those refugees in Buduburam, identified as vulnerable individuals, received food rations which included maize; some Liberians perceived it to be “comparable to animal feed.”<sup>240</sup> The individuals would quickly turn around and sell it to the Ghanaian traders from Accra who “descend[ed] on the camp only to buy maize grain directly from the beneficiaries.”<sup>241</sup> These traders would then sell it in the Ghanaian markets making a substantial profit while the Liberians would use their meager earnings to buy rice. So why was rice not distributed to them in the first place, especially since aid organizations knew about this trading of maize for rice system? This is one example of the lack of awareness, care and interest that the Liberians found to be very discouraging. Such inattentiveness left Liberians with the impression that, from the very beginning of their time in Ghana, the Ghanaian government and host communities were not interested in helping Liberians. This perception led to even further resentment and animosity between the refugees and the host state.

## ***2. Access to Education***

As in most countries, education is thought to be the framework which shapes an individual's future. Such a belief is shared in West Africa, and was observable in Buduburam. Many refugee schools were established to provide educational opportunities for children. There were also training centers, such as baking and sewing schools, to provide certain skills. The primary educational challenges became noticeable once an individual completed high school or for those adults who had limited or no education. The only possibility for higher education was to attend one of the Ghanaian universities

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<sup>239</sup>Many of the negative feelings toward UNHCR stem from the fact that it is composed of Ghanaian nationals and its close relationship with the Ghana Refugee Board which is also composed of Ghanaians. The refugees often felt that these bodies were working against them rather than working to facilitate a solution to their problems.

<sup>240</sup>*supra* note 237 at 330.

<sup>241</sup>A. Adam-Bradford, Femke Hoekstra and René van Veenhuizen, *Linking Relief, Rehabilitation and Development: A Role for Urban Agriculture?*, 21 *Urban Agriculture Magazine*, 7 (Jan. 2009), available at <http://www.adambradford.eu/Article/UAM21.p.3-10.pdf>.

but such opportunities had to be self-financed as no scholarships were offered to refugees and humanitarian agencies did not provide assistance for such endeavors. Another source of frustration stemmed from the lack of work opportunities, especially for those with higher degrees or those who obtained degrees in Ghana. These lack of opportunities proved to be detrimental to the self-sufficiency of the Liberians and became a source of further detest for their situation in Ghana.

Almost all participants complained about the higher educational fees required of them, compared to that of Ghanaian nationals, to attend Ghanaian schools. Many did what they could in order to attend these schools because of the higher quality of education compared to the schools established in the camp. Some resorted to selling water or baked goods while others relied on the generosity of resettled family members and friends to send them money to pay the school fees.

One young female participant described her experiences attending a Ghanaian boarding school:

To stay at the boarding house the discrimination was too much. For me, I couldn't come from home and leave my house every day. So I stayed on the campus but it was tedious because they call you a lot of names. Sometimes they call you *Liberian* <sup>242</sup> or sometimes they call you *Ashawo* which is prostitute [in local Ghanaian dialect]. Sometimes they tell you that you are rebels, that you are killers and that they can't trust you. Sometimes they spit on your food. Sometimes you go to the bathroom to take a bath but no one else will enter because you are a Liberian.<sup>243</sup>

After completing high school, this participant was fortunately able to afford the costs of attending a skills-training program. However, even in this program she experienced harassment and other setbacks. For example, the books required for such courses were at a higher cost for her than her Ghanaian colleagues. Even after acquiring these additional skills she was unable to obtain a job. "Also, you can't get a job in Ghana. I went and applied to so many places but when they see your nationality -you're

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<sup>242</sup>A derogatory term in the vernacular Liberian English

<sup>243</sup>Interview with Participant C1, in Monrovia, Liberia (January 2011).

a Liberian- they don't even consider it. Even if you're qualified or even more qualified they won't give it to you because you're a Liberian.”<sup>244</sup>

Another female participant described similar discrimination and harassment while attending school in Ghana. She described situations in which the school offered additional support and classes to Ghanaian students but not to her. There were incidences where her teacher told her that on certain days there would be no classes when classes were actually held.<sup>245</sup> She also reaffirmed the previous participants' inability to secure a job based on her Liberian nationality. “They will prefer giving their citizens the job. If you send in maybe your CV and they send in theirs, whether you are qualified or not they will not give you the job.”<sup>246</sup> Due to their inability to secure employment opportunities or substantial ways to earn a living many resorted to other ways of creating income-generating support: selling bags of water, washing clothes or braiding hair in order to survive. All complained of the need to constantly struggle in order to live and to provide for their family and friends; refugees in the camp often had to rely on one another for “small small” money here or food there.

### ***3. Issues with Resettlement***

Refugees often face trust issues due to traumatic experiences from events which led to their departure from their home country, the transit period and while in the host

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<sup>244</sup>*Id.*, see 1951 Convention Article, *supra* note 3 at art. 17(1): “The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage earning employment. 2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions: (a) He has completed three years' residence in the country; (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse; (c) He has one or more children possessing the nationality of the country of residence. 3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.” See also

In addition, “the Constitution of Ghana and the labour laws prohibit discrimination on the basis of race, sex, ethnic origin, creed, colour, religion, social, or economic status” as described in Jane Hodges and Dr. Anthony Baah, *National Labour Law Profile: Ghana*, International Labour Organization, (2006), available at <http://www.ilo.org/public/english/dialogue/ifpdial/info/national/ghana.htm>.

<sup>245</sup>Interview with Participant E2, in Monrovia, Liberia (January 2011).

<sup>246</sup>*Id.*



country. These trust issues can affect relationships with others within the camp as well as with outsiders, such as locals, government officials and aid agencies. In the case of Liberian refugees in Ghana, many events created an environment of mistrust between the refugees and UNHCR, primarily because of UNHCR's close relationship with the Ghana Refugee Board and because UNHCR Ghana's employees are primarily Ghanaian nationals.

