

Article

Refugee Responses, State-like Behavior, and Accountability for Human Rights Violations: A Case Study of Sexual Violence in Guinea's Refugee Camps

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This Article advocates for better access to justice and a more comprehensive accountability system in refugee camps. Refugee women are frequently subject to sexual violence and sexual exploitation in the country of refuge, and find themselves without ways of redressing these fundamental rights violations. This Article uses the sexual violence and sexual exploitation that was documented in refugee camps in Guinea in 2002 as an illustrative case study of the protection problems faced by refugee women in many parts of the world. The author argues that the host government, UNHCR, and various non-governmental organizations operated together to fulfill state-like functions in long-term refugee camps, but their efforts left accountability, access to justice, and enforcement of women's human rights laws sorely lacking. The movement toward rights based refuge – embraced in varying forms by the aid providers in Guinea – provides a theoretical and practical framework for greater rights recognition, but has not yet delivered a complete response to the specific human rights violations faced by refugee women. If rights-based refuge is to succeed in refugee settings like Guinea, aid providers must make the protection of women's human rights a central

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concern by instituting a robust, multi-layered system of accountability to which all refugee women have access.

INTRODUCTION

Women and girls in refugee camps around the world are deeply vulnerable to sexual violence and sexual exploitation.¹ Not only are many of these women subject to sexual violence when fleeing their home countries, but they find themselves in desperate need of food or shelter, in perilous security situations, and often without the protection of family members in their countries of refuge. Sexual violence and sexual exploitation, which in many contexts have deep cultural roots, but which are greatly exacerbated in the refugee setting, constitute violations of refugee women's fundamental human rights. In emergency and post-emergency situations, protecting the rights of refugee women is both a task of crucial importance and a task that has not yet been adequately met.

Refugee women lack access to justice and accountability mechanisms. Over the past decade, there have been broad attempts to incorporate human rights norms into refugee responses. Many of the actors that provide relief to refugees – including the United Nations High Commissioner for Refugees (“UNHCR”) and a committed cadre of international non-governmental organizations (“NGOs”) – have embraced the concept of rights-based refuge. However, rights-based refuge – which recognizes the fundamental human dignity and rights-bearing nature of

1. See, e.g., The Secretary-General, *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services: Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa*, Supp. (No. 1), ¶ 5, U.N. Doc. A/57/1 (Oct. 11, 2002); Mike Jendrzeczyk, *From Eating Rats in North Korea to Sex Abuse in China: A Refugee Tragedy*, INT'L HERALD TRIB., Nov. 19, 2002, at 8 (discussing the vulnerability of female North Korean refugees in China, and claiming that refugee women are sold or abducted into “sexual slavery” and frequently subject to domestic violence); Michael Wines, *Zambia's Plight Goes Begging in Year of Disasters*, N.Y. TIMES, Feb. 23, 2006, at A1 (discussing the ration cuts in the Nangweshi refugee camp near the Angolan border in late 2004, and stating that “some of the women in the camps turned to prostitution to feed their children”); HUMAN RIGHTS WATCH, HIDDEN IN PLAIN VIEW: REFUGEES LIVING WITHOUT PROTECTION IN NAIROBI AND KAMPALA (Nov. 2002), available at <http://www.hrw.org/reports/2002/kenyugan.pdf> (discussing the prevalence of sexual violence, harassment, and extortion among refugees living in Nairobi and Kampala); HUMAN RIGHTS WATCH, SEEKING PROTECTION: ADDRESSING SEXUAL AND DOMESTIC VIOLENCE IN TANZANIA'S REFUGEE CAMPS (Oct. 2000), available at <http://www.hrw.org/reports/2000/tanzania> (alleging that Burundian refugee women confronted wide-spread sexual abuse and domestic violence in Tanzanian refugee camps); HUMAN RIGHTS WATCH, SEXUAL VIOLENCE AND ITS CONSEQUENCES AMONG DISPLACED PERSONS IN DARFUR AND CHAD: A HUMAN RIGHTS WATCH BRIEFING PAPER (Apr. 12, 2005), available at <http://hrw.org/backgrounder/africa/darfur0505.pdf> (discussing the continuing risk of rape and assault for refugee women and girls who fled Darfur and live in refugee camps in Chad); HUMAN RIGHTS WATCH, TRAPPED BY INEQUALITY: BHUTANESE REFUGEE WOMEN IN NEPAL (Sept. 2003), available at <http://hrw.org/reports/2003/nepal0903/nepal0903full.pdf> (examining the uneven response of UNHCR and the government of Nepal to rape, domestic violence, sexual and physical assault, and trafficking of girls and women from refugee camps).

the refugee – must be interpreted in a more generous and comprehensive manner in order to be fully effective for refugee women. Looking at rights-based refuge through the lens of sexual violence tests the commitment of aid providers to this re-conceptualized notion of humanitarian aid. As of yet, rights-based refuge has not found a way to incorporate fundamental mechanisms for accountability and access to justice. Without these crucial tools for protecting the human rights of refugees, the movement towards rights-based refuge remains incomplete.

The sexual violence and sexual exploitation that was documented in refugee camps in Guinea in 2002² provides an illustrative case study of the problems faced by refugee women in many parts of the world. During this period, Guinea's refugees were cared for by a trio of aid providers – the host government, UNHCR, and various NGOs – that is representative of the actors in camp governance in many other refugee situations around the world. In Guinea, much like in other refugee settings, this trio of aid providers delivers a broad range of state-like functions from security to health care. However, the trio of aid providers in Guinea in 2002 struggled to offer strong mechanisms for accountability and access to justice. Since 2002, many aid providers in Guinea have taken positive steps towards rights-based refuge by finding ways to redress sexual violence and sexual exploitation. However, despite the efforts to incorporate rights-based refuge into aid delivery, Guinea still lacks a comprehensive and durable model for providing accountability and access to justice for refugee women subject to sexual violence. By examining the structure of aid delivery in Guinea, this paper aims to make the case for a more substantial incorporation of accountability mechanisms in refugee settings around the world.

This paper starts by giving a brief overview of the waves of refugee flows into Guinea since 1990. I review the particular protection concerns of refugee women and discuss the responses of the Guinean government, UNHCR, and the NGOs working in Guinea at the time. Second, I examine the parallel human rights initiatives of this trio of aid providers – all of which recognize the rights-bearing nature of refugees – and argue that all three developments lay the groundwork for rights-based refuge, but ultimately fail to offer a complete response to the specific human rights violations faced by refugee women.

2. See, e.g., *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services: Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa*, supra note 1; *Refugees Describe Food-for-Sex Abuse*, Associated Press, Mar. 1, 2002; *Mano River Union: Reports that Child Refugees Sexually Exploited Shock Annan*, U. N. INTEGRATED REGIONAL INFORMATION NETWORK, Feb. 27, 2002, <http://www.irinnews.org/print.asp?ReportID=23126>; United Nations High Commissioner for Refugees (UNHCR) & Save the Children – UK, *Note for Implementing and Operational Partners on Sexual Violence and Exploitation: The Experience of Refugee Children in Guinea, Liberia, and Sierra Leone: Based on Initial Findings and Recommendations from Assessment Mission 22 October – 30 November 2001*, 2 (Feb. 27, 2002), available at <http://www.unhcr.org/cgi-bin/texis/vtx/partners/pendoc/pdf?tbl=PARTNERS&id=3c7c89a4> [hereinafter UNHCR/ Save the Children (UK) Report].

Third, I argue that the Guinean government, UNHCR, and the NGOs operate together to fulfill state-like functions in the refugee camps, but that their lack of coordination leaves accountability, access to justice, and enforcement of women's human rights laws sorely lacking. Finally, I conclude that if rights-based refuge is to succeed in refugee settings like Guinea, aid providers must make the protection of women's human rights a central concern by instituting a robust, multi-layered system of accountability to which all refugee women have access.

I. GUINEA'S LONG-TERM REFUGEE CRISIS

A. Refugee Influxes and Long-Term Camps

Since 1991, successive waves of refugees from the West African sub-region have poured into Guinea.³ More than 90% of these refugees – amounting to more than 500,000 people – came from Sierra Leone or Liberia.⁴ Following outbreaks of violence in 2001-2002, scores of refugees arrived in Guinea from Côte d'Ivoire as well.⁵ For Guinea, a country of around 9 million people⁶ and one that ranks in the bottom 30 countries on the human development index,⁷ these refugee numbers are overwhelming. The refugee influx in Guinea is proportional to the United States of America absorbing more than 16 million refugees in a ten-year period.⁸

As is characteristic of many refugee flows, most of the refugees arriving in Guinea were women and young children unaccompanied by

3. UNHCR, STATISTICAL YEARBOOK: GUINEA, available at <http://www.unhcr.ch/cgi-bin/texis/vtx/statistics/openssl.pdf?tbl=STATISTICS&id=414ad5837&page=statistics> (last visited May 8, 2005) (reporting that in 1993, there were 577,158 refugees in Guinea, primarily from Liberia or Sierra Leone). As of 2002, there were 182,163 refugees in Guinea, primarily from Liberia, Sierra Leone, and Côte d'Ivoire. *Id.* Between 2000 and 2002, there were always more than 175,000 refugees in Guinea. *Id.* Between 1993 and 2000, there were always more than 400,000 refugees in Guinea. *Id.*

4. *Id.* at 317 (indicating that in 1993, 416,064 refugees from Liberia and 161,092 refugees from Sierra Leone were in Guinea, and in 2002, 119,293 refugees from Liberia and 60,553 refugees from Sierra Leone were in Guinea).

5. *Id.* (noting that in 2002, 2,188 refugees from Côte d'Ivoire were in Guinea).

6. U.S. CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK: GUINEA, <http://www.cia.gov/cia/publications/factbook/geos/gv.html> (last modified Jan. 10, 2006) (stating that the population estimate as of July 2005 was 9,467,866).

7. U.N. DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2004: CULTURAL LIBERTY IN TODAY'S DIVERSE WORLD, http://hdr.undp.org/reports/global/2004/pdf/hdr04_complete.pdf, 31 (2004). The human development index measures a country's achievements in terms of life expectancy, educational attainment, and adjusted real income. Guinea ranks 160th among 177 countries. *Id.* at 232 tbl. 27.

8. See U.S. CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK: UNITED STATES OF AMERICA, <http://www.cia.gov/cia/publications/factbook/geos/us.html> (last modified Jan. 10, 2006) (estimating approximately 300,000,000 people for the population of the United States). The calculation in the text is reached by dividing 500,000 (an approximation of the number of refugees in Guinea during the 1990s) by 9,000,000 (an approximation of the Guinean population during this period) and multiplying by 300,000,000.

male family members, because many of the men and older boys had been recruited to fight in their home country's conflicts.⁹ Many of the women and girls who sought refuge in Guinea had been subject to extensive sexual violence before leaving their home countries of Sierra Leone,¹⁰ Liberia,¹¹ and Côte d'Ivoire.¹² Guinea was under pressure to absorb huge numbers of refugees and to do so in a way that responded adequately to the horrific abuses the refugees had suffered before fleeing to Guinea.

Almost all of these refugees flooded into an interior, forested district that curls southwards and juts into Sierra Leone, Liberia, and Côte d'Ivoire. The Forest Region is primarily rural and is one of the poorest areas of Guinea. The area, which has a population that is ethnically distinct from the ruling Soussous¹³ and is geographically distant from the capital Conakry, has not seen significant investment in public infrastructure in decades.¹⁴ The enormous influx of refugees exacerbated the already alarming poverty in this part of Guinea.¹⁵ The Forest Region does not have the economic or environmental infrastructure to absorb large numbers of refugees, and the increase in population rapidly led to deforestation and competition for agricultural land.¹⁶

When the refugee crisis began in the early 1990s, many of the refugees

9. See LAWYERS COMM. FOR HUMAN RIGHTS, REFUGEES, REBELS, AND THE QUEST FOR JUSTICE 58 (2002); HUMAN RIGHTS WATCH, YOUTH, POVERTY, AND BLOOD: THE LETHAL LEGACY OF WEST AFRICA'S REGIONAL WARRIORS, 27 (Mar. 2005), available at <http://www.hrw.org/reports/2005/westafrica0405/westafrica0405.pdf> (discussing the patterns of recruitment of boys and young men during the Sierra Leonean and Liberian conflicts in the 1990s, and noting that humanitarian workers in Guinean refugee camps observed that an alarmingly small number of men and boys above fourteen were reaching the camps).

10. HUMAN RIGHTS WATCH, "WE'LL KILL YOU IF YOU CRY": SEXUAL VIOLENCE IN THE SIERRA LEONE CONFLICT, 25-48 (Jan. 2003), available at <http://www.hrw.org/reports/2003/sierraleone/sierleon0103.pdf>.

11. HUMAN RIGHTS WATCH, LIBERIAN REFUGEES IN GUINEA: REFOULEMENT, MILITARIZATION OF CAMPS, AND OTHER PROTECTION CONCERNS, 19 (Nov. 2000), available at <http://www.hrw.org/reports/2002/guinea/guinea1102.pdf>.

12. HUMAN RIGHTS WATCH, TRAPPED BETWEEN TWO WARS: VIOLENCE AGAINST CIVILIANS IN WESTERN COTE D'IVOIRE, 28 (Aug. 2003), available at <http://www.hrw.org/reports/2003/cotedivoire0803/cotedivoire0803.pdf>.

13. U.S. DEPT. OF STATE, COUNTRY REPORT ON HUMAN RIGHTS PRACTICES: GUINEA 2004, (Feb. 28, 2005), <http://www.state.gov/g/drl/rls/hrrpt/2004/41607.htm>. President Lansana Conté and most of his senior officials are ethnically Soussou, a minority tribe in Guinea. *Id.*

14. *Guinea: Further Economic Decline Expected as Donors Quit*, U. N. INTEGRATED REGIONAL INFORMATION NETWORK, June 29, 2004, <http://www.irinnews.org/print.asp?ReportID=41918> ("In the remote Forest Region, in southern Guinea, the last public investment in hydraulic and electric services or highway infrastructures was in 1961. Since then, the population of the region has increased by five.").