Four of the participants relayed stories of Ghanaians traveling to the United States, on the US resettlement program, but under Liberian names and passports. One male participant described how his friends found their names on the resettlement board located at the top of the camp. However, when they went to the airport to leave, names were called but they saw other groups boarding planes – groups of Ghanaians – going in place of them.<sup>247</sup> Another participant reaffirmed this by stating, “Many days our parents when they send for us, they go to the airport to receive us and they find another family.”<sup>248</sup> Stories such as these only further “authenticated” the refugees’ grounds for distrusting the overseeing refugee agencies. They often felt alone and helpless, forgotten by the rest of the world, as even those who were supposed to be there to help them did not.

#### ***4. Safety Concerns in Buduburam***

Safety can be ambiguous in that it can be composed of various elements depending on the individual and the culture from which he or she originates. For refugees, varying degrees of assistance can amount to security but refugee law's general definition of security is principally established as the right to life, liberty and security of person.<sup>249</sup> One thing that is for certain is that the camp atmosphere should be one which exhibits all aspects of personal security. Refugees have fled from unsafe conditions and find refuge in host countries and camps to re-gain this protection and a sense of security. Refugee camps, however, are often plagued with insecurities: crime, assaults, armed robberies, rape, and kidnappings, issues with former rebel or government soldiers and

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<sup>247</sup>Interview with Participant A1, in Monrovia, Liberia (January 2011).

<sup>248</sup>Interview with Participant B1, in Monrovia, Liberia (January 2011).

<sup>249</sup>*Id.*

even encounters with former torturers or abusers. Buduburam Refugee Camp was no different and the majority of refugees faced numerous security issues at one time or another.

The majority of participants relayed one story or another about the security issues within the camp. “Joe the Juker”, a Ghanaian man, would walk around the camp late at night and juke<sup>250</sup> the refugees in their homes with a long spear. After this occurred on many separate occasions a group of Liberians were successful in catching him. They quickly brought him to the Ghanaian police station at the camp’s entrance and handed him over to the authorities. However, like many other incidents involving Ghanaian nationals, Joe the Juker was released without any further investigations.

In order to address the security concerns of the camp, the Liberian refugees felt it necessary to “take justice into their own hands” by forming a neighborhood watch committee.<sup>251</sup> There were many documented events which resulted in the death or serious harm of a Liberian and the Ghanaian involved would always be released. “As soon as one of the Ghanaians speak Twi<sup>252</sup> they free them.”<sup>253</sup> Ghanaian police arrested one Liberian male participant for participating in a fight between him and a Ghanaian male even though the authorities had been told, by numerous witnesses, that he had not been involved in the altercation. The police slapped him and placed him in jail. He had to rely on funds raised by his mother’s church to retain a lawyer to help appeal his case and gain release from jail.

The need for Liberians to take action in order to bring some degree of security and justice to the camp also validates the refugees’ negative perception of the Ghanaian government and aid organizations and the necessity to fend for themselves. After a while, they found it futile to even attempt to report any crimes to the Ghanaian police who held an office at the camp’s entrance. Frequent raids and the unwillingness to prosecute Ghanaian citizens for crimes involving Liberians exhibit the lack of support and protection on behalf of the host state. Refugees are extremely vulnerable as they are

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<sup>250</sup>*To juke* in vernacular Liberian English is the equivalent of *to stab* in American English.

<sup>251</sup>Participant A2, *supra* note 238.

<sup>252</sup>One of Ghana’s principal national languages.

<sup>253</sup>Interview with Participant D1, in Monrovia, Liberia (January 2011).

outside of their own country, having fled from violence and often traumatic events, and are entitled to protection from further insecurities and traumatization. Host states, such as Ghana, often commit these acts of harassment and intimidation in order to unsettle refugees, to remind them that they are guests and that their stay is only temporary.

### ***5. The 2002 Camp Invasion***

The seven male participants all related their encounter with the Ghanaian army's visit to the camp in early 2002. According to their accounts, the whole camp was sleeping when, over the loud-speakers, they heard the demand for all male refugees within the camp to report to the football field, near the entrance of the camp. While the army surrounded the entire field, the camp's male refugees were compelled to wait for hours, under the hot sun, as they listened to insult after insult from the Ghanaian Interior Minister Kwamena Bartels. His presence at the camp came soon after the outbreak of fighting in neighboring Cote d'Ivoire as the Ghanaian government was suspicious that Liberian men were crossing the border, into Cote d'Ivoire, to aid the rebel movement. Minister Bartels accused the Liberian women of being prostitutes, the men as rebels and of engaging in armed robberies and the trafficking of drugs.<sup>254</sup> On this occasion, the army beat some men and arrested and detained others. Dogs and guns were used to scare the 11,000 or so men on the field. In the end, the men spent a total of around ten hours on the field, without food or water, before being able allowed to return to their homes.

### ***6. The 2008 Camp Invasion***

The \$5 USD repatriation offer to Liberian refugees was insufficient as it would not have provided them the means of securing a home, or food or any necessities upon their arrival in Liberia. The women's decision to protest was not to defy or embarrass the Ghanaian government, but to appeal to UNHCR for more financial support; they wanted aid that reflected the economic situation in Liberia thus enabling a return with the ability to re-establish themselves and be self-sustainable in the long-term. The threats and

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<sup>254</sup>Participant A2, *supra* note 238.

“fallacious and fabricated lies”<sup>255</sup> by the Ghanaian media marked just the beginning of the unraveling relations between the refugees and the host state. The ensuing physical and emotional abuse, detainment and deportations both shocked and created fear throughout the refugee community. For many, it was described as a period of re-traumatization with the armed security forces entering the camp and treating the refugees as they pleased. As one participant stated,

I'll tell you one thing, some of our colleagues were sent back to Liberia in boxers. We were living in complete fear at that time. Some of us were not sleeping at our own place because we thought where we sleep our houses will be surrounded and we will be deported or taken to unknown locations.<sup>256</sup>

One female participant was one of the 600 women arrested and was detained in the remote village of Kordiabe for more than a month after actively protesting. Her detailed narrative addressed her experiences over the course of the month and the conditions that she was forced to endure. During the time of her arrest, the Ghanaian authorities physically abused, repeatedly kicked and hit, the women as they forced them onto one of numerous army trucks that entered the camp on 17 March. In remote Kordiabe, scorpions and snakes are prominent which resulted in many illnesses and necessary medical treatments for ailments caused by snakebites and scorpion stings. At one point the Ghanaian authorities dug holes around the women and threatened that “with those holes they would just massacre us [the refugee women] and put us there.”<sup>257</sup> Armed men kept a close watch on the women, treating the women like prisoners and escorting them everywhere, even to use the bathroom. It was not until the delegation from Liberia arrived that these women were allowed to speak to anyone from “the outside” as many other human rights organizations had been denied access to the women.

But looking at what started to transpire, I mean we were living in complete fear. Life started to be tedious to us because we can't be in another man's country, being insulted and threatened with armed men surrounding the

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<sup>255</sup> Interview with Participant B2, in Monrovia, Liberia (January 2011).

<sup>256</sup> *Id.*

<sup>257</sup> *supra* note 253.

camp. Right? Armed men don't enter a refugee camp but it happened in Ghana.<sup>258</sup>

One of the male participants arrested on 22 March, while playing basketball on the court near the camp's entrance, was accused of being a rebel and of attempting to overthrow the Ghanaian government. The security forces placed him in a *Moah* -a type of tank- with other Liberians before being brought to a detention facility in the capital of Accra. During the hours in which he was detained and questioned he was repeatedly insulted and physically abused with a *batu* (a baton). He stated that those who did not have their UNHCR ID cards with them at the time were taken straight to the airport to go through deportation proceedings; he, fortunately, had his ID with him at the time.

### ***7. The Process Home to Liberia***

But you cannot come home when you have kids and you come home and you live under your friend or you stop with someone and it will be for a week. When it gets to a month or two it gets to be boring. So some people had family members that were waiting to accept them but the majority didn't have, didn't have nowhere to go. Some left the rural area in 1990. They don't even know the hut that they left and whether it still exists. Some left from Monrovia in 1990 or 1995 or so. The house that they left burnt to ashes. The family or the majority [of them] were killed. It was in Ghana that they started a family. So the family that you have started on that side, where will you bring them to resettle them in Liberia?<sup>259</sup>

This is just one example of the number of concerns felt by many of those considering returning to Liberia after the camp invasion in March 2008. After this invasion “people started registering and people started going” to Liberia.<sup>260</sup> UN-chartered planes carried refugees on Sundays and Wednesdays from Accra, Ghana direct to Monrovia, Liberia. Others traveled by chartered buses –mostly men- from Buduburam to Monrovia, via Cote d'Ivoire.

One issue raised during this time period related to UNHCR's decision to fingerprint those refugees with UNHCR identity cards, due to cases of identity fraud.

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<sup>258</sup>*supra* note 255.

<sup>259</sup>Participant C1, *supra* note 243.

<sup>260</sup>Participant A1, *supra* note 247.

Those who failed to go through the process were unable to return through UNHCR's voluntary repatriation program. This was thought to have affected many people because the procedure took place immediately following after the camp invasion during a time when many were reluctant to present themselves to any sort of authoritative figure due to the tension and feelings of uncertainty in the camp. Others, who did not have identification cards, were able to secure spots in the repatriation program through bribery:

Because they can't go without ID card so some people bribed. They had a neighborhood watch team who were over the repatriation with the Ghanaians. So you'll go and you'll bribe; you'll give the neighborhood watch team money. When you give them money you can go with that ID card which is not yours.<sup>261</sup>

### ***8. Back "Home" in Liberia***

UNHCR's repatriation programs resumed quickly after the camp invasion and subsequent arrests. It was an extremely overwhelming and emotional time for all as the situation in the camp had deteriorated so rapidly that the quick shift from the protests to the repatriation programs caught many off guard. Within weeks former refugees found themselves back in Liberia. After signing the repatriation forms with UNHCR, most left within a matter of days or, in some cases, weeks which left them with very little time to mentally or financially prepare for their return.<sup>262</sup> As one female participant put it, "Peace in Liberia is another thing but going back home and not having anywhere to start is another thing."<sup>263</sup> This sentiment exhibits the general feeling for most Liberians as to why they were not ready to repatriate in the first place.

Only one participant, a female, discussed what it was like for her and her family back at home in Liberia. She had spent most of her life in Ghana as she fled Liberia when she was very young. She was hesitant to return with her husband and two children

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<sup>261</sup>*Id.*

<sup>262</sup>In Ghana, they had a home and some means of making money: selling water, washing clothes, baking, sewing, etc. In Liberia they had nothing; each refugee was allotted around 20kilos of luggage (that which could be packed into a suitcase or donated blue UNHCR bag. It did not include furniture, mattresses, stoves, televisions, etc. that many refugees had acquired in all their years in Buduburam. They had to therefore leave these possessions behind; most returnees have been unable to afford to purchase such goods in Liberia.

<sup>263</sup>Participant C1, *supra* note 243.

because she no longer knew Liberia, having spent fifteen years in the camp. At that point she and her husband had established a life in the camp.<sup>264</sup> However, promises of opportunities for returnees made by UNHCR during the repatriation process gave her some sense of relief and hope upon their return. Some of these promised opportunities included skills-training, job sponsorship, educational opportunities and assistance in obtaining a driver's license. However, as she noted, and was later confirmed by a second participant, "We didn't benefit anything from the UN."<sup>265</sup> They tried to pursue all the opportunities that were promised to her and her family but they did not successfully obtain anything.