15. See generally GIL LOESCHER, BEYOND CHARITY: INTERNATIONAL COOPERATION AND THE GLOBAL REFUGEE CRISIS 148-49 (1993) [hereinafter LOESCHER, BEYOND CHARITY] (discussing the detrimental effects of large refugee influxes in poor countries of first asylum).

16. *Id.*; UNHCR, *Economic and Social Impact of Massive Refugee Populations on Host Developing Countries as well as Other Countries*, ¶ 11, U.N. Doc. EC/54/SC/CRP.5 (Feb. 18, 2004), available at <http://www.unhcr.ch/cgi-bin/texis/vtx/excom/opendoc.pdf?tbl=EXCOM&id=403dcdc64>.

in the Forest Region were absorbed into local villages.¹⁷ During this period, the impact on the host population was relatively positive. For instance, as the public health specialist Wim Van Damme argues, while refugees were largely living among the host community, the provision of health services to refugees also benefited the host community.¹⁸ As the refugee influx grew, however, and the numbers became overwhelming, many refugees gravitated toward UNHCR camps. Initially, these camps were mostly along the borders, dangerously close to the violence from which the refugees had fled. Some refugees, mostly men with marketable skills, continued to live in the towns of N'Zérékoré, Macenta, and Guéckedou, or in nearby villages. However, because many of the refugees were women traveling alone or with young children, they lacked the resources or skills to find means of survival outside the camps. The wars in Liberia and Sierra Leone continued unabated, and so by the late 1990s the camps had become semi-permanent, long-term settlements for hundreds of thousands of people. As with many other refugee situations, finding a permanent, or "durable," solution to this refugee crisis eluded the political actors in the field.¹⁹ The Guinean government, like many other host governments in countries of first asylum, was deeply reluctant to accept the refugees as permanent citizens.²⁰

As more refugees arrived in Guinea, tension between hosts and refugees increased, a phenomenon that had a particularly severe impact on refugee women. The government took various measures hostile to refugee protection, periodically closing the borders to Sierra Leone and Liberia.²¹ Resentment among the host communities increased in part because refugees in camps had greater access than Guineans to resources, such as income generating loans, food distribution, and primary education, that lead to the realization of social and economic rights.²²

17. Wim Van Damme, *Do Refugees Belong in Camps? Experiences from Goma and Guinea*, 346 THE LANCET 360, 361 (1995).

18. Wim Van Damme et al., *Effects of a Refugee-Assistance Programme on Host Populations in Guinea as Measured by Obstetric Interventions*, 351 THE LANCET 1609 (1998).

19. U.N. Commissioner for Refugees Executive Comm. Programme, "Protracted Refugee Situations," ¶ 4, U.N. Doc. EC/54/SC/CRP.14 (June 10, 2004), available at <http://www.unhcr.org/cgi-bin/texis/vtx/excom/openssl.pdf?tbl=EXCOM&id=40c982172> (attributing the protracted refugee situations in Guinea and elsewhere to "political impasses").

20. See generally GIL LOESCHER, *THE UNHCR AND WORLD POLITICS: A PERILOUS PATH* 351 (2001) (discussing the increasing reluctance on the part of countries of first asylum to see local integration as a viable permanent solution to refugee crises).

21. LAWYERS COMM. FOR HUMAN RIGHTS, *supra* note 9, at 60 (describing arrests and removal of suspected rebels and adult members of their families at the border with Sierra Leone in 1998 and stating that independent observers from UNHCR, the International Committee of the Red Cross or elsewhere were not permitted to observe these operations); see also *id.* at 74 (discussing the ramifications of these border closings on refugee protection).

22. Jeremy Konyndyk, *Towards a New Model for Post-Emergency Refugee Assistance*, HUMANITARIAN PRACTICE NETWORK, www.odihpn.org/report.asp?ID=2745 (last visited February 27, 2006) (arguing that "emergency-level services" provided to refugees exceed the resources available to the host population and that provision of these services increases

The deterioration in host-refugee relations accelerated when militia violence in the neighboring countries bled over the border in late 2000. Violence had initially spilled over into Guinea in mid-1998, and hit-and-run raids took place throughout 1999.²³ In late 2000, these attacks took on a “new level of intensity and sophistication” when intense fighting broke out on both sides of the Liberian-Guinean border near Guéckedou.²⁴ These cross-border incursions further disrupted life in the Forest Region of Guinea,²⁵ leading to fatalities, injuries, and sexual crimes against women. In addition, the incursions caused considerable internal displacement of both Guinean nationals and refugees.²⁶ The violence caused major economic disruption and compounded domestic instability.²⁷ In September 2000, Guinean president Lansana Conté appeared on radio and television and issued a public plea to protect the country from rebel attacks.²⁸ As a result, mobs in Conakry attacked and raped Sierra Leonean refugee women living in the capital city.²⁹

After the incursions in 2000-2001, UNHCR became increasingly concerned about deteriorating security in the camps near the borders.³⁰ Throughout 2000, the Guinean camps had been infiltrated by rebel groups.³¹ One particular cross-border attack in 2000 – in which one

tensions with the host communities); *see also* UNHCR Evaluation and Policy Analysis Unit, *Working Paper: When is a Refugee not a Refugee? Flexible Social Categories and Host/Refugee Relations in Guinea* (March 2003) (prepared by B. Lacey Andrews) (analyzing the economic and social benefits in the camps and suggesting that the International Rescue Committee schools in the refugee camps are actually pull factors for those considering migration from Liberia).

23. LAWYERS COMM. FOR HUMAN RIGHTS, *supra* note 9, at 65-66 (detailing incidents in which elements of the Sierra Leonean RUF stormed villages in Guinea).

24. *Id.* at 73.

25. *UN Reports Accuse Guinea of Violating Arms Embargo on Liberia*, BBC MONITORING INTERNATIONAL REPORTS, Nov. 2, 2002 (“The Liberian civil war has claimed tens of thousands of lives and caused hundreds of thousands of refugees. There have been several incursions into Guinea, which have claimed lives and caused material damage in the neighbouring divisions.”).

26. AMNESTY INTERNATIONAL, GUINEA, LIBERIA, AND SIERRA LEONE: A HUMAN RIGHTS CRISIS FOR REFUGEES AND THE INTERNALLY DISPLACED 1-2 (2001), <http://web.amnesty.org/library/print/ENGAFR050052001>.

27. U.S. CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK: GUINEA, *supra* note 6.

28. Press Release, Human Rights Watch, *Refugee Women in Guinea Raped* (Sept. 13, 2000), <http://www.hrw.org/english/docs/2000/09/13/guinea760.htm>; *see also* HUMAN RIGHTS WATCH, TESTIMONIES FROM SIERRA LEONEAN REFUGEES IN CONAKRY, GUINEA (Sept. 2001), <http://hrw.org/english/docs/2000/09/01/sierra3097.htm>.

29. Human Rights Watch, *Refugee Women in Guinea Raped*, *supra* note 28; Human Rights Watch, *Testimonies from Sierra Leonean Refugees in Conakry, Guinea*, *supra* note 28.

30. UNHCR, *Guinea: Relocation from Border Camps: a Summary of Comments by UNHCR Spokesperson Ron Redmond*, (2000), <http://www.unhcr.ch/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&page=home&ID=3ae6b82678>.

31. *See* UNHCR, *Possible Militia Recruitment in Guinea Camps Seen as Threat to Refugees*, UNHCR UPDATE, Jan. 25, 2001, <http://www.unhcr.ch/cgi-bin/texis/vtx/news/opendoc.pdf?tbl=NEWS&id=3ae6b807c> (discussing militia presence in camps near Guéckedou, including the Nyaedou camp); HUMAN RIGHTS WATCH, *LIBERIAN REFUGEES IN GUINEA*, *supra* note 11 (documenting the presence of LURD combatants and weapons within Kouankan Camp near the border town of Macenta); HUMAN RIGHTS WATCH, *YOUTH, POVERTY, AND*

UNHCR international staffer was killed and another abducted – spurred UNHCR to begin relocating the camps.³² Not all refugees were willing to relocate, fearing the hostility of Guineans farther from the borders.³³ In addition, the Guinean government was reluctant to permit further movement of Liberian refugees to the interior of the country.³⁴ Nonetheless, during 2001-2002, UNHCR moved the majority of camp-based refugees to new camps away from the borders.³⁵

Three different groups provided aid to refugees in Guinea throughout this period: the Guinean government, UNHCR, and various NGOs. As more and more refugees were settled in camps, this aid took on a long-term character. The camps became the equivalent of small towns, with sophisticated community-service structures, including schools, marketplaces, hospitals, and income-generating opportunities.³⁶ But the trio of aid providers still managed the camps in an emergency framework (for instance, by preventing agricultural cultivation). Such a framework is damaging to the long-term welfare of refugees who remain in camps for years, in part because it discourages the development of economic self-sufficiency.³⁷

BLOOD: THE LETHAL LEGACY OF WEST AFRICA'S REGIONAL WARRIORS, *supra* note 9 (describing interviews with combatants who had been recruited from camps in Guinea).

32. Alexander G. Higgins, *UN Said One Staffer Killed, Second Missing in Guinea*, Associated Press, Sept. 18, 2000, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/news/archive/2000/09/18/international0004EDT0400.DTL>.

33. See, e.g., HUMAN RIGHTS WATCH, *GUINEA: REFUGEES STILL AT RISK: CONTINUING PROTECTION CONCERNS IN GUINEA*, 3 (Jul. 2001), available at <http://www.hrw.org/reports/2001/guinea/guinea0701.PDF> (stating that some refugees chose to remain closer to the border in order to be able to flee reprisal attacks from Guinean nationals).

34. *Guinea Moves Liberia's New Refugees into Camps Further Inland*, UNHCR NEWS STORIES, Aug. 7, 2002 ("After weeks of negotiations, UNHCR and the Guinean government have finally agreed to move more than 1,000 Liberian refugees living near the unsafe border in southern Guinea further inland to camps in Albadaria.").

35. Compare UNHCR, *Guinea as of 09 May, 2001*, <http://reliefweb.int/rw/RWB.NSF/db900LargeMaps/SKAR-64GDRZ?OpenDocument&cc=gin&rc=1> (showing refugee camps and potential resettlement sites in 2001), with UNHCR, *Guinée: Situation des Réfugiés Sierra Léonais et Libériens* (October 2001), <http://reliefweb.int/rw/RWB.NSF/db900LargeMaps/SKAR-64GBKU?OpenDocument&cc=gin> (demonstrating the relocation of Liberian refugees to camps further from the border). For a depiction of the camp locations in Guinea as of 2004, see UNHCR, *UNHCR Presence in West Africa: Refugee and Returnee Estimates* (Apr. 1, 2004), <http://www.reliefweb.int/rw/RWB.NSF/db900SID/SKAR-64GC2E?OpenDocument>. By March 2004, UNHCR was operating six main camps in the forest region: three in the Kissidougou/ Albadaria region (Kountaya, Boreah, and Telikoro), two near N'Zérékoré (Lainé and Kola), and the Kouankan camp near Macenta. *Id.*

36. Cf. Ralph Wilde, Note, *Quis Custodiet Ipsos Custodes? Why and How UNHCR Governance of "Development" Refugee Camps Should be Subject to International Human Rights Law*, 1 *YALE HUM. RTS. & DEV. L. J.* 107, 108-09 (1998) (describing the Dadaab camps in Kenya).

37. Konyndyk, *supra* note 22 (arguing that "the sustained provision of free services after the emergency phase . . . erodes refugees' livelihoods mechanisms. . . . over time these unused [job] skills deteriorate and are forgotten"); Gil Loescher, *UNHCR at Fifty: Refugee Protection and World Politics*, in *PROBLEMS OF PROTECTION: THE UNHCR, REFUGEES AND HUMAN RIGHTS* 3, 10 (Niklaus Steiner, Mark Gibney, & Gil Loescher eds., 2003) [hereinafter Loescher, *UNHCR at Fifty*] (arguing that in the 1990s, UNHCR focused "almost entirely" on repatriation, ignoring

In 2002, when the reports on sexual violence in Guinean refugee camps came to light, it became clear that the camp construction and operation had systematically disadvantaged women and left them vulnerable to sexual violence.³⁸ For instance, when the new camps were established, families of refugees were given a plot of land and materials with which to build shelters. Women without male family members had to rely on NGO staff and other refugees for construction assistance.³⁹ Other aspects of the camp design, such as water-gathering points and food distribution methods, exacerbated the extent to which women had to rely on men for assistance, thereby making them more vulnerable.⁴⁰ Job opportunities in the camps usually went to men, leaving women without independent means of income.⁴¹ Although refugee women had been settled in these camps for years, aid providers did little to redesign operations to reduce vulnerability. Since 2002, some NGOs implemented micro-enterprise schemes and other income generating projects focusing on women's self-sufficiency.⁴² However welcome these efforts are, they are only the first step in a systematic and comprehensive solution to refugee women's vulnerability.

Given that there were very few long-term solutions for these refugee women while wars were raging in Sierra Leone and Liberia, the camps effectively functioned as long-term settlements.⁴³ None of the three traditional "durable solutions" used by UNHCR – return, resettlement, or local integration – were viable long-term solutions for most refugee women in Guinea during this period.⁴⁴ For almost a decade, return to Sierra Leone and Liberia was blocked by ongoing war. Global awareness of the needs of

other possible solutions such as local integration projects, educational programs and income-generating projects, "often to the detriment of refugees").

38. UNHCR & WOMEN'S COMMISSION FOR REFUGEE WOMEN AND CHILDREN, RESPECT OUR RIGHTS: PARTNERSHIP FOR EQUALITY – REPORT ON THE DIALOGUE WITH REFUGEE WOMEN 26 (2001) [hereinafter REPORT ON THE DIALOGUE WITH REFUGEE WOMEN] (reporting on the UNHCR consultation in Guinea, and stating that women were left out of planning, implementing, and operating camps).

39. *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services: Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa*, *supra* note 1, ¶ 25.

40. UNHCR, REPORT ON THE DIALOGUE WITH REFUGEE WOMEN, *supra* note 38, at 26 (stating that water points in Guinean camps were often controlled by men, frequently resulting in physical attacks on women and girls as they fetched water, and also indicating that women faced increased vulnerability when food aid was distributed through refugee committees or through male heads of household).

41. *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services: Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa*, *supra* note 1, ¶ 22(b).

42. Konyndyk, *supra* note 22 (discussing the micro-enterprise development activities of the American Refugee Committee and other NGOs in Guinea).

43. See LOESCHER, BEYOND CHARITY, *supra* note 15, at 148-49 (discussing the general lack of durable solutions to modern refugee crises).

44. *Id.* (noting that the three traditional solutions are resettlement, local integration, and repatriation, and that for the majority of refugees in sub-Saharan Africa these are not viable answers).

West African refugee populations was low, and as long as there was no ideological or political purpose to their admission, many refugees from the West African sub-region remained outside the scope of resettlement.⁴⁵ Language barriers and escalating tension between refugee and host populations made local integration hard.⁴⁶ While a small handful of the most vulnerable refugees were resettled in Western countries, and some of the best-educated refugees (mostly men) were integrated into francophone Guinean society, most women and girls were left to languish in camp environments. With durable solutions elusive, the camps took on the character of long-term settlements.

B. Consistent Violations of the Rights of Refugee Women

Guinea's long-term camps, like many other refugee camps, are unstable environments where altered economic and social factors aggravate women's existing cultural vulnerabilities to sexual exploitation.⁴⁷ In early 2002, the extent of sexual exploitation in Guinea's refugee camps – and the fact that some aid workers were among the perpetrators – caught the eye of the international press.⁴⁸ Two reports released in 2002 – one by UNHCR/Save the Children (UK),⁴⁹ and one by the United Nations Office of Internal Oversight Services (OIOS)⁵⁰ – detailed specific cases of adolescent sexual exploitation perpetrated by aid workers. The UNHCR/Save the Children (UK) report accused sixty-seven aid workers from forty-two aid organizations of perpetrating sexual violence against young girls.⁵¹ The workers were accused of demanding sex from refugees in exchange for food or services.

In response to the UNHCR/ Save the Children (UK) report, OIOS

45. See THOMAS SPIJKERBOER, *GENDER AND REFUGEE STATUS* (2000) (arguing that Western countries are taking on increasingly hostile attitudes to refugee resettlement).

46. See, e.g., Konyndyk, *supra* note 22 (“While refugees receive extensive support from humanitarian agencies, impoverished Guineans in nearby villages have little food, low-quality health care and under-resourced schools. This has caused resentment between the host and refugee populations, leading to violence on a number of occasions.”).

47. See JENNIFER HYNDMAN, *Managing Difference: Gender and Culture in Humanitarian Emergencies*, in *MANAGING DISPLACEMENT: REFUGEES AND THE POLITICS OF HUMANITARIANISM* (2000) (discussing the prevalence of gender-based violence in refugee camps); *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services: Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa*, *supra* note 1 (discussing sexual violence in refugee and IDP camps in Guinea, Liberia, Sierra Leone, and other parts of the West African sub-region); see also UNHCR/Save the Children (UK) Report, *supra* note 2.

48. See, e.g., *Refugees Describe Food-for-Sex Abuse*, Associated Press, *supra* note 2; *Mano River Union: Reports that Child Refugees Sexually Exploited Shock Annan*, U. N. INTEGRATED REGIONAL INFORMATION NETWORK, *supra* note 2.

49. UNHCR/ Save the Children (UK) Report, *supra* note 47, at 4.

50. *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services: Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa*, *supra* note 1, at 6-11.

51. UNHCR/ Save the Children (UK) Report, *supra* note 2, at 2.

conducted an in-depth investigation into allegations of sexual exploitation throughout the West African sub-region.⁵² In spite of its critique of the methodology and conclusions of the UNHCR/ Save the Children (UK) report, the OIOS report also found cases of sexual exploitation of refugees by aid workers, albeit much reduced compared to the allegations in the UNHCR/ Save the Children (UK) report.⁵³ The OIOS report looked at forty-three cases in Guinea, Liberia, and Sierra Leone,⁵⁴ and found that ten cases could be substantiated against aid workers (one United Nations Volunteer, one peacekeeper, and eight NGO workers).⁵⁵ OIOS concluded that, although it could not independently verify the cases in the UNHCR/ Save the Children (UK) report, there was considerable cause for concern.⁵⁶ OIOS pointed to reports from groups of unconnected refugees and internally displaced people spread throughout the region as evidence that sexual exploitation was a problem in the camps.⁵⁷

Although crimes such as these are chronically underreported, legal aid workers in Guinea during this period found that many women and girls traded sex for basic necessities, such as food or plastic sheeting, while others were sexually assaulted in isolated areas of the camp, and still others were subject to domestic violence.⁵⁸ The refugees most vulnerable to sexual exploitation were women traveling alone, women as single heads of families, children in child-headed households, children in single-parent households, and orphaned children. The majority of children involved were girls between the ages of 13 and 18.⁵⁹

Sexual exploitation and sexual assault are violations of the fundamental human right to personal security.⁶⁰ This right is detailed in

52. See *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services: Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa*, *supra* note 1.

53. *Id.* at 15.

54. *Id.* at 4.

55. *Id.*

56. *Id.* at 3.

57. *Id.* at 8 ("The fact that the consultants heard sexual exploitation stories from groups of unconnected people, spread across three countries, gives some credibility to the issue even if the specific allegations could not be verified.")

58. See AMERICAN REFUGEE COMMITTEE INT'L, GENDER-BASED VIOLENCE: A PARTICIPATORY TOOLKIT, 6 (2005) ("few actual numbers are known, although reports of rape, sexual exploitation, sexual bartering, domestic violence, and other forms of GBV are increasingly surfacing in conflict and displaced settings."). Precise statistics on the extent of sexual violence in Guinea's refugee camps are hard to locate. *Id.* However, the American Refugee Committee's Legal Aid Clinics for Women, which serve refugee women in Guinea only, process between 400 to 600 cases of physical and sexual violence, exploitation, child prostitution, forced prostitution, threats, paternity suits, and child custody cases per year. *Id.* at 8. Cf. HUMAN RIGHTS WATCH, SEXUAL VIOLENCE AND ITS CONSEQUENCES AMONG DISPLACED PERSONS IN DARFUR AND CHAD, *supra* note 1, at 5-9 (presenting evidence that Sudanese women and girls in Chad are frequently assaulted when they leave displaced persons camps to collect firewood or water).

59. UNHCR/ Save the Children (UK) Report, *supra* note 2, at 3-4.

60. Conclusion on the International Protection of Refugees, U.N. High Commissioner for

the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the Convention on the Status of Refugees.⁶¹ The UNHCR Executive Committee acknowledges that violations of this fundamental right inflict serious harm and injury on the victims, their families, and their communities.⁶² Refugees do not forfeit this basic human right when they cross a national border, and they should be able to enjoy their rights to life and security of person regardless.⁶³ Furthermore, the exploitation is in some cases a violation of Guinean penal law, though victims often encounter serious practical obstacles when trying to assert their rights in Guinean courts.⁶⁴

Desperate need – in addition to underlying cultural factors – was at the root of much of the sexual exploitation and domestic violence in Guinean camps in 2002. The UNHCR/ Save the Children (UK) report alleged that women and girls exchanged sex for basic necessities. Payment was rarely in cash terms; the victims received small “gifts” of palm oil, plastic sheeting, ration cards, grain, or soap.⁶⁵ One young refugee mother illustrated this dependence on exploitation by asking, “If I tell you the name of the NGO worker I have to sex [sic] with, he will get fired, and then how will I feed my child and myself?”⁶⁶ An NGO worker in Guinea told a UNHCR assessment team that “no girl will get a job in this camp without having sex with NGO workers.”⁶⁷ The OIOS Report states that some fourteen- and fifteen-year-old girls claimed that teachers in refugee schools gave out instruction, supplies, or grades in exchange for sex.⁶⁸ Caregivers and family members were often aware of the exploitation, but they, like the victims, felt it was the only way to get food and other basic necessities.⁶⁹

The perpetrators were primarily men in positions of relative power who control access to goods and services in the camps.⁷⁰ They may have

Refugees, Executive Comm. Programme, “Refugee Protection and Sexual Violence,” Conclusion No. 73 (XLIV), 1993, <http://www.unhcr.org/cgi-bin/texis/vtx/excom/opendoc.htm?tbl=EXCOM&page=home&id=3ae68c6810>.

61. See UNHCR, SEXUAL AND GENDER-BASED VIOLENCE AGAINST REFUGEES, RETURNEES AND INTERNALLY DISPLACED PERSONS: GUIDELINES FOR PREVENTION AND RESPONSE 49 (May 2003) [hereinafter UNHCR Guidelines on Sexual Violence] (giving a full discussion of human rights violated by sexual exploitation and sexual violence).

62. Executive Committee Conclusion No. 73 (XLIV), *supra* note 60, ¶ 1.

63. *Declaration on the Human Rights of Individuals who are not Nationals of the Country in Which they Live*, G.A. Res. 40/144, art. 5 (Dec. 13, 1985), available at <http://www.un.org/documents/ga/res/40/a40r144.htm>.

64. See ARC INT’L, CADRE JURIDIQUE RELATIF À CERTAINES FORMES DE DISCRIMINATION ET À LA VIOLENCE CONTRE LES FEMMES EN RÉPUBLIQUE DE GUINÉE (2004) [hereinafter ARC, Internal Report] (on file with author).

65. UNHCR/ Save the Children (UK) Report, *supra* note 2, at 3-4.

66. *Id.* at 8.

67. *Id.* at 5.

68. *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services: Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa*, *supra* note 1, ¶ 33.

69. *Id.*

70. *Id.*

included: personnel of humanitarian aid organizations; government employees overseeing refugee affairs; security forces, including peacekeepers; and influential members of the refugee community, including political and religious leaders.⁷¹ Those who occupied these positions of power were primarily men; for instance, the Guinean army and police who were delegated to provide security to the camps were staffed almost entirely by men. Partly owing to cultural influences, those in positions of leadership among the refugee community were often men, even though women made up a far larger proportion of the refugee population.⁷² While aid providers have addressed sexual violence and sexual exploitation in Guinean camps,⁷³ and while the situation has improved, there are still incidents of sexual assault⁷⁴ and sexual exploitation⁷⁵ in the camps.

C. Incomplete Nature of Aid Providers' Response

From the early 1990s until 2002, the trio of aid providers – the Guinean government, UNHCR, and various NGOs – struggled to provide basic humanitarian aid to these continuous waves of refugees and was unable to redress effectively the sexual violence and sexual exploitation in the camps. The 1951 Refugee Convention does not distinguish between individual refugees and mass influxes, leaving the Guinean government without a clear framework for effective aid.⁷⁶ The West African states negotiated a series of memoranda of understanding with UNHCR, permitting UNHCR

71. See generally UNHCR Guidelines on Sexual Violence, *supra* note 61, at 14-15 (discussing likely perpetrators of sexual violence and sexual exploitation against refugees).

72. See REPORT ON THE DIALOGUE WITH REFUGEE WOMEN, *supra* note 38, at 33.

73. See, e.g., ARC INT'L, AN OVERVIEW OF THE FERN HOLLAND LEGAL AID CLINIC: GBV IN CONFLICT-AFFECTED SETTINGS, 9-12 (2005) [hereinafter ARC Int'l, Overview of the Fern Holland Legal Aid Clinic] (detailing ways in which an NGO legal aid clinic can address sexual exploitation and sexual violence).

74. See ARC INT'L, MULTI-SECTORAL REFUGEE ASSISTANCE PROGRAM IN THE FOREST REGION OF GUINEA, PROGRESS REPORT APR. - JUNE 2005, 19-20 (indicating that ARC's legal aid clinic in Kissidougou received five new rape cases and seven new domestic violence cases in the second quarter of 2005, while the clinic in Nzerekore received three new rape cases and forty-three new cases of assault or beating in the same period); ARC INT'L, MULTI-SECTORAL REFUGEE ASSISTANCE PROGRAM IN THE FOREST REGION OF GUINEA, PROGRESS REPORT JULY - SEPT. 2005, 17-19 (indicating that ARC's legal aid clinic in Kissidougou received four new rape cases and four new domestic violence cases, whereas the clinic in Nzerekore received seven new rape cases and thirty-five new cases of assault or beating during the third quarter of 2005).

75. See ARC INT'L, MULTI-SECTORAL REFUGEE ASSISTANCE PROGRAM IN THE FOREST REGION OF GUINEA PROGRESS REPORT APR. - JUNE 2005, *supra* note 74, at 18-19 (indicating that the ARC legal aid clinics received three new referrals of sexual exploitation in the second quarter of 2005); ARC INT'L, MULTI-SECTORAL REFUGEE ASSISTANCE PROGRAM IN THE FOREST REGION OF GUINEA PROGRESS REPORT JULY - SEPT. 2005, *supra* note 74, at 18-19 (indicating that the ARC legal aid clinics saw one new case of sexual exploitation during the third quarter of 2005).

76. See Tom Clark, *Rights-Based Refuge, the Potential of the 1951 Convention and the Need for Authoritative Interpretation*, 16 INT'L J. OF REFUGEE L. 584, 597 (2004).

to assist refugees on West African territories.⁷⁷ Nonetheless, the Guinean government still routinely took numerous measures hostile to refugee protection.⁷⁸ Aid providers faced numerous logistical difficulties establishing the Guinean camps. Because of the cross-border violence in 2000-2001, agencies encountered major problems ensuring the security of their workers and of the refugees.⁷⁹ UNHCR failed to provide adequate ration and identification cards, leading to inequitable food distribution and lack of freedom of movement.⁸⁰ The inadequate provision of basic humanitarian aid made women and girl refugees more vulnerable.