The UN said that if we come back home they will give you this. If you have a career they will sponsor you. Nothing! For me, I didn't see anything. They said they had a driving program and we ran after it. Nothing! They said if you are qualified in this area they will provide some finances and things for you. We ran behind it. Nothing! They said they were giving loans but they didn't give anything. For me, I didn't see any of it so I don't see like it was true. So we just decided to stay home and just do what we can do until we can do something for better living.<sup>266</sup>

While this participant was clearly disappointed and discouraged it did not affect how she felt about being back home. It was apparent that even with disappointment that these promises of help and assistance were unfulfilled she was happier to be back in Liberia and to no longer be in Ghana. "We were in a foreign land and they didn't treat us well. So it is better that I die in my home than to die elsewhere, where I won't have a grave or where nobody will ever know about me."<sup>267</sup> One of the male participants concluded his narrative by declaring: "It's not like you get bread from heaven but at least you feel safe because you're home. You go anywhere you wanna go and nobody will ask you, 'Who are you?'"<sup>268</sup>

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<sup>264</sup>She worked as a seamstress and baked cookies. Her husband and she also rented a large water tank from which they would sell buckets of water to other refugees for cleaning, washing and drinking purposes for 10-15 cents a bucket. She owned a stove which she was able to transport to Liberia, however, the price of gas is too expensive in Liberia and so she is unable to use it and cookies from a small fire-stove instead.

<sup>265</sup>Participant E2, *supra* note 245.

<sup>266</sup>*Id.*

<sup>267</sup>*Id.*

<sup>268</sup>Participant A2, *supra* note 238.

These sentiments express the refugees' overall thoughts on their time in Ghana and their happiness to be back in Liberia. While the conditions in Liberia are not ideal, they are much better than what they had been and are improving. More importantly, these former refugees feel safe and they feel safe not only because the civil conflict in their home country has ended but they are no longer in a foreign land where everything was unattainable and safety was nonexistent. While home might be an ambiguous concept, especially in refugee law where many refugees are unable to return to the place of their former inhabitation, they are in a land with their own laws and customs and are treated with greater respect in dignity than when they were in Ghana.

### **E. Narrative Conclusion**

Some Liberian refugees lived in the camp for almost two decades. While Buduburam had a strong sense of community and developed structures to create a sense of normalcy in the camp, the time spent was ultimately a waiting game. Some waited for resettlement opportunities while others waited until it was evident that the security situation in Liberia had improved and they had opportunities to acquire skills or save money.<sup>269</sup>

Voluntary repatriation is based on the idea of “voluntariness;” however, there is no system to measure the “voluntariness” of decisions to repatriate. There is a lack of established mechanisms to determine under what conditions refugees are truly making the decision to repatriate. As one returnee said, “The repatriation was voluntary, sure, but look because of the tension.”<sup>270</sup> The coercive methods used by the Ghanaian government left Liberian refugees with no other choice *but* to repatriate. As one participant emotionally said, “Living as a refugee is like living in hell with the devil himself; Especially in Ghana.”<sup>271</sup> While Liberians may not have been ready to go home, no matter what the conditions in Liberia were like they could no longer compare to the conditions in Ghana, living in fear and wondering who would be victimized next.

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<sup>269</sup>Advocates for Human Rights, *supra* note 237 at 335.

<sup>270</sup>Interview with Participant E1, in Monrovia, Liberia (January 2011).

<sup>271</sup>Participant A2, *supra* note 238.





## V. POLICY RECOMMENDATIONS

The following are a list of policy recommendations along with some general observations and considerations for all stakeholders, not only for the promotion of repatriation programs but for the entire international refugee law regime. Some provide methods to address the gaps in the current system, including ways to incorporate the refugee's subjective perspective, while others address the roles and responsibilities of states and UNHCR. These recommendations do not recognize all the disparities and challenges of the refugee law system but they offer a starting point from which all actors can work and build-upon in order to diminish any current problems, inequalities and irrelevant aspects of its current state.

### *General Recommendations*

- International refugee law instruments must consist of a language which has a clearer “meaning of words” with less room for vague and ambiguous terms so that there is less freedom for self-interpretation by states.<sup>272</sup>
- UN member states, along with the assistance of UNHCR and other refugee agencies, must seriously re-consider the 1951 Convention and address the disparities between its language, its implementation and refugee protection. This might involve the preservation of the current Convention with major adjustments or require an entirely new draft. One key element which must be included in this process is the examination of the scope of the Convention and its limit on humanitarian aspects, such as human rights.
- The current framework for repatriation is unable to achieve its core objective. There is a need to re-evaluate repatriation in order to clarify its goals.
  - The use of language such as promotion, encouragement, coercion, facilitation and persuasion should all be defined within a legal context.

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<sup>272</sup>As previously mentioned, the current language of refugee law's legal framework demonstrate an inability to distinguish the differences between acts which results in pressure, coercion, encouragement, persuasion, etc. and under which terms, if any are they acceptable or unacceptable or legal or illegal actions?

The meaning of home is also another term which needs to be legally defined since it differs between the state and the refugee.

- Clear guidelines must be established to outline the role of all stakeholders in the repatriation process. These guidelines must offer a step-by-step approach to the various phases of repatriation in order to ensure full adherence by states and refugee agencies.
- The concept of “voluntariness” needs to assume an absolute legal character otherwise states will continue to disregard this standard and its purpose will cease to be of importance. While voluntary repatriation is currently non-binding, a revision of the 1951 Convention would be able to incorporate this issue into the draft, in order to encourage states to adhere to this human rights standard.
- A new approach needs to be taken, with strategic policies, to confront the issue of the objective vs. subjective perspectives and their role in refugee protection. The state’s power over the standards and decisions stemming from the 1951 Convention has established a system where protection is not afforded to refugees but rather to states and their self-interests.
  - The current role of UNHCR and the application of the 1951 Convention have created ambiguity surrounding when mandated repatriation is indeed legal which must be addressed if repatriation is to remain a key solution.
- There is the need to develop a more effective way to close the gap between the emergency relief and longer-term development.<sup>273</sup> This is of vital importance for both the home states and the refugees in the state of asylum.
- While there is already a discussion surrounding the issue of burden-sharing amongst states, there is an urgent need to place more emphasis on creating and implementing policies to address this problem. A solution to this issue could have immediate positive changes on the refugee system.<sup>274</sup>

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<sup>273</sup>UNHCR, *supra* note 11.

<sup>274</sup>For example, states might not feel the impacts if refugee populations are more dispersed and may thus be more inclined to offer longer-term assistance and protection.