Since the reports on sexual exploitation were released, the trio of aid providers has focused on refugee women's protection needs. Both reports offered constructive solutions, and some recommended changes have been implemented. For example, virtually every NGO currently operating in the camps is required to have a sexual misconduct policy in place. Organizations also ask their employees to sign an agreement stating that they will abide by these policies.⁸¹ Until 2004, the International Rescue Committee (IRC) functioned as the lead "partner" agency for gender-based violence, providing counseling and referral services to refugee victims of gender-based violence.⁸² The NGOs that work on gender-based violence also maintain a staff of community workers in the camps near Kissidougou and N'Zérékoré. Cases of sexual exploitation and sexual violence still occur, but in reduced numbers compared to 2002.⁸³

Women's rights are among the most under-enforced human rights norms in Guinea's refugee camps. Sexual exploitation is rooted in tasks that are intrinsic to the private sphere, such as food production and water-gathering.⁸⁴ Because it occurs as part of these daily routines and because of

77. See, e.g., UNHCR, *ECOWAS-UNHCR Memorandum of Understanding* (2001), <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&page=home&id=3bfa4a962>.

78. LAWYERS COMM. FOR HUMAN RIGHTS, *supra* note 9, at 68-74.

79. See, e.g., CARE *Deplores Attack*, U. N. INTEGRATED REGIONAL INFORMATION NETWORK, Sept. 18, 2000, <http://www.irinnews.org/print.asp?ReportID=5969>; *One UNHCR Staffer Killed, Another Abducted in Border Attack*, U. N. INTEGRATED REGIONAL INFORMATION NETWORK, Sept. 18, 2000, <http://iys.cidi.org/humanitarian/irin/wafrica/006/0011.html>.

80. See, e.g., LAWYERS COMM. FOR HUMAN RIGHTS, *supra* note 9, at 63 (2002) (describing the inadequate distribution of registration cards in the Guinean camps, which created problems in distributing aid to the neediest refugees).

81. See, e.g., American Refugee Committee, *Sexual Misconduct Policy (Harassment, Exploitation and Violence)*, May 2004 (internal report, on file with author).

82. See <http://www.theirc.org/Guinea> for a current description of IRC's gender-based violence program in Guinea (Jun. 2004).

83. See ARC INT'L, *MULTI-SECTORAL REFUGEE ASSISTANCE PROGRAM REPORT APR. - JUNE 2005*, *supra* note 74, at 18-19 (giving statistics on sexual violence cases handled by the Legal Aid Clinic for Women in the second quarter of 2005); ARC INT'L, *MULTI-SECTORAL REFUGEE ASSISTANCE PROGRAM REPORT JULY - SEPT. 2005*, *supra* note 74, at 18-19 (giving similar statistics for the third quarter of 2005).

84. *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services: Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa*, *supra* note 1, ¶ 22 (listing factors that can lead to sexual exploitation).

ingrained cultural practices, sexual violence is hard to address in refugee camps. The refugee responses enshrined in the 1951 Convention prioritize the public sphere over the private; that division is mimicked by the provision of aid in Guinea.⁸⁵ Though aid providers have taken major strides in combating sexual exploitation and sexual violence since 2002, more can be done. A more accountable refugee response system that offers refugee women access to justice is greatly needed.

II. AID PROVIDERS: PARALLEL DEVELOPMENTS AND PARALLEL FAILURES

Over the last two decades, each member of the trio of aid providers in Guinea has moved toward greater incorporation of human rights norms in refugee responses. For all three, these movements have had some, albeit limited, impact on refugee rights. However, there remain serious obstacles to effective rights-based refuge both at the structural level and in enforcement. This is particularly true for women's rights, one of the first areas traded away or marginalized when under political, economic, or socio-cultural pressure.

A. The Guinean Government

Since ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on September 8, 1982,⁸⁶ Guinea has taken steps towards incorporating women's rights norms in pieces of national legislation that affect refugee women.⁸⁷ Non-discrimination takes a central place in Guinea's Constitution, which was adopted in 1990.⁸⁸ Under the Guinean Constitution, international treaties supercede national laws⁸⁹ and can be invoked in courts without having been directly

85. See Joseph Oloka-Onyango, *The Plight of the Larger Half: Human Rights, Gender Violence and the Legal Status of Refugee and Internally Displaced Women in Africa*, 24 DENV. J. INT'L LAW & POL'Y 349, 364 (1996).

86. Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties* (Jun. 9, 2004) available at <http://www.unhcr.ch/pdf/report.pdf>.

87. See Richard B. Lillich & Hurst Hannum, *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY AND PRACTICE*, 184 (3rd ed. 1995) (discussing the manner in which UN human rights treaties obligate signatory states to make substantial changes in their own domestic legal regimes to bring them into conformity with international norms).

88. LOI FONDAMENTALE [Constitution] préambule (Guinea). ("The People of Guinea proclaim . . . the equality and solidarity of all nationals, without distinctions of race, ethnicity, sex, origin, religion, or opinion . . ."); LOI FONDAMENTALE [Constitution] art. 8 (Guinea). ("All human beings are equal before the law. Men and women have equal rights. No one may be privileged or disadvantaged because of their gender.").

89. LOI FONDAMENTALE [Constitution] art. 79 (Guinea). ("Treaties and accords that were properly approved or ratified have, upon their publication, an authority superior to that of the laws, subject to reciprocity.").

integrated into domestic law.⁹⁰ Consequently, according to the law, women in Guinea's jurisdiction have the same access to courts as men.⁹¹ In addition, under article 24 of CEDAW, Guinea is obliged to adopt all necessary measures in order to bring its domestic laws in line with the standards promulgated in the Convention.⁹² These non-discrimination provisions have great potential to benefit refugee women.

Guinea's civil and criminal codes contain a number of provisions that offer redress for women – including refugee women – who are subject to sexual violence or sexual exploitation. The Constitution enumerates the right to “physical integrity” but without addressing women specifically.⁹³ Rape is criminalized, punishable by 5-20 years of imprisonment.⁹⁴ Prostitution is not criminalized, but pimping or otherwise profiting from prostitution is.⁹⁵ Likewise, forced prostitution – which in the legal definition amounts to sexual exploitation – is criminal.⁹⁶ Domestic violence is illegal, but only prosecuted to the extent that the victim requests.⁹⁷

By law, these criminal provisions should offer equal redress to refugee women and to Guinean women. Refugees are subject to the jurisdiction of the host country. According to the 1951 Convention, refugee women should have free and full access to the Guinean courts in order to seek the enforcement of these provisions.⁹⁸ The Guinean government, however, may be hesitant to enforce the rights of women refugees, because it sometimes perceives them more as perpetrators than as victims.⁹⁹

In reality, the promulgation of laws related to CEDAW spurred a nascent awareness of women's rights in Guinea. Guinea established a women's affairs ministry in 1992, which aims in part to promulgate and

90. ARC, Internal Report, *supra* note 64, at 14 (“International provisions can be invoked before courts or administrative bodies, and they can be applied directly without being integrated by writing into national legislation or administrative regulations.”).

91. Convention on the Elimination of All Forms of Discrimination Against Women, art 15, Dec. 18 . 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

92. *Id.* art. 24 (“States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.”).

93. LOI FONDAMENTALE [Constitution], art. 6. (Guinea). (“A person has the right to free development of his personality. He has the right to life and to physical integrity. No one can be subject to torture, or cruel, inhuman, or degrading punishment or treatment.”).

94. CODE PÉNAL art. 321 (Guinea).

95. *Id.* art. 326.

96. *Id.* art. 327. Circumstances that amount to forced prostitution include paying for sex with a minor child, abusing a relationship of authority as a teacher or government official, or engaging in prostitution while armed. *Id.*

97. *Id.* arts. 303-305.

98. Convention Relating to the Status of Refugees, art. 16, July 28, 1951, 189 U.N.T.S. 150, 164.

99. See, e.g., *Initial Report of Guinea*, U.N. Committee on the Elimination of Discrimination Against Women, at 34, U.N. Doc. CEDAW/C/GIN/1 (Mar. 6, 2001), available at, <http://www.hri.ca/fortherecord2001/documentation/tbodies/cedaw-c-gin-1-3.htm> (discussing forced immigration as one factor that has contributed to the sharp rise in prostitution in Guinea in the past decade).

promote the enforcement of women's rights laws.¹⁰⁰ In addition, Guinea's 2000 periodic report to the CEDAW committee acknowledges, and commits the government to redress, the prevalence of violence against women in Guinea.¹⁰¹

Despite these encouraging signs, there are three on-going problems with the women's rights legislation adopted in Guinea. First, both the civil and criminal penal codes remain riddled with discriminatory and unfavorable provisions. For instance, sexual exploitation is not expressly mentioned in Guinean legislation.¹⁰² Though discrimination is prohibited in the Constitution, there is no definition of discrimination anywhere in Guinean legislation. Consequently, the constitutional provision does not adequately protect women in general, and refugee women in particular.

Second, enforcement of existing women's rights laws is minimal at best. Underreporting of violence against women – whether refugee or Guinean – is common. Marital rape in particular is rarely reported, as it is widely considered the husband's right.¹⁰³ Prostitution is rampant among underage girls.¹⁰⁴ The government has taken no action so far to halt the prostitution of minor girls.¹⁰⁵

Third, there are extreme obstacles to access to justice, particularly for rural women who lack the education or resources to bring cases to court. There is no legal aid system that can help women who lack the funds for a lawyer. The Guinean government's incitement of sexual violence against refugee women deters the judiciary from taking cases that might provide redress.¹⁰⁶ Although Guinea's domestic legislation increasingly reflects an awareness of women's rights, it nonetheless leaves protection of women in general, and refugee women in particular, sorely lacking.

The disparity between women's rights laws and their enforcement has particularly grave consequences for refugee women. These women face additional barriers to justice: they are often unaware that they have the right to access Guinean courts, and in addition, financial and linguistic barriers often prevent them from doing so. The Guinean government, like many host states, is unwilling to acknowledge that the camps are long-term institutions,¹⁰⁷ is hostile to the refugee influxes in general,¹⁰⁸ and takes

100. *Id.* at 11.

101. *Id.* at 31-32 (discussing various forms of violence against women in Guinea; calling for an increase in systematic data to "determine the levels, patterns and forms of violence perpetrated against women").

102. ARC, Internal Report, *supra* note 64, at 26 ("Exploitation is not expressly mentioned in the Guinean code."); see also CODE PÉNAL, art. 337 (GUINEA) (enumerating various other forms of exploitation).

103. ARC, Internal Report, *supra* note 64, at 28.

104. *Id.* at 29.

105. *Id.*

106. See Refugee Women in Guinea Raped, *supra* note 28.

107. See Mark Pallis, *The Operation of UNHCR's Accountability Mechanisms*, I.I.L.J. Working Paper 2005/12 (Global Administrative Series) 29 (2005).

108. See, e.g., LAWYERS COMM. FOR HUMAN RIGHTS, *supra* note 9, at 74 (describing

few steps to promote refugee women's rights. Thanks to the lack of enforcement and difficulty accessing the justice system, Guinea's women's rights laws provide virtually no practical protection for refugee women.

B. The United Nations High Commissioner for Refugees

For more than a decade, refugee scholars have been advocating for greater inclusion of women's rights in refugee protection.¹⁰⁹ There are numerous advantages to using human rights law to highlight and reinforce protection of refugee women. Most notably, human rights law can provide a better legal basis on which to hold violators accountable.¹¹⁰ Just as incorporating human rights norms into Guinean domestic law has the potential to benefit refugee women, incorporating these concepts into refugee protection could improve refugee women's access to justice and strengthen accountability mechanisms. In fact, over the last twenty years there has been a gradual convergence of human rights law and refugee law, both in UNHCR camps and in asylum jurisprudence in the West.¹¹¹ However, as with Guinean domestic law, this development has produced few tangible changes in refugee women's access to justice.

Structurally, refugee law has long been perceived as distinct from human rights law.¹¹² Since its creation in the 1950s, refugee law has aimed to protect those for whom state protection has failed.¹¹³ The function of human rights law, on the other hand, is to alter the behavior of states.¹¹⁴ Thus, as refugee scholar Deborah Anker argues, human rights law has a prospective function, whereas refugee law is remedial.¹¹⁵ The division stems from in the text of the 1951 Convention itself, which gives substitute state protection to those who have *already* been stripped of their rights.¹¹⁶

xenophobic attacks instigated by the Guinean government).

109. See, e.g., Chaloka Beyani, *The Needs of Refugee Women: A Human Rights Perspective*, 3(2) GENDER AND DEV. 29 (1995); Deborah E. Anker, *Refugee Law, Gender, and the Human Rights Paradigm*, 15 HARV. HUM. RTS. J. 133, 138 (2002); Emily Copeland, *A Rare Opening in the Wall: The Growing Recognition of Gender-Based Persecution*, in PROBLEMS OF PROTECTION: THE UNHCR, REFUGEES AND HUMAN RIGHTS 101, 105 (Niklaus Steiner et. al. eds., 2003).

110. Brian Gorlick, *Refugee Protection in Troubled Times: Reflections on Institutional and Legal Developments at the Crossroads*, in PROBLEMS OF PROTECTION: THE UNHCR, REFUGEES AND HUMAN RIGHTS 79, 94 (Niklaus Steiner et. al. eds., 2003).

111. Anker, *supra* note 109, at 133-36; see also Clark, *supra* note 76, at 586 ("The basis for a wider rights-based protection for refugees is already largely in place.")

112. ARTHUR HELTON, THE HUMAN RIGHTS OF REFUGEES AND DISPLACED PERSONS: PROTECTIONS AFFORDED REFUGEES, ASYLUM SEEKERS AND DISPLACED PERSONS UNDER INTERNATIONAL HUMAN RIGHTS, HUMANITARIAN AND REFUGEE LAW, 2 (Briefing Paper issued by the Lawyers Committee for Human Rights 1991) [hereinafter HELTON, THE HUMAN RIGHTS OF REFUGEES].

113. Anker, *supra* note 109, at 134-35.

114. *Id.*

115. *Id.* at 135.

116. Convention Relating to the Status of Refugees, *supra* note 98, art. 1(A)(2). The Convention applies to someone who, "owing to a well-founded fear of being persecuted for

Absent is the aspirational language featured in key human rights treaties that address gender equality and access to justice. Refugee law was not designed to alter the behavior of the sending state.

Refugee law can be further distinguished from human rights law because it is grounded in state sovereignty rather than individual equality.¹¹⁷ Refugee law offers protection for those who have, for certain specified reasons, lost the protection of their state. It is therefore contingent on state behavior.¹¹⁸ By contrast, human rights law "is based on the premise that certain rights are fundamental to all people" regardless of state sovereignty.¹¹⁹ The 1951 Convention obliges the host state to offer surrogate protection to the refugee, based on the rights enumerated in the Convention itself, not on a broader notion of the general applicability of human rights norms. Refugee law places the great burden of responsibility on the host state.

A growing movement among refugee scholars criticizes both these distinctions. The first distinction – that refugee law is remedial, whereas human rights law is aspirational – came under fire because it ignores women's rights and women's protection needs.¹²⁰ Women's rights activist Chaloka Beyani argues that because refugee issues have largely been separated from human rights, progressive interpretations of refugee women's needs have been ignored both by women's rights advocates and by refugee responders.¹²¹ This first distinction is being eroded on other grounds, too. Anker argues that the increasing cross-fertilization and internationalization of asylum practices in different states has led to an emerging pattern of the inclusion of human rights norms in asylum decisions.¹²² This capitalizes on a long-standing practice by Western states of using asylum law as a tool to identify human rights abuses of sending countries.¹²³

The second distinction – that refugee law is state-based, but human rights law centers on the individual – has also been challenged. The refugee response mechanisms established by the Convention dealt with emergency situations like the post-World War II crisis, and as such, placed

reasons of race, religion, nationality, membership of a particular social group or political opinion *is* outside of the country of his nationality and *is* unwilling to avail himself of the protection of that country. . ." (emphasis added).

117. HELTON, *THE HUMAN RIGHTS OF REFUGEES*, *supra* note 112, at 2.

118. *Id.* ("Refugee and humanitarian law represent codification in treaty form of international norms. . . that have grown out of a world order based on the doctrine of national sovereignty.").

119. *Id.*

120. Beyani, *supra* note 109, at 30.

121. *Id.*

122. Anker, *supra* note 109, at 136-37.

123. *See id.* at 145 (discussing the 1996 U.S. decision, *In re Kasinga*, 21 I. & N. Dec. 357, 365 (U.S. BIA 1996) in which the United States Board of Immigration Appeals granted asylum to a Togolese woman fleeing female genital surgery); *see also* LOESCHER, *BEYOND CHARITY*, *supra* note 15, at 104 (arguing that grants of asylum in the United States during the Cold War were significantly higher for individuals fleeing communist countries than other nations).

a strong emphasis on the host state's responsibilities regarding non-refoulement and assimilation.¹²⁴ But since the 1950s, the basic character of refugee emergencies has changed.¹²⁵ Large numbers of people linger in long-term refugee camps while international actors search for elusive durable solutions.¹²⁶ The host state remains the primary party responsible for these refugees.¹²⁷ Even though UNHCR plays a crucial practical role in responding to refugee influxes, it does not have a formal role under the Convention.¹²⁸ A state-based, rather than individual-based, notion of refugee responsibility does not adequately respond to modern refugee crises.

UNHCR's protection mandate has strong links to human rights, but the contours of those links have changed over time. Under the UNHCR Statute – a document written before the international covenants on human rights were drafted – the High Commissioner's protection work is to be entirely non-political and focused on humanitarian and social issues.¹²⁹ Nonetheless, the Statute is implicitly linked to human rights of refugees, because it exists in part to protect those who have a well-founded fear that they will be the victims of future human rights abuses.¹³⁰ In reality, the early concept of UNHCR's protection obligations included preventing refoulement, ensuring compliance with essential humanitarian standards, and securing the enjoyment of basic human rights.¹³¹

The early notion of refugee protection, as seen in the 1951 Convention, protected civil and political rights above economic and social ones by

124. HELTON, *THE HUMAN RIGHTS OF REFUGEES*, *supra* note 112, at 6-7; *see also* Gorlick, *supra* note 110, at 80 (relating the argument that the 1951 Convention and the 1967 Protocol are of limited relevance in dealing with refugee problems in less-developed countries).

125. LOESCHER, *BEYOND CHARITY*, *supra* note 15, at 75-76 (discussing how decolonization brought about changes in "push" factors sending refugees over international borders).

126. Wilde, *supra* note 36, at 108-09 (arguing that many refugee camps in the developing world have taken on a medium- or long-term character, constituting "settled and complex communities of refugees. . . with marketplaces, schools, hospitals. . . and decision-making fora.").

127. *See* Gorlick, *supra* note 110, at 80-81 (quoting the former Indian permanent representative to the U.N., who argues that mass movements of refugees to developing countries puts the fragile environment, economy, and society of those countries at risk).

128. GUY GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW*, 254 (2nd ed. 1998) ("Neither UNHCR nor any other international agency has any secure place of asylum and no formal way to protect the personal security of refugees and asylum seekers, which in principle remains largely the responsibility of governments.").

129. Statute of the Office of the United Nations High Commissioner for Refugees, G.A. Res. 428(V), ch. I, art. 2 (14 December 1950) (the Statute was issued on the same day that the 1951 Convention was opened for accession).

130. Erik Roxström & Mark Gibney, *The Legal and Ethical Obligations of UNHCR: The Case of Temporary Protection in Western Europe*, in *PROBLEMS OF PROTECTION: THE UNHCR, REFUGEES AND HUMAN RIGHTS* 37, 39 (Niklaus Steiner et. al. eds., 2003); *see also* Gorlick, *supra* note 110, at 87 (arguing that the 1951 Refugee Convention is a direct descendant of the Universal Declaration of Human Rights).

131. Arthur Helton, *What is Refugee Protection? A Question Revisited*, in *PROBLEMS OF PROTECTION: THE UNHCR, REFUGEES AND HUMAN RIGHTS* 19, 19-33 (Niklaus Steiner et. al. eds., 2003).

focusing largely on political persecution.¹³² This primacy of (public) civil and political rights above (private) economic and social rights directly disadvantages women refugees.¹³³ The connection between economic disadvantage and vulnerability to sexual exploitation in the camps demonstrates the interconnected nature of women's protection needs.¹³⁴ And yet, for years, this connection was all but ignored. During the early years of the Convention, women's claims for refugee status were viewed as the 'derivative' claims of a spouse accompanying the 'real,' or male, refugee.¹³⁵

In the 1990s, UNHCR's protection role became increasingly pragmatic, focusing on the delivery of food, shelter, and medicine.¹³⁶ UNHCR has, to a certain extent, become the humanitarian arm of the United Nations, a role for which it has no mandate.¹³⁷ In the 1990s, UNHCR took responsibility for some additional human rights functions, for instance by monitoring human rights violations in countries of origin in an attempt to identify and stem refugee flows before they cross borders.¹³⁸ And yet, despite this expansion of human rights activities, Loescher characterizes the 1990s as a period of decline in refugee protection, because "the central importance of human rights protection of displaced and threatened populations [was] frequently neglected."¹³⁹

Today, the basis for a wider, rights-based protection mandate is already in place.¹⁴⁰ However, when attempting to define how human rights norms should be applied in emergency situations of mass influxes like the situation in Guinea, the Convention is weakened by "ambiguities in key terms."¹⁴¹ An authoritative interpretation of the Convention is needed to give meaning to this nascent notion of rights-based refuge.¹⁴² Because refugees do not forfeit their human rights based on their refugee status,

132. Convention Relating to the Status of Refugees, *supra* note 98, art. 1(A)(2) ; see Oloka-Onyango, *supra* note 85, at 362 (arguing that the Convention's determination of refugee status is rooted in the philosophy that awards primacy of place to political and civil rights above economic and social rights).

133. Oloka-Onyango, *supra* note 85, at 362.

134. *Id.*, at 384-85 (arguing that refugee women are involved in a wide variety of economic and social activities largely within the private sphere that make them more susceptible to sexual violence).

135. Copeland, *supra* note 109, at 102-03 (discussing the manner in which early refugee status determinations considered the head of household only).

136. Loescher, *UNHCR at Fifty*, *supra* note 37, at 12-13; Oloka-Onyango, *supra* note 85, at 10-11 ("UNHCR... has seen its role progressively expand into a variety of different humanitarian... contexts").

137. Helton, *What is Refugee Protection? A Question Revisited*, *supra* note 131, at 25-27.

138. Loescher, *UNHCR at Fifty*, *supra* note 37, at 12.

139. *Id.* at 13.

140. Clark, *supra* note 76, at 568; see also Loescher, *UNHCR at Fifty*, *supra* note 37, at 15-16 (arguing that one way in which UNHCR and other refugee rights advocates should reverse the decline in refugee protection is to insert human rights ideas into the current refugee dialogue).

141. Clark, *supra* note 76, at 585-86.

142. *Id.* (arguing that the ICJ is the most appropriate court to give such a reading).

UNHCR behavior should be at least consonant with human rights values.¹⁴³ Activists have begun to recognize that the lack of an integrated human rights strategy exacerbates women's protection problems,¹⁴⁴ and have pushed for women's rights to be included in the redefinition of the refugee agenda.¹⁴⁵

Refugee women's protection is one area in particular that has seen a growth of the inclusion of human rights norms in recent years.¹⁴⁶ In 1985, the protection of refugee women first appeared on the agenda of the UNHCR Executive Committee.¹⁴⁷ Without using rights-based language, the Executive Committee noted that refugee women are exposed to "special problems," resulting from their "vulnerable situation," and called for a more detailed investigation.¹⁴⁸ In 1988, the Executive Committee acknowledged that UNHCR could play a preventative role on this issue.¹⁴⁹ By 1989, the Committee specifically viewed sexual exploitation as a rights violation,¹⁵⁰ and in 1990 it requested that UNHCR draw up operational guidelines for the protection of refugee women.¹⁵¹ The right in question was further characterized as a fundamental human right - the right to security of person - in 1993.¹⁵² By explicitly characterizing sexual exploitation in this way, the Executive Committee placed women's human rights firmly within UNHCR's general protection mandate.

Spurred by the Executive Committee, UNHCR issued a series of guidelines incorporating human rights norms in the protection of refugee women.¹⁵³ The first policy on refugee women, issued in 1989, encouraged

143. Roxström & Gibney, *supra* note 130, at 39-40.

144. Beyani, *supra* note 109, at 30-31.

145. Copeland, *supra* note 109, at 103 (describing the manner in which various actors - including UNHCR, NGOs, women's rights activists, and host countries - have slowly begun to recognize refugee women's protection needs).

146. *See id.* at 101.

147. Conclusion on the International Protection of Refugees, U.N. High Commissioner for Refugees Executive Comm. Programme, "Refugee Women and International Protection", Conclusion No. 39 (XXXVI), 1985; *see generally* Clark, *supra* note 76, at 600 (arguing that Executive Committee conclusions have "considerable persuasive power" in their intended contexts).

148. *Id.*

149. Conclusion on the International Protection of Refugees, U.N. High Commissioner for Refugees Executive Comm. Programme, "Refugee Women," Conclusion No. 54 (XXXIX) 1988.

150. Conclusion on the International Protection of Refugees, U.N. High Commissioner for Refugees Executive Comm. Programme, "Refugee Women," Conclusion No. 60 (XL), 1989.

151. Conclusion on the International Protection of Refugees, U.N. High Commissioner for Refugees Executive Comm. Programme, "Refugee Women and International Protection," Conclusion No. 64 (XLI), 1990.

152. Conclusion on the International Protection of Refugees, U.N. High Commissioner for Refugees Executive Comm. Programme, "Personal Security of Refugees", Conclusion No. 72 (XLIV), 1993; Executive Committee Conclusion No. 73 (XLIV), *supra* note 60.

153. *Cf.* Oloka-Onyango, *supra* note 85, at 11 (arguing that UNHCR's various policies on refugee women are "situated firmly within the framework of international human rights law").

mainstreaming of women's protection issues.¹⁵⁴ In 1995, the Office issued a more comprehensive policy, giving detailed programmatic guidance for a multi-sector approach.¹⁵⁵ The updated version of these guidelines, issued in 2003 ("the Guidelines"), encourages refugee responders to engage refugee women in designing and structuring aid programs, and is used by some NGOs in the Forest Region of Guinea.¹⁵⁶ In 2000-2001, UNHCR conducted an extensive dialogue with refugee women from around the world, including refugee women in Guinea, which highlighted many of the root causes behind sexual violence in camps.¹⁵⁷

Though the efforts of the Committee and the Office are welcome, they only begin to address the needs of refugee women in Guinea. Before 2002, there were some failures in protection. For instance, the Guidelines recommend designing camp distribution programs so that women have direct access to food and other supplies.¹⁵⁸ And yet in Guinea in 2002, men dominated food distribution, and therefore men were the direct beneficiaries.¹⁵⁹ There were also deficits in monitoring sexual exploitation; though the Guidelines provide detailed, well-designed forms to track violations, the women in the camps were deeply reluctant to report, and UNHCR performed little outreach.¹⁶⁰ During this period, the notion of rights-based protection had little impact; refugees in Guinea were still very much seen as "the recipients' of assistance, and not as decision-makers or judges of it."¹⁶¹

Much to the disadvantage of refugee women throughout Africa, UNHCR's failure to implement its policies has been widespread.¹⁶² A Human Rights Watch report on Burundian refugees in Tanzania, for instance, states that UNHCR guidelines have "often represented little more than theory, with few, if any, efforts made by UNHCR staff to ensure that

154. UNHCR, *Policy on Refugee Women*, U.N. Doc. A/AC.96/754 (August 20, 1990) available at <http://www.unhcr.org/cgi-bin/texis/vtx/excom/opendoc.pdf?tbl=EXCOM&id=3b9cd20e5>.

155. UNHCR, *SEXUAL VIOLENCE AGAINST REFUGEES: GUIDELINES ON PREVENTION AND RESPONSE*, (1995) available at <http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=3b9cc26c4>.

156. UNHCR, *GUIDELINES ON SEXUAL VIOLENCE*, *supra* note 61 (used in ARC's legal aid clinic).

157. UNHCR, *REPORT ON THE DIALOGUE WITH REFUGEE WOMEN*, *supra* note 72.

158. UNHCR, *GUIDELINES ON SEXUAL VIOLENCE*, *supra* note 61, at 45 ("Make sure that the essential supplies - such as food, water, and fuel used for cooking - are given directly to women or distributed by their intermediary.").