## ***UNHCR***

The 1951 framework of UNHCR does not express the current refugee situation and has thus only hindered its “adaption process and created a narrow legal image of the institution’s potential” by applying “post-cold war legal terms” to “modern-day situations.”<sup>275</sup> Its current capacity as a political entity is far removed from its original mandate and thus not only is the UN overextended but its inattentiveness has further allowed for states to deter from their legal obligations. While there is confusion in the global community regarding the role and responsibilities of UNHCR there is clearly disorder and a lack of clarity within the agency itself. This will only prove the agency ineffective in the long-run if it does not know realize the threshold of its capabilities and responsibilities. The creation of a new mandate, which reflects the contemporary refugee and needs, will establish precise objectives, roles and responsibilities.

There is a great need for more empirical research to be conducted on returnees in order to obtain their voice on the voluntary repatriation experience. Research will allow UNHCR to gain a greater understanding of the current gaps and challenges associated with voluntary repatriation. The results from such studies will allow UNHCR to re-examine the current framework of durable solutions and attempt to adapt it to this new knowledge if it hopes to preserve the refugee law regime. This will also help to re-evaluate the current criteria for the improvements in the home country which would enable repatriation. As this paper illustrated, the requirements that would motivate return for refugees is very different from those of UNHCR and states. An immediate approach to facilitate discussions on would also have immediate effects in refugee law, specifically in the realm of durable solutions.

Another issue which seems to arise is the nationality of UNHCR staff working with the population of concern. Already host communities can have difficulties welcoming and accepting refugee populations. When one is in the position to make important decisions on behalf of a refugee it is important that they do so in an unbiased manner. This does not always seem to be the case and is an important issue that seems to

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<sup>275</sup>David Kennedy, *International Refugee Protection*, 8 Hum. Rts. Q. 8 (1986).

affect UNHCR on a global scale, rather than just country or region specific. It is a matter which should be examined closely in order to ensure that the objectives and the integrity of UNHCR are upheld.

Further recommendations include:

- The implementation of “education for repatriation” programs in order to teach refugees about dispute resolution along with skills to later maintain a livelihood.<sup>276</sup>
- UNHCR should oversee and facilitate voluntary repatriation plans from the beginning to the end in order to “monitor the fulfillment of [any] amnesties, guarantees or assurances”<sup>277</sup> that were promised to the refugees as part of their return.<sup>278</sup>
- UNHCR must facilitate dialogues between Northern and Southern states to address burden-sharing amongst all UN members and the 1951 Convention signatories and initiate processes and principles related to addressing refugee situations and how states can mutually assist each other while providing absolute refugee protection.
- UNHCR should coordinate and facilitate national asylum practices for states in order to create a normative framework for all those who seek asylum.
- Assistance, rather than protection, has come to comprise by far the greatest portion of the UNHCR’s work. The agency must devise solutions for groups of people rather than for individual refugees.<sup>279</sup>

## State of Asylum

It is common knowledge that while states may ratify legal instruments they usually fail to adhere to their obligations and/or successfully implement their policies. As this paper has demonstrated, the legal instruments of international refugee law are no

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<sup>276</sup>Jennifer Moore, *The Alchemy of Exile: Strengthening a Culture of Human Rights in the Burundian Refugee Camps in Tanzania*, 27 WASH. U. J. L. & POL’Y 150 (2008).

<sup>277</sup>Chimni, *supra* note 72 at 456.

<sup>278</sup>A method of monitoring promises and guarantees made to refugees by UNHCR should also be developed to ensure that returnees obtain the assistance assured to them upon their return home.

<sup>279</sup>*supra* note 275 at 5.

different. While a discussion regarding the need for states to abide by both international human rights and refugee law is obvious it is also known to have little effect on states. So while one may not force a state to comply with their obligations it is important for discourse to revolve around ways in which refugees and states can mutually benefit from one another during the refugees' duration of stay in the host state. If states fully understand and recognize the positive effects that granting certain rights to refugees would create then perhaps they would be more inclined to consider such benefits. By acknowledging this they would realize that it is in their best-interest to approach refugee law in a manner which will result in success rather than increased difficulties and problems.<sup>280</sup>

States of refuge should also consider the following recommendations:

- Access to education, skills development and income-generating activities will enable refugees to rely less on aid and aid in preparation for their eventual return to the home state. These opportunities create self-reliance which enables refugees to rely less on humanitarian and government assistance. They also create the possibility for generating economic opportunities and development in host communities.
- States should facilitate repatriation along with the help and support of the UNHCR and other refugee and humanitarian agencies in order to ensure that the needs and rights of refugees are addressed through every step of the process
- States should develop and implement programs or other activities to bring together refugee and host communities in order to develop friendlier relationships rather than hostile and/or discriminatory ones. It creates mutual understanding and also acts as an educational tool for all participants.

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<sup>280</sup>For example, a positive and supportive approach for voluntary repatriation will result in a greater chance of its durability rather than forced returns which have a greater risk of resulting in renewed refugee flight. Approaches such as this, and policies which create such situations, are unsustainable and are of even greater detriment to the refugees as well as the host states.

## **State of Origin**

The home state has some of the most difficult and challenging responsibilities as it is the one recovering from civil conflict and, as noted, often lacks basic infrastructure and services. Their duty to welcome returnees home and re-instate their protection as citizens can be a burden if returnees attempt or are forced to return too soon after the end of a conflict. It is essential that states of origin keep agencies, such as UNHCR and other aid organizations, as well as the asylum states informed on their conditions and progress. They must also be forthright and clear about their needs and areas where they are facing difficulties.

Once it has been decided that returnees can successfully return “home” the home states must be attentive to the needs of returnees in their transitional and recovery plans. They must work closely with states of refuge to facilitate an easier transition for returnees. They need to implement strategic policies and plans for the reintegration of returnees. Home states must assist them in obtaining any necessary documents (birth certificates, passports, deeds to land, compensation claims, etc.) so that they may begin re-building their lives. However, states of origin must be practical when creating programs or policies, such as the reacquisition of land or property, so that they are fair for all nationals. They should not make promises that they are unable to keep if they desire success in the phases of reintegration and national rehabilitation.