159. UNHCR, *REPORT ON THE DIALOGUE WITH REFUGEE WOMEN*, *supra* note 72, at 26 (citing a staffer in Guinea: "women felt they were left out of planning, designing, implementing and even evaluating programs for refugee assistance. . . [leading to] poor access to services like water, food distribution, and shelter").

160. See UNHCR, *GUIDELINES ON SEXUAL VIOLENCE*, *supra* note 61, Annex.

161. UNHCR Evaluation and Policy Analysis Unit, *A Beneficiary-Based Evaluation of UNHCR's Programme in Guinea, West Africa*, ¶ 128, EPAU/2001/02 (Jan. 2001) (prepared by Tania Kaiser).

162. See, e.g., UNHCR, *AGENDA FOR PROTECTION* (3d ed. 2003) 86 (emphasizing the need to disseminate and monitor implementation of 2003 Guidelines worldwide).

they form a routine and integral part of all UNHCR programs”¹⁶³ Similar concerns have been raised regarding Sudanese refugees in Chad, where women have been raped when leaving camps to collect firewood, even though the 2003 Guidelines emphasize finding safe ways to provide necessary cooking equipment.¹⁶⁴ There are, of course, severe funding shortfalls which make implementing the Guidelines harder.¹⁶⁵ Nonetheless, there remains a prominent notion that UNHCR, as the UN’s humanitarian agency, may have to choose between human rights and practical realities.¹⁶⁶

Accountability remains one of the key areas of the prevention strategy articulated in the 2003 Guidelines that has not been fully embraced in Guinea.¹⁶⁷ Apart from a legal aid clinic run by the American Refugee Committee, there is no formal mechanism for asserting complaints. UNHCR has yet to establish a general oversight mechanism to provide accountability for the behavior of its staff and volunteers in the field in Guinea or elsewhere in the region.¹⁶⁸ The refugee-run Camp Committees frequently try to assert authority over sexual violence cases that belong in the Guinean criminal justice system.¹⁶⁹

UNHCR is well-placed to address issues of sexual violence in the camps¹⁷⁰ and has made a good start through the Executive Committee action and the Guidelines. But without greater policy implementation and, more importantly, an impartial system of accountability that can address violations by staff members and others, attempts to protect refugee women from sexual violence fall short.¹⁷¹ Much like the incorporation of human

163. HUMAN RIGHTS WATCH, *SEEKING PROTECTION*, *supra* note 1, Section I.

164. HUMAN RIGHTS WATCH, *SEXUAL VIOLENCE AND ITS CONSEQUENCES AMONG DISPLACED PERSONS IN DARFUR AND CHAD*, *supra* note 1 (referring to the 2003 UNHCR guidelines to argue that more should be done by the Office).

165. See U.S. COMM. FOR REFUGEES, *FUNDING CRISIS IN REFUGEE ASSISTANCE: IMPACT ON REFUGEES* (Nov. 20, 2002).

166. See, e.g., Beth Elise Whitaker, *Changing Priorities in Refugee Protection: The Rwandan Repatriation from Tanzania*, in *PROBLEMS OF PROTECTION: THE UNHCR, REFUGEES AND HUMAN RIGHTS* 141, 146-151 (Niklaus Steiner, et al. eds., 2003) (describing the political and financial realities faced by UNHCR when Tanzania decided to forcibly repatriate Rwandan refugees in 1996-1997); Roxström & Gibney, *supra* note 130, at 42 (arguing that UNHCR will always need to “strike an appropriate balance between principles and pragmatism”).

167. UNHCR GUIDELINES ON SEXUAL VIOLENCE, *supra* note 61, at 67-69; see Kaiser, *supra* note 161, ¶¶ 127-128.

168. Peter Dennis, Op-Ed., *The U.N., Preying on the Weak*, WASH. POST, APR. 12, 2005, at A-21 (discussing lack of accountability in the context of UNHCR’s actions in Sierra Leone).

169. Cf. HUMAN RIGHTS WATCH, *SEEKING PROTECTION*, *supra* note 1, at Section VIII (discussing the failure of the refugee-run informal justice system to provide Burundian refugee women with accountability).

170. WOMEN’S COMMISSION FOR REFUGEE WOMEN AND CHILDREN, *YOU CANNOT DANCE IF YOU CANNOT STAND: A REVIEW OF THE RWANDA WOMEN’S INITIATIVE AND THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES’ COMMITMENT TO GENDER EQUALITY IN POST-CONFLICT SOCIETIES* 28-30 (Apr. 2001), available at http://www.womenscommission.org/pdf/rwi_ss.pdf.

171. See Oloka-Onyango, *supra* note 85, at 369-70 (arguing that general enforcement of the Guidelines is a major problem, particularly in the African context).

rights in Guinean law, inclusion of human rights in UNHCR practice is paralleled by missed opportunities for greater protection.

C. The Humanitarian NGOs

In the aftermath of the 2001-2002 sexual exploitation scandals and the ensuing UNHCR and OIOS reports, humanitarian organizations working in the camps in Guinea began to promulgate codes of conduct that were more responsive to human rights in general, and women's rights in particular.¹⁷² This shift mirrored a broader movement among humanitarian organizations operating in Africa and elsewhere for greater incorporation of human rights norms in humanitarian action.¹⁷³ One of the largest efforts along these lines is the SPHERE Project, an attempt to codify rights-based humanitarianism.¹⁷⁴

Before the movement for rights-based humanitarianism became prominent, some scholars argued that many NGOs were more concerned with philanthropy than rights.¹⁷⁵ Policy analyst David Rieff even goes so far as to argue that this philanthropy was underscored by neutrality, a sense that human rights promotion and humanitarian action were "distinct and in some ways irreconcilable imperatives."¹⁷⁶ Yet after the failures of humanitarian organizations aiding Rwandan refugees in 1994-1995, scholars and practitioners publicly questioned the role of neutrality in humanitarianism, arguing that it can result in diminished protection of human rights.¹⁷⁷ Activist and scholar Alex de Waal argues that by prioritizing neutrality in Rwanda, for example, humanitarian agencies

172. See, e.g., AMERICAN REFUGEE COMMITTEE, SEXUAL MISCONDUCT POLICY, *supra* note 81 ("The American Refugee Committee believes strongly in the human dignity of each individual.").

173. See, e.g., Hugo Slim, *Not Philanthropy But Rights: Rights-Based Humanitarianism and the Proper Politicisation of Humanitarian Philosophy in War*, Centre for Development and Emergency Practice, Oxford Brookes University, 21 (2003), available at http://www.odi.org.uk/hpg/confpapers/slim_new.pdf ("Grounding humanitarian action in rights, duties and laws makes the values of humanitarian work explicit to all and it links humanitarian values directly to justice.").

174. See Barbara Harrell-Bond, *Can Humanitarian Work with Refugees be Humane?* 24 HUM. RTS. Q. 51, 75 (2002) (citing the SPHERE Project as one way in which the abuse of power by humanitarian organizations vis-à-vis their beneficiaries can be broken down through increased accountability); Slim, *supra* note 173, at 18 (discussing SPHERE in addition to ICRC's *Avenir* process, in which ICRC committed to developing a rights-based framework for humanitarianism).

175. Slim, *supra* note 173, at 10.

176. David Rieff, *Humanitarianism in Crisis*, 81 FOREIGN AFF. 111, 112 (2002).

177. ALEX DE WAAL, *FAMINE CRIMES: POLITICS AND THE DISASTER RELIEF INDUSTRY IN AFRICA* 191-202 (1997) (arguing that the Rwandese Patriotic Front (RPF) advance and eventual capture of power meant that many of the refugees who fled to Zaire and given humanitarian aid were former *génocidaires*); Whitaker, *supra* note 166, at 150 (discussing the forced repatriation from Tanzania of Rwandan refugees in 1996-1997 which was not actively protested by the humanitarian organizations working in Tanzania at the time).

actually contributed to the worsening of the human rights abuses by protecting the perpetrators of the genocide and giving them an opportunity to regroup and rearm.¹⁷⁸ Rwanda is a stark example that naturally raises questions about the responsibilities and duties of peacekeeping forces and state governments; but nonetheless, it illustrates a shift in the field. Neutrality was relevant to humanitarian emergencies caused by state-to-state wars, but protecting refugees through neutrality is considerably harder in situations involving non-state actors or quasi-state armed groups.¹⁷⁹

The increasing politicization of NGO operations underscores the growing irrelevance of philanthropy as a guiding principle for humanitarian aid. Today, NGOs rely on government funding far more now than they did a few decades ago.¹⁸⁰ Therefore, aid has begun to mimic the political objectives of the donor governments.¹⁸¹ In this context, the guiding principles of neutrality and philanthropy no longer make so much sense; some feel that NGOs need to shift their focus in order to become "effective and morally coherent."¹⁸²

The shift away from neutrality and philanthropy was accompanied by a deep sense of unease with the debasing relationship between aid giver and recipient.¹⁸³ For anthropologist and refugee activist Barbara Harrell-Bond, the very idea of charity is debasing, placing the power for determining survival exclusively in the hands of the humanitarian aid workers.¹⁸⁴ The SPHERE Project's organizing document, the *Humanitarian Charter*, puts human rights center stage by focusing on the fundamental rights of the beneficiary, and by asserting that the right to life with dignity is one of the principles of "fundamental importance" to humanitarianism.¹⁸⁵ This shift to rights-based humanitarianism aims to make the beneficiaries "more than passive recipients of the charity of others."¹⁸⁶ Rights-based humanitarianism goes beyond "private charity or governmental largess" by defending and securing the beneficiaries' human rights.¹⁸⁷

178. DE WAAL, *supra* note 177, at 191-98.

179. Elizabeth G. Ferris, *The Role of Non-Governmental Organizations in the International Refugee Regime*, in PROBLEMS OF PROTECTION: THE UNHCR, REFUGEES AND HUMAN RIGHTS 117-37, 125 (Niklaus Steiner et al. eds., 2003).

180. *Id.* at 125.

181. *Id.*

182. Rieff, *supra* note 176, at 113.

183. Harrell-Bond, *supra* note 174, at 54-55.

184. *Id.*; see also Nicolette Lawrie & Wim Van Damme, *The Importance of Refugee-Host Relations: Guinea 1990-2003*, 362 THE LANCET 575 (2003) (arguing that labeling large-scale influxes of refugees as a "burden" in need of charity boosts donor support but undermines host-refugee relations).

185. THE SPHERE PROJECT, HUMANITARIAN CHARTER AND MINIMUM STANDARDS IN DISASTER RESPONSE 17 (2004). The other two fundamental principles are the distinction between combatants and non-combatants and the principle of non-refoulement. *Id.*

186. Rieff, *supra* note 176, at 114.

187. Harrell-Bond, *supra* note 174, at 52.

The disproportionate vulnerability of refugee women makes them prime examples of the phrase “passive recipients of charity.” Harrell-Bond suggests that recognizing the fundamental dignity of aid recipients may help shift the camps’ destructive power balance in favor of refugees. Vesting refugee women with the power to lodge complaints or to otherwise hold camp officials accountable, for example, may also further shift that balance of power.¹⁸⁸ The Charter does not specifically address women’s rights, though there are some technical guidelines in the second part of the SPHERE Handbook on the best ways to implement aid programs to protect women’s rights.¹⁸⁹ The Charter does emphasize, however, that NGOs’ “fundamental accountability must be to those we seek to assist,”¹⁹⁰ which suggests a high degree of responsiveness to the needs of the women they aid.

In practice, the incorporation of human rights norms into humanitarianism has had limited impact on refugee women’s rights. This may be in part because initiatives such as the SPHERE Project are still embryonic efforts.¹⁹¹ Awareness of rights-based humanitarianism has taken root more strongly in head offices than in field offices, leading to a temporary disconnect between the values promulgated by some organizations and the realities in the field.¹⁹² A further obstacle to implementation is that there remains some debate within the humanitarian community as to the appropriate place of human rights within humanitarianism.¹⁹³

In Guinea, the American Refugee Committee’s Legal Aid Clinic for Women is one successful example of rights-based humanitarianism in action.¹⁹⁴ ARC operates two clinics for refugee women, both staffed by Guinean lawyers.¹⁹⁵ The clinics are able to capitalize on Guinea’s favorable women’s human rights laws to take on sexual assault, rape, and sexual exploitation cases in addition to child custody and alimony mediations.¹⁹⁶

188. *See id.* at 70.

189. THE SPHERE PROJECT, *supra* note 185.

190. *Id.* at 19.

191. MARCI VAN DYKE & RONALD WALDMAN, COLUMBIA UNIVERSITY MAILMAN SCHOOL OF PUBLIC HEALTH, THE SPHERE PROJECT: EVALUATION REPORT, COLUMBIA UNIVERSITY, MAILMAN SCHOOL OF PUBLIC HEALTH 31 (2004) (“The bold effort to introduce a ‘rights-based’ approach to humanitarianism, while welcomed by many NGOs is, after all, only a few years old.”).

192. *Id.* at 6.

193. *See* Rieff, *supra* note 176, at 118-19 (2002) (arguing that humanitarians have not completely adapted to the “uncontested centrality” of human rights); Harrell-Bond, *supra* note 174, at 76 (noting that the organizational cultures of some humanitarian organizations, including UNHCR, can create barriers to such fundamental shifts in organizational goals).

194. ARC INT’L, OVERVIEW OF THE FERN HOLLAND LEGAL AID CLINIC, *supra* note 73, at 9.

195. *Id.*; *See also* ARC INT’L, GENDER-BASED VIOLENCE: A PARTICIPATORY TOOLKIT, *supra* note 58, at 8 (“ARC’s two clinics process between 400 to 600 cases per year, working only with refugees.”).

196. Elizabeth Rubin, *Fern Holland’s War*, N.Y. TIMES MAG., Sept. 19, 2004, at 68-69 (stating that Holland proposed opening the legal aid clinic partly because she found that Guinea’s

For instance, if the clinics take on a rape case, the clinic's Guinean lawyers help the woman prosecute her case in Guinean court by providing her with legal support during the investigatory and trial phase of the prosecution. The clinics also work with clients who wish to mediate their cases using informal procedures set up at the camp. Mediation is usually reserved for child custody and alimony situations. The clinics operate as semi-independent entities, using separate staff and buildings from ARC's regular operations. The clinics protect women's rights on several levels: first, by providing access to justice to redress violations of their physical security; second, by securing alimony payments that address the women's economic needs and reduce their vulnerability to rights violations; and third, by raising awareness of women's rights among men and women in the refugee and humanitarian aid communities.

However, rights-based humanitarianism, including the clinic model, is not without on-going structural problems. First, some scholars question how far the language of rights can be taken, especially in emergency situations.¹⁹⁷ This is particularly relevant for some women's rights traditionally within the private sphere, which can be quickly neglected in emergency situations or contested on cultural relativist grounds.¹⁹⁸ Second, donor governments seem to be far more interested in a needs-based approach to humanitarianism than a rights-based one, partly because the needs-based approach is easier to defend before their own public, and partly because they may not wish to accrue the duty-bearing responsibility that is implied by the rights-based approach.¹⁹⁹

The ultimate structural problem with rights-based humanitarianism is lack of accountability. Are NGOs willing to work under a system that holds them accountable to their rights-bearing beneficiaries – and if so, what would that accountability look like? The SPHERE Project's *Humanitarian Charter* does include some provisions on accountability, but it does not specify exactly how such a system would work.²⁰⁰ A clinic-based accountability model, such as that used by ARC, has certain intrinsic problems, including its organizational links to the NGO community itself,

domestic law and international obligations provided the necessary legal basis to pursue successful claims).

197. Rieff, *supra* note 176, at 118 (arguing that "the language of rights is much more problematic than relief NGOs have thus far been willing to recognize," citing the right to food as one particular example of a contested right that could be hard to deliver in a place "convulsed by ethnic war").

198. See Bonny Ibowoh, *Defining Persecution and Protection: The Cultural Relativism Debate and the Rights of Refugees*, in PROBLEMS OF PROTECTION: THE UNHCR, REFUGEES AND HUMAN RIGHTS 61, 67-68 (Niklaus Steiner et al., eds., 2003).

199. VAN DYKE & WALDMAN, *supra* note 193, at 32 (quoting a staffer for a donor government who posed the question, "Can you imagine someone suing the US State Department for human rights violations for not giving them adequate shelter?").

200. THE SPHERE PROJECT, *supra* note 185, at 19 ("We expect to be held accountable to this commitment and undertake to develop systems for accountability within our respective agencies, consortia and federations.").

its Western-based funding sources, and its reliance on a receptive court system in the host country. Unlike UNHCR, NGOs are not necessarily trained to fulfill protection roles,²⁰¹ and so they should not be the sole aid providers held responsible for providing accountability mechanisms.

Lack of accountability deeply affects refugee women who have been victims of sexual violence. Gender-based violence researcher Jeanne Ward emphasizes that a rights-based approach in women's rights programming requires both that gender-based violence be explicitly addressed when planning humanitarian assistance strategies and that any efforts to confront gender-based violence must be "inclusive of the population served and the needs of the most vulnerable."²⁰² These standards constitute the bare minimum. Movements in the NGO community to provide accountability and access to justice for refugee women are most welcome and must be encouraged.

The trio of aid providers in Guinea – the government, NGOs, and UNHCR – all fail to guard the human rights of women refugees in similar ways: lack of enforcement of laws or policies designed to protect women, limited access to justice, and ineffective accountability mechanisms. Though each aid provider has taken steps to incorporate human rights norms, each has failed to redress the violations of refugee women's fundamental human rights. If aid providers wish to emphasize that individual beneficiaries are endowed with inalienable rights, then the aid providers have specific responsibilities to help the individuals realize those rights.²⁰³ There is a clear need for more comprehensive protection of the physical security of refugee women.²⁰⁴

III. STATES, STATE-LIKE ACTORS, AND ACCOUNTABILITY

There is no effective state-like actor providing refugee women in Guinea's camps with accountability or access to justice. Acknowledging the human rights of beneficiaries naturally correlates with affording each individual the ability to assert those rights.²⁰⁵ Refugee women do not have the democratic means to change those in positions of authority – they cannot vote out UNHCR – and so it is all the more important to establish a quasi-judicial or judicial system that can provide greater accountability.²⁰⁶

201. Ferris, *supra* note 179, at 129.

202. Jeanne Ward, THE REPRODUCTIVE HEALTH FOR REFUGEES CONSORTIUM, IF NOT NOW, WHEN? ADDRESSING GENDER-BASED VIOLENCE IN REFUGEE, INTERNALLY DISPLACED, AND POST-CONFLICT SETTINGS: A GLOBAL OVERVIEW, 9 (2002).

203. See, e.g., Oloka-Onyango, *supra* note 85, at 19 (arguing that refugee women would be well-served by an expeditious and effective inspection and accountability mechanism).

204. *Id.*

205. See, e.g., Rieff, *supra* note 176, at 113 (citing an Action Contre la Faim worker, "What I support is the victims' access to their rights – that is, a construction that makes them subjects, not objects").

206. Oloka-Onyango, *supra* note 85, at 18-19 (arguing that the best protectors of rights are the people themselves, and that women must have a mode of redress).

Collectively, the trio of aid providers amounts to the *de facto* state in the refugee camps. The long-term camps in Guinea's Forest Region are active polities; the camps have more sophisticated municipal infrastructures than many of the neighboring villages and towns.²⁰⁷ Each member of the trio of aid providers – the government, NGOs, and UNHCR – performs vital state-like functions. And yet no member of the trio functions fully as a state. None of them take on full duty-bearing responsibilities to ensure the human rights of the residents. Without effective state-like institutions – institutions that are accountable and offer residents the means through which to realize their rights – the movement for greater recognition of the human rights of refugees becomes empty.

Enforcement, access to justice, and accountability are key functions of an effective state.²⁰⁸ Enforcement of the policies promulgated by the government and the provision of basic physical security are two core state functions. As part of their responsibility to provide law and order, states – like aid providers – have a duty not to violate certain human rights norms. They may also have a duty to prevent private actors from violating those norms. Another key state function, often derived from international treaties to which the state is party, is the obligation to aid in the realization of certain human rights.²⁰⁹ Strong state functions can make the fundamental dignity of each individual refugee a central part of the aid response.²¹⁰

What exactly would strong state-like institutions that provide the crucial functions of enforcement, access to justice, and accountability look like? Francis Fukuyama uses two criteria to assess the strength of a state or state-like institution.²¹¹ He argues that it is necessary to measure both the scope of the state's functions and the strength of the state's institutional capacities.²¹² In assessing the breadth of state role, Fukuyama suggests that ensuring the rule of law and providing essential public goods like courts are functions with a fairly basic scope, while more activist state functions include wealth redistribution and social insurance.²¹³ In assessing the state's institutional capacities, Fukuyama identifies the transparency with which the institution operates as an important measure of its strength.²¹⁴ Ultimately, for Fukuyama, "[t]he essence of stateness is . . . *enforcement*," or in other words, the ability to ensure compliance with the state's laws and

207. Cf. Wilde, *supra* note 36, at 109.

208. FRANCIS FUKUYAMA, *STATE-BUILDING: GOVERNANCE AND WORLD ORDER IN THE 21ST CENTURY* 8-10 (2004) (discussing various types of state functions).

209. See, e.g., International Convention on Civil and Political Rights arts. 2, 40, opened for signature Dec. 16, 1966, 99 U.N.T.S. 17 [hereinafter ICCPR].

210. Oloka-Onyango, *supra* note 85, at 19 (discussing who will monitor the aid workers in order to prevent abuses).

211. FUKUYAMA, *supra* note 208, at 6-39.

212. *Id.*

213. *Id.*

214. *Id.*

policies.²¹⁵

Fukuyama argues that weak governments – as evaluated using this two-part framework – can be the source of humanitarian and human rights disasters.²¹⁶ For example, Sierra Leone’s government has a very limited scope of state functions, barely meeting minimal functions such as rule of law and property rights.²¹⁷ Sierra Leone also has very weak institutions, and to Fukuyama, this is a fatal combination.²¹⁸ On the other hand, Turkey takes on an ambitious range of state functions, but its institutions, including the courts, are still relatively weak.²¹⁹ Although Turkey attempts to provide a broad pallet of public goods to its citizens, it does so without a strong enough system of accountability to ensure fundamental rights. A similar analysis holds true for Guinea’s refugee camps: an ambitious scope of state functions implemented weakly can result in the failure to ensure human rights.

A. The Guinean Government’s Weak State Functioning in the Camps

According to its international obligations, the Guinean government must act as a surrogate state to the refugees in its territory.²²⁰ Fundamental human rights standards apply without discrimination between national and alien²²¹ and in some situations can offer a greater level of protection than that established by the 1951 Refugee Convention.²²² For instance, the rights declared in the International Covenant on Civil and Political Rights, including access to courts and protection of physical security, must be ensured to “all individuals within the territory and subject to its jurisdiction.”²²³ States party to the ICCPR must broadly apply the fundamental right to recognition as a person before the law.²²⁴

In addition to the obligations imposed by the ICCPR, the Guinean government also accrues specific obligations through the 1951 Refugee Convention. The preamble affirms “the principle that human beings shall enjoy fundamental human rights and freedoms without distinction.”²²⁵ The Convention distinguishes between rights that must be accorded a minimum standard of realization – at least that which is accorded to aliens

215. *Id.* at 6.

216. *Id.* at x.

217. *Id.* at 13 fig. 5.

218. *Id.* at 13.

219. *Id.* at 12.

220. Anker, *supra* note 109, at 134-35.

221. GOODWIN-GILL, *supra* note 128, at 231.

222. Clark, *supra* note 76, at 591 (arguing that articulations of non-refoulement in the Convention Against Torture and other human rights treaties provide broader protection than article 33 of the 1951 Refugee Convention).

223. ICCPR, *supra* note 209, art. 2(1).

224. GOODWIN-GILL, *supra* note 128, at 232 (arguing that refugees have a fundamental right to be recognized as persons before the law).

225. Convention Relating to the Status of Refugees, *supra* note 98, preamble, ¶ 1.

generally – and rights that must be realized without distinction between national and refugee.²²⁶ Access to courts is in the latter category; all refugees in Guinea are entitled to the same assistance in accessing courts as nationals.²²⁷

The government has ceded large portions of its day-to-day operations in the camps to UNHCR through memoranda of understanding. Because Guinea has negotiated agreements with UNHCR, it can be assumed to have admitted the refugees lawfully and is obligated to implement the Convention.²²⁸ The delegation of day-to-day operations to UNHCR does not include delegation of legal responsibility; new memoranda are drawn up for each country UNHCR works with, and terms of the memoranda can be renegotiated at any point.²²⁹ For instance, the 2001 Memorandum of Understanding between ECOWAS and UNHCR specifically aims to address “the needs of vulnerable groups such as women and children in West African countries,” and aims to stabilize countries in the region.²³⁰ The agreement does not, however, impose any additional legal obligations on UNHCR beyond those to which the organization is bound through its statute or as a part of the U.N. Through its memoranda of understanding the Guinean government cedes *de facto* control of some camp functions, but does not relinquish the legal obligation to protect refugees.

In practice, the government remains responsible for the security of the camps and is represented primarily by two organizations: the Bureau National de Coordination de Réfugiés (BNCR) and the Brigade Mixte de Sécurité (BMS). BNCR operates as a coordinating agency between the Guinean government and other actors in the field, while BMS is a joint military and police bureau that provides security for the camps. In addition to providing security, the Guinean government provides land for the camps themselves, but attempts to limit refugees’ ability to cultivate that land. The Guinean government agencies responsible for refugees are not particularly powerful or well-coordinated.

Viewing the Guinean government’s exercise of state-like functions over the refugee camps through Fukuyama’s analytical framework, it becomes clear that the government is relatively weak.²³¹ The Guinean government provides a very limited range of services – general security and land – and does not attempt to secure basic individual rights, including physical

226. GOODWIN-GILL, *supra* note 128, at 298-99.

227. Convention Relating to the Status of Refugees, *supra* note 98, art. 16 (access to courts must include free legal assistance and exemption from *cautio judicatum solvi*, if those provisions are offered to nationals).

228. Clark, *supra* note 76, at 597-98.

229. See, e.g., Basic Agreement (Government of the Republic of South Africa and UNHCR), Sept. 6th, 1993 available at <http://www.lhr.org.za/refugee/policy/policy02basic.htm> (expanding UNHCR’s capacities in South Africa beyond that of the 1991 memorandum of understanding).

230. UNHCR, *ECOWAS-UNHCR Memorandum of Understanding*, *supra* note 77.

231. See generally FUKUYAMA, *supra* note 208, at 16-17 (describing how many sub-Saharan African states decreased both state scope and state strength during the 1980s and 1990s).

security and property rights. The government's provision of public goods to the Forest Region in general is also minimal.²³² The state institutions that oversee the camps are strong in some respects – the BMS and the BCR exercise territorial control over the camps, and so are able to carry out the government's security policies – but offer no accountability and are subject to high levels of corruption.²³³ In addition, the leaders of the BMS and the BCR defer to police and security forces and are often not informed of new refugee arrivals or detentions.²³⁴

B. UNHCR's Assumption of a Quasi-State Role in the Camps

When UNHCR assumes responsibility for providing basic public services, such as nutrition, education, and health, in long-term refugee camps the agency becomes, in some respects, a quasi-state. In Guinea and elsewhere, UNHCR has taken on functions that “were not predictable – either in terms of character or permanency – at the time the office was created.”²³⁵ In long-term camps, which develop sophisticated and complex community structures, UNHCR goes far beyond providing basic emergency care.²³⁶ In Guinea the agency operates much like a local government, exercising a greater degree of control over the municipal operations in the camps than the host government itself.²³⁷

UNHCR has signed memoranda of understanding with the host government that allow it to take on certain state-like functions in running the camps. The transfer of power from the government to UNHCR supports the state-like character of UNHCR's operations. In particular, the 2001 Memorandum of Understanding between ECOWAS and UNHCR was aimed at addressing “the needs of vulnerable groups such as women and children.”²³⁸ Though UNHCR does not accrue additional legal obligations through these memoranda of understanding, it does take on

232. *Guinea; Further Economic Decline Expected as Donors Quit*, U. N. INTEGRATED REGIONAL INFORMATION NETWORK, June 29, 2004, <http://www.irinnews.org/print.asp?ReportID=41918>. (“In the remote Forest Region, in southern Guinea, the last public investment in hydraulic and electric services or highway infrastructures was in 1961. Since then, the population of the region has increased by five.”).