## ***Refugees***

One of the major gaps in the current organization of refugee law is that the individual refugee is not considered an integral part of the international refugee regime. By transforming his role from a passive recipient into more of a participatory position then he has the ability to aid in some of the burdens that states claim to bear when they host refugee populations. This offers power to the individual to make important decisions for himself to not only better his life but to also realize the options that he has, rather than waiting around for months or even years for someone to approach him and offer or mandate solutions. Policies affect refugees directly and thus they should be involved in all aspects of the decision-making process of the system.

- From the onset of protection, refugees should have a clear understanding of what their rights are and assistance offered in camps or urban environments should offer programs to address this issue.<sup>281</sup>
- Repatriation assistance must not only reflect the refugees' criteria but it must also reflect their pace of decision-making.<sup>282</sup>
- When seriously contemplating repatriation programs refugees should be afforded the opportunity to address their concerns in an open forum. These concerns should then be considered by host states and UNHCR who should respond to these questions and fears.<sup>283</sup>

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<sup>281</sup> The majority of refugees receive news from indirect sources, other refugees who heard from someone else who heard from someone else. These tend to instigate rumors and lies which spread quickly amongst these populations due to their situations. One way to approach this would be to include legal aid classes as a mandatory element to those who are granted refugee status. A class such as this would help outline what it means to be a refugee: legal rights in host state, rights as a refugee, available aid and assistance, economic and educational opportunities, possible solutions, etc. It would also help for refugees to have a clear understanding of what is possible and what is not. The current trend for everyone to wait for resettlement is unsettling because so few are actually resettled. Many miss out on other opportunities, such as educational, because they are only waiting to be selected for resettlement.

<sup>282</sup> Chimni, *supra* note 72 at 449.

<sup>283</sup> Community gatherings, town-hall style meetings, surveys, personal narratives and interviews are all methods in which such a forum could be conducted.



## VI. CONCLUSION

Whether you agree or not that international refugee law is in crisis, one cannot deny that its current framework does not reflect the needs of contemporary refugees. The current rift in the refugee system and the various gaps in the standards of protection only substantiate the need for states “to stick to the spirit of international instruments [and] find a viable solution in an environment [which is becoming] increasingly hostile to refugees.”<sup>284</sup> From burden-sharing to refugee protection to the principle of *non-refoulement* states are becoming increasingly absent in the global refugee problem. While states of the North continuously leave Southern states to bear the challenges of providing for refugees, the majority of states seek ways to either divert their participation or to relinquish their assistance all together.

Voluntary repatriation may have been considered the ideal solution for the past three decades but its increasing transformation from a voluntary character to an involuntary one illustrates its inability to continue serving as a durable solution without completely disrupting the refugee protection system once and for all. The current criteria for the promotion of voluntary repatriation lack a standard of mechanisms which reflect the needs of refugees and human rights norms; provided with the right support refugees are the best judges to determine when it is safe to return. The shift of control from legal standards to the state’s objective perspective has increased the power of the state to become the primary decision-maker, creating a disruption in the system. This puts the safety of refugees in danger, deteriorating its intent to provide protection to vulnerable individuals. The state’s objective perspective cannot be the premise for coercing refugees to return nor can it replace the value of the refugee’s subjective perspective. Ignoring the refugee voice increases the likelihood that they will be unable to fulfill the requirements for refugee protection, which they may otherwise be eligible for, or remain refugees indefinitely, causing even more “burdens” for host states. The lack of consideration of the refugee’s perspective along with the current ability of states to hide

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<sup>284</sup>Chimni, *supra* note 28 at 9.

behind its sovereignty to avoid refugee situations enables states to largely ignore their obligations to both international refugee law and international human rights law.

Today's refugees "are less often middle-class people who need legal assimilation in a second European culture [for whom the 1951 Convention was created] than destitute people with a wide variety of special needs."<sup>285</sup> If we are to address the challenges which stem from this outdated context then we must be willing to negotiate the terms under which it presently exists. A "fundamental rethinking of norms"<sup>286</sup> is necessary to achieve the objective of refugee law since current practice clearly illustrates that states do not respect the current approach to legal standards of refugee law. Legal instruments must be re-developed under a normative framework to reflect human rights standards and use more restrictive language for less state interpretation. If the system continues to function in its present capacity then refugees will continue to find themselves in a state of perpetual fear and eternal limbo and refugee law will remain in turmoil.

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<sup>285</sup>Kennedy, *supra* note 275 at 5.

<sup>286</sup>Baruciski, *supra* note 2 at 245.

## VII. APPENDIX

### A. Methodological Approach

#### *Why a Focus on Former Liberian Refugees?*

This particular community was chosen for the case study in order to address the following:

- This particular community has not experienced research fatigue thus information provided may prove to be new and insightful for future situations where refugees are at risk of refoulement and acts of hostilities by the host government.
- There was very little reported on the camp's invasion by Ghanaian security forces on 17 and 22 March 2008 and the weeks that followed.
- Few reports or studies exist on how these events in March 2008 affected the residents of Buduburam and their situation as refugees in Ghana.
- It is important to consider the fact that many Liberian refugees feared for their lives and believed they were in greater danger if they continued to reside in Ghana rather than if they were to return to a still unstable Liberia, thus resulting in "voluntary" repatriation.
- This case study offers a prime example of how host countries often have immense influence on the news which reaches the international media sources.<sup>287</sup>
- Due to the lack of international press coverage and factual documented accounts of the situation in Buduburam, the international community never condemned the Ghanaian government's actions.

#### *Methodological Approach*

I conducted narratives with 11 former Liberian refugees in the cities of Monrovia

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<sup>287</sup>Most of the information released to the international community was fabricated, focusing mainly on a report that refugees were protesting naked rather than the motive for the protest in the first place. "The media has been rife with inaccurate and contradictory reports, making a clear assessment of the situation confusing at best. Neither the government of Ghana nor the United Nations High Commissioner for Refugees appears to consider the safety and long-term wellbeing of the refugees as a priority," as described in Megan Sullivan, *N.G.O.'s and Concerned Individuals Form Grassroots Campaign to Safeguard Human Rights of Refugees in Ghana*, World Press (April 2008). See also BBC News Africa, *Ghana to Expel Female Protestors*, BBC News, (18 March 2008), available at <http://news.bbc.co.uk/2/hi/africa/7302243.stm>.

and Buchanan over a 2-week time period in January 2011. The narratives<sup>288</sup> included individuals with various perspectives and experiences: returnees who participated in a repatriation program both before and after 17 March 2008. I recruited participants through former acquaintances from the Buduburam Refugee Camp, known as “gatekeepers”. Each gatekeeper referred me to a participant who was then able to refer me to additional participants for the study. By using this “snowball” sampling technique I mitigated any bias responses by being unacquainted with the participants.<sup>289</sup>

I conducted informal conversation with each possible participant during the recruitment process, before selecting participants, in order to determine whether or not it would be appropriate for the participant to partake in the study.<sup>290</sup> Before each narrative session began, I made certain that each individual had a clear understanding of the project description as well as the process of narrative inquiry.<sup>291</sup> Individuals understood that

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<sup>288</sup>Initially, I planned to conduct a survey but due to the population sample size (Buduburam’s population at the time of the 2008 invasion was around 40,000 and would have required the completion of 400 surveys) I decided to conduct narratives instead. The purpose of the research was not to obtain a representative sample but rather the subjective element to repatriation in the form of the individual refugee perspective. By conducting narratives I was able to spend a great deal of time with each individual to hear their stories and experiences so that I could acquire the individual’s full perspective. It also allowed for follow-up appointments as well as a review, with the participant, of their narrative transcript (as described below).

<sup>289</sup>If I had been acquainted with a participant and they were aware of the responses that I sought then they may have felt more inclined to frame their responses around this context if they thought it would help me with my research.

<sup>290</sup>Another reason for conducting only eleven narratives is that in the recruitment process for participants I needed time to conduct informal conversations with potential participants, as suggested in the literature regarding the narrative approach, prior to inviting the participant to participate in the research. Since participants may be unable to see potential consequences, such as susceptibility to negative mood states and depression, through these informal conversations I was able to recognize any possible vulnerabilities which could have led to possible consequences or harm if the participant had participated. While I did not believe that my topic of research would lead to such consequences I did want to ensure that all safeguards were in place to prevent any harm to the individual participant. Therefore, I planned that if at any point of the recruitment process or during the story-telling phase if a situation involving such vulnerability arose I would contact a professional Psychosocial Worker at the Liberian Association of Psychosocial Services or another professional if necessary. Fortunately, such a situation did not arise. As mentioned in both the Smythe and Murray literature and per the suggestion of the Center for Migration and Refugee Studies, I obtained the contacts for these professionals, such as the Liberian Association of Psychosocial Services, prior to my arrival in Liberia. As described in William E. Smythe and Maureen J. Murray, *Owning the Story: Ethical Considerations in Narrative Research*, 10 ETHICS AND BEHAVIOR 313(2000).

<sup>291</sup>The participant must have a clear understanding that a narrative is the process through which they tell their story or their experiences through their own perspective. However, this narration, while told from their own perspective, will later be re-narrated, from the researcher’s perspective. As Smythe suggested, I allowed for time, in this case two days, to pass before conducting the narrative to ensure full consent and understanding of what the research process entailed and to ensure that the participant told their own story, with their own words and from their own perspective. Also, individuals understood that no compensation

participation was on a completely participatory basis with an emphasis on the need for the individual's honesty throughout the narrative process. I retained anonymity by not recording any personal details, in order to diminish any security concerns that these former refugees may have as well as to minimize the bias within the study's results.<sup>292</sup> Furthermore, any participant interested in receiving the results of the study will be given the opportunity to receive them. All observations and interviews were conducted in a location of the participants' choice to ensure their comfort and safety.<sup>293</sup> I assured each participant of the importance of confidentiality in this study and presented them with an informed consent form for their review and signature; the consent forms were not shared with anyone other than me.<sup>294</sup> I reminded participants that at any point throughout the course of the study if they decided to no longer participate then they had the right to refrain from participating further and that any information they had provided up to that point in time would be discarded. Participants were not below the age of twenty-one in order to ensure that they were legally independent, and not dependents, when they repatriated to Liberia.<sup>295</sup>

### ***The Importance of the Narrative Inquiry (Expanded)***

The narrative inquiry is essential as the methodological approach to this study

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would be awarded for their participation. *Id.*

<sup>292</sup>It was important that the participant was aware that their identity would not be used in the written research but that a numbering system, only known to me, would be used in place; any personal and demographic information that they revealed was not incorporated so as to protect their identity. Furthermore, those who referred me to the participants were *not* present at any point of the narrative process, including the follow-up and review of the transcripts. *Id.*

<sup>293</sup>Only the participant and I were present during the course of the narrative, unless he/she wished to have someone else present during this time period. No acquaintances were involved in the actual narrative process.

<sup>294</sup>It was highly understood that many participants would be unwilling to sign the form but it was clear that their oral consent was suffice to participate in the narrative. Only two of the eleven participants refused to sign the form but did give their oral consent to participation. Furthermore, while the informed consent does not allow for the course of nature that narratives often take, the participant and I relied on the "process consent", which is an on-going understanding of consent that will last through the duration of the narrative process. Therefore, at any time, either during or after the narrative phase, if the participant felt that the narrative moved beyond the boundaries from which they were comfortable then they would have been able to withdraw their participation and data. All data, including the consent forms, will be destroyed at the end of the 3 year time frame that is required by the IRB. Thomas Hadjistavropoulos and William E. Smythe, *Elements of Risk in Qualitative Research*, 11 ETHICS & BEHAVIOR 164 (2010).

<sup>295</sup>In order to register for voluntary repatriation an individual had to be of the legal age of 18 in order for his or her decision to repatriate to be considered legal. Those under the age had to repatriate with their parents, or other family members, or else did not have the ability to return to Liberia.

because the objective is to understand the subjective element of the refugee experience through the individual's perspective.<sup>296</sup> Narratives can be "used to effect cultural change, transfer complex tacit knowledge through implicit communication, construct identity, aid education, contribute to sense making, act as a source of understanding, and study decision making."<sup>297</sup> Participants are able to talk openly and freely about their experiences and the events surrounding their repatriation; they are not confined to the boundaries of particular questions as presented in other forms of methodology. This allows room for additional information to be provided which may be useful and insightful and may not have been offered otherwise. The "narrative lends itself to a qualitative enquiry in order to capture the rich data within stories"<sup>298</sup> and are able to "address the ambiguity, uncertainty, complexity and dynamism of individual, group and organizational phenomena."<sup>299</sup> Surveys, questionnaires and other types of quantitative analyses are unable to capture such information. While the narrative stories "are essentially individual constructs of human experience and can have limitations that may affect objectivity,"<sup>300</sup> they can offer "different viewpoints and interpret collected data to identify similarities and differences in experiences and actions."<sup>301</sup>

#### ***Approach to Conducting Narratives***

When conducting narrative inquiries the research participant is regarded as a collaborator rather than an informant because the researcher does not guide the participant with the agenda of the research, such as in other methodological approaches. Instead research is conducted through forms of dialogue between the researcher and the collaborator (participant) with the research subject as a key participant in the discussion.

I met with each individual twice, for a period of a couple of hours, with time set aside during the two weeks to allow for additional follow-ups if it was necessary. In

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<sup>296</sup>*Id.* The purpose of narrative is not to clarify what the "participants intended to say but, rather, to interpret the underlying, implicit meanings behind what they say." Such narratives are known as "typal narratives because they attempt to subsume individuals and their life experiences within broader types that are of theoretical interest to social scientists."

<sup>297</sup>M Mitchell and M Egudo, *A Review of Narrative Methodology*, Australian Government Department of Defence: Defence Science and Technology Organization, II (November 2003).

<sup>298</sup>*Id.* at 2.

<sup>299</sup>*Id.* at executive summary.

<sup>300</sup>*Id.* at 5.

<sup>301</sup>*Id.*

order to illicit information and to create a standard across the group I asked the same questions to each participant. I avoided asking direct questions so that the research would remain in the narrative format while focusing on the focal point of my research. By asking indirect and open-ended questions I was able to open up the discussion for the participant to then begin the process of telling their stories. Examples of questions asked include:

- Tell me about life in Ghana.
- Why did you choose to return to Liberia rather than remain in Ghana?
- Tell me about the repatriation process.

### ***Data Collection Method***

Through the narratives I successfully obtained individual stories and experiences from returnees and their time prior to and during the decision-making process in which they decide to repatriate back to Liberia.<sup>302</sup> No personal information was recorded and a letter and number system was created (in place of a pseudonym) to refer to individuals in the final report.<sup>303</sup> After the completion of each narrative, I consulted with the participant to ensure that their transcript was an accurate reflection of their narration along with a transcript of my interpretations from their narrative.<sup>304</sup> I considered any feedback from the participant and incorporated it into the data, if it proved to be of vital importance.<sup>305</sup> Any recorded data will be destroyed after a three year time period.

B.

### **Informed Consent Form<sup>306</sup>**

Hello,

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<sup>302</sup>In order to retain accuracy I used the assistance of an acquaintance when stories contain cultural elements (expressions, phrases) that I was unfamiliar with. Any of these necessary clarifications were made at a time separate from the time period of the narrative to ensure the safety and protect the identity of the participant.

<sup>303</sup>Their experiences were hand-written using a numbering system, only known to me, so that only I know to which participant the number and corresponding information belong. It also assists in the preservation of anonymity in the unfortunate event that any materials are lost or stolen as there would be no manner of tracing the information back to the participant.

<sup>304</sup>If there was a particular topic of concern then a mutual agreement was made before the information was changed and thus incorporated into the research, in case the alterations greatly impacted the protection of the individual, the researcher and the integrity of the research.

<sup>305</sup>Smythe et al., *supra* note 290. This also allows for further protection as the participant has the ability to give their final consent to their information begin included in the final research.

<sup>306</sup>This informed consent form was taken from the CMRS Research and Methodology course that I took with Dr. Ray Jureidini during the spring semester 2010 and was adapted to fit my research topic.

I am a student in the International Human Rights Law Program at the American University in Cairo. For my thesis research I am conducting a study that seeks to understand the perspective of the individual refugee during the process of repatriation. The main aim of this study is to understand the conditions and experiences of Liberian refugees in the repatriation process and the role that the Ghanaian government played in this processes both prior to and during the process of repatriation. I am asking for your help and cooperation. I would like to ask you a few questions and listen to your experiences of living in Ghana and the process of repatriation.

During the course of this study, it is possible that the discussion will move towards a topic that may be of an upsetting nature. For this reason, you may stop the interview whenever you wish and the information that you have provided will be withdrawn. Please understand that while you will give your personal perspective on your experiences, the information will then be re-narrated from my own perspective. I will allow you to review the transcript of your narrative as well as that of my perspective before I include it in my research.<sup>307</sup> In the final research report all names and demographic information will be disguised with pseudonyms so that your identity will be protected.

When this study has been completed and is in the form of a written document, it will only be made available to students and professors at the American University in Cairo. It is also possible that at some later stage the results of the study may be published, however, no individual will be able to be identified in that publication, so your anonymity will be preserved.

Thank you for your cooperation.

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I have been informed that the records, transcript and/or notes of the interview will be preserved in a secure place at the American University in Cairo. In this context, I agree to give consent that all of the information provided by me during this interview can be published. I want my name to be **used / kept** confidential in any outcomes of this study.

Date:

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<sup>307</sup>Smythe et al., *supra* note 290. Smythe suggests that the researcher warns the participant that through the course of the narrative the path of the storytelling experience may lead in various directions, including those which may not have been intended by the participants. It is up to the researcher to use their intuition and judgment to avoid harm and maintain informed consent throughout the process.