233. See FUKUYAMA, *supra* note 208, at 8-9 (“Strength in this sense includes . . . the ability to formulate and carry out policies and enact laws; . . . to control graft, corruption, and bribery; to maintain a high level of transparency and accountability in government institutions”); see also HUMAN RIGHTS WATCH, *LIBERIAN REFUGEES IN GUINEA*, *supra* note 11 (describing the government's exercise of state control with respect to refugees, including border closing, extended detention, and incitement to rape).

234. LAWYERS COMM. FOR HUMAN RIGHTS, *supra* note 9, at 60 (stating that the control and management of refugees in Guinea is viewed as a matter of national security, describing the manner in which police and security forces controlled information about refugee arrivals and detentions, and noting that the President made all final decisions on refugee matters).

235. Oloka-Onyango, *supra* note 85, at 11.

236. See Wilde, *supra* note 36, at 108.

237. Compare *id.* at 110 (discussing the Dadaab camps in Kenya).

238. UNHCR, *ECOWAS-UNHCR Memorandum of Understanding*, *supra* note 77.

specifically-delegated state functions.²³⁹

In practice, UNHCR functions as the municipal government of the camps by overseeing camp committees, providing basic legal services, including status determination, and running marketplaces. By taking primary responsibility for refugee status determination, UNHCR plays a major role in choosing the "citizens" of this state-like entity. UNHCR maintains the dirt roads that lead from nearby towns to the camps, and it coordinates with the World Food Programme to transport necessary supplies from the east of the country. In addition, UNHCR oversees NGO "partners" who implement various aspects of the refugee response strategy, including health, education, and job-training services. NGOs must win approval, and in some cases funding, from UNHCR in order to perform these services. In both its supervisory and direct-service provision roles, UNHCR takes on many functions normally attributed to a government.

According to international lawyer Ralph Wilde, UNHCR's state-like character gives it certain responsibilities under international human rights law.²⁴⁰ First, Wilde establishes that UNHCR has international personality, which incurs responsibility under international law.²⁴¹ Second, he argues that the scope of that responsibility is determined by the circumstances in which the organization exercises its legal personality - namely the state-like behavior.²⁴² And so, in Wilde's eyes, UNHCR's *de facto* sovereignty implies direct responsibility for upholding human rights treaty obligations entered into by the host state.²⁴³

Wilde's reading of UNHCR's human rights obligations is certainly not the mainstream interpretation, but other scholars agree that UNHCR has at least some limited responsibility to enforce human rights norms. For instance, Goodwin-Gill agrees that UNHCR, as a subsidiary organ of the General Assembly, has international personality and therefore can possess international rights and duties.²⁴⁴ Van Dyke and Waldman take the position that once an international organization chooses to intervene in a humanitarian situation, it becomes obligated to help beneficiaries exercise their legal rights.²⁴⁵ And from a policy standpoint, Harrell-Bond argues that once UNHCR starts operating in a country, a perspective can emerge that the organization is responsible for refugees in all respects.²⁴⁶ This perspective is compounded by the notion that UNHCR staffers are 'senior'

239. Compare Basic Agreement, *supra* note 229, § 11 (stating that refugees shall "enjoy full legal protection," but not specifying that UNHCR has additional responsibilities for legal protection).

240. Wilde, *supra* note 36, at 115.

241. *Id.*

242. *Id.*

243. *Id.*; see also Harrell-Bond, *supra* note 174, at 75-76 (discussing Wilde's argument, and disagreeing with it on other grounds).

244. GUY GOODWIN-GILL, *supra* note 128, at 216.

245. VAN DYKE & WALDMAN, *supra* note 191, at 30-31.

246. Harrell-Bond, *supra* note 174, at 78.

to host government officials.²⁴⁷

UNHCR certainly has a duty not to violate human rights norms while operating in Guinea; staff members and volunteers, for example, must not commit acts of sexual violence. Furthermore, as a state-like entity with considerable policy-setting capabilities, UNHCR also has a limited duty to prevent others from committing human rights violations. UNHCR has no criminal law function that would allow it to prosecute individual suspects, but it must enforce existing policies designed to reduce systemic occurrences of sexual violence.

There are considerable limits to UNHCR's duty to prevent human rights violations. First, the agency is often limited by the security situation. For instance, in 2000-2001, UNHCR had trouble preventing Kamajor recruitment in the camps because violence in the region left UNHCR with no access to the camps.²⁴⁸ Second, the agency is further limited by its double mandate: it must simultaneously "protect refugees from repression" and "facilitate state policies towards refugees."²⁴⁹ This ties UNHCR's hands with respect to the government and undermines its ability to prevent sexual violence perpetrated by government agents.²⁵⁰ So UNHCR's duty to prevent is a generalized duty that can focus primarily on policies aimed at ending systemic violations of women's rights, rather than on individual instances of sexual violence.

Applying Fukuyama's two-part framework, UNHCR's state-like functioning in the camps is strong. Although the agency provides few civil or political rights, UNHCR does perform a broad range of state-like functions, from providing public goods to coordinating private activity and fostering markets.²⁵¹ The institutions that implement these state-like functions are relatively strong; UNHCR exercises a virtual monopoly on enforcement of policies *within* the camps. Because refugees are reliant on UNHCR for basic necessities, Harrell-Bond argues that some will pander to the organization, representing themselves as "good" refugees who are helpless victims of circumstances.²⁵² This further bolsters the relative strength of UNHCR's institutions by making enforcement easier. UNHCR has the state-like capacity to implement policies that protect women's rights. UNHCR is, in some ways, a stronger "state" than the Guinean government.

247. *Id.* at 56.

248. See HUMAN RIGHTS WATCH, *YOUTH, POVERTY, AND BLOOD: THE LETHAL LEGACY OF WEST AFRICA'S REGIONAL WARRIORS*, *supra* note 9, at Section IV.

249. See Loescher, *UNHCR at Fifty*, *supra* note 37, at 4-5.

250. *Id.*

251. See FUKUYAMA, *supra* note 208, at 7-8 (discussing the World Bank's framework for measuring state functions).

252. See Harrell-Bond, *supra* note 174, at 58.

C. NGOs' Limited State-Like Qualities

The NGOs that operate in the Forest Region are like a series of administrative agencies, in that UNHCR selects the partner agencies, who each then take on specific state-like roles. UNHCR retains a monitoring and evaluating role for all projects implemented in the camps.²⁵³ In addition, UNHCR acts as the coordinating body, overseeing access to the camps and providing funding to NGOs. Individual NGOs often take on one or two specific state functions, similar to an administrative agency.

Together, their operations constitute a massive and complex operation. De Waal labels the groups of specialists, consultants, and lobbyists that pull together these operations the "Humanitarian International," arguing that they function as an internationalized social welfare agency.²⁵⁴ NGOs bring to Guinea logistical resources that permit them to function, including generators, jeeps, and extensive radio communications systems. They rely on both international and national staff members, many of whom have gained experience in other refugee settings. They also provide access to international media. According to de Waal, however, the press does not always provide an adequate accountability check on the scope and character of the NGOs' collective operation.²⁵⁵

Van Dyke and Waldman outline the chain of responsibility that falls to NGO operations of this scale.²⁵⁶ NGOs have a basic duty not to violate human rights while going about their operations, but they do not have a formal, state-like duty to prevent human rights violations.²⁵⁷ Once NGOs make the choice to intervene, however, they become "obligated to help those they are assisting to exercise their legal rights . . ." ²⁵⁸ In refugee settings where rights holders lack the capacity to exercise political will, rights-based programming, such as that advocated by the SPHERE Project, forms part of the basis for an accountable system.²⁵⁹ Where the host state lacks the capacity to protect refugees' fundamental human rights, it falls to UNHCR and NGOs to craft systems of accountability and access to justice.

Under Fukuyama's two-part framework, NGOs have a limited state-like quality. Together, they perform a number of state-like operations, providing services analogous to complex state functions.²⁶⁰ Measuring their

253. See Pallis, *supra* note 107, at 13.

254. DE WAAL, *supra* note 177, at 65-66 (arguing that the "Humanitarian International" has converged around a common culture that prevents them from being fully accountable).

255. See *id.* at 84-85 (arguing that the international media cannot provide the needed level of accountability because too many journalists work closely with the "Humanitarian International," thus losing their impartiality).

256. VAN DYKE & WALDMAN, *supra* note 191, at 30-31.

257. *Id.*

258. *Id.* at 31.

259. See, e.g., Lola Gostelow, *The Sphere Project: The Implication of Making Humanitarian Principles and Codes Work*, 23(4) *DISASTERS* 316, 321 (1999) (discussing rights-based programming as being "appropriate in those very contexts where rights have eroded").

260. See FUKUYAMA, *supra* note 208, at 7-11.

institutional strength is more difficult, as NGOs are under the logistical and in some cases financial oversight of UNHCR. In addition, the measure of institutional capacity may vary strongly by function.²⁶¹ NGOs are good at delivering economic and social services. But NGOs and their oversight body, UNHCR, are poor at maintaining “a high level of transparency and accountability,” which is a key component of strong institutions.²⁶² While NGOs behave like states to the extent that they perform crucial state-like functions under a powerful organizational and operational structure, they do not provide the political or judicial accountability crucial to full recognition of their beneficiaries as bearers of fundamental human rights.

D. No Effective State, and No Incentive to Collaborate

There is no effective state in Guinea’s refugee camps. The trio of aid providers cobbles together a broad range of state-like functions to operate the camps. They perform some of these functions well: the camps are operational municipalities with active schools, markets, and religious institutions. But none of the three actors provides political or judicial accountability that safeguard against violations of human rights. It is not enough for the trio of aid providers to pledge to address the underlying causes of sexual violence in refugee camps. Instead, given the fundamental rights-bearing nature of the refugee, the trio of aid providers that offer governance to those refugees must also provide mechanisms to ensure the refugees’ rights are realized. A state that recognizes the fundamental human rights of its citizens must provide accountability to ensure the exercise of those rights. In the camps, no such accountability exists.

The host state has the ultimate legal responsibility under the 1951 Convention.²⁶³ In reality, Guinea is a weak state, hostile to the massive influxes of refugees. Not only is Guinea unable to provide real accountability for these refugees, it is politically unwilling to do so. UNHCR has a surprisingly strong state-like role, under Fukuyama’s framework. Aided by NGOs, UNHCR has stepped forward to provide and coordinate humanitarian aid in the camps. It must now also assume responsibility for protecting fundamental human rights.

Because the very state-like functions performed by UNHCR and the NGOs can in fact exacerbate the conditions that make refugees susceptible to sexual violence, these organizations must make accountability a priority. UNHCR and NGOs interact with camp residents on a daily basis, distributing basic goods and services. The state-like operations of UNHCR and NGOs create multiple ties between aid providers and beneficiaries. Poorly-implemented policies can exacerbate the vulnerability of refugee

261. *Id.* at 10.

262. *Id.* at 9.

263. GOODWIN-GILL, *supra* note 128, at 240.

women. Until NGOs and UNHCR are held accountable for their policy choices, rights-based refuge will remain a mirage.

The trio of aid providers has no structural incentive to collaborate as one state-like body to provide accountability. Rights-based refuge "demands a purposeful degree of co-operation,"²⁶⁴ which is lacking from this scenario. The state is obliged to provide guarantees of security and protection of rights. But given Guinea's national security concerns and deteriorating political stability, the government is unwilling to allow the aid organizations to take on a particularly political state-like function such as human rights accountability.²⁶⁵ Meanwhile, UNHCR and many NGOs are faced with organizational and structural difficulties that make institutional change difficult. A collective approach to accountability may overcome some of these issues. Each organization must be held accountable for the state-like functions it provides and for the natural duties of the rights-based approaches it espouses.

CONCLUSION AND RECOMMENDATIONS

The nascent efforts by the trio of aid providers - the Guinean government, UNHCR, and NGOs - to incorporate human rights norms into various aspects of refugee assistance are welcome. These efforts lay the groundwork for addressing violations of refugee women's right to physical security. A concept of rights-based refuge is central to dissipating the uncomfortable dynamic of giver and receiver that debases refugee women.²⁶⁶ Furthermore, rights-based refuge is useful in defining minimum standards for responses to mass influxes of refugees.²⁶⁷ However, incorporation of rights-based norms alone is insufficient to address the structural vulnerability and continuing rights violations experienced by these women. Though there are clear obstacles to establishing accountability mechanisms - among them the objections of participating states, lack of funding, and the inertia of organizational cultures - rights-based refuge will remain a hollow promise until such accountability mechanisms are established.

When rights-based refuge is incorporated into aid responses in name only, women are disproportionately disadvantaged. Refugee women are vulnerable to human rights violations in part because of structural defects in camp design. Rights-based refuge alone, without adequate accountability mechanisms, does not answer these concerns. Human rights recognition has historically affected the public sphere more than the

264. See GOODWIN-GILL, *supra* note 128, at 229.

265. Cf. *id.* ("A Slobodan Milosevic in Belgrade or a Mullah Ohmar in Kandahar is not going to permit NGOs to operate as anything but purveyors of charity.")

266. See Sundhya Pahuja, "Don't Just Do Something, Stand There!" *Humanitarian Intervention and the Drowning Stranger* (Book Review), 5 HUMAN RIGHTS & HUMAN WELFARE 51, 51-53 (2005) (commenting on the inadequacy of the metaphor of the rescuer).

267. See Clark, *supra* note 76, at 600.

private, meaning that women's rights are less easily realized.²⁶⁸ Rights-based refuge as a guiding principle, rather than a fully-implemented reality, does not address the bias toward protection of public sphere human rights inherent in refugee law.²⁶⁹ If humanitarian organizations choose to re-orient their operations around the recognition of fundamental rights – as UNHCR and the NGOs, at least, have chosen to do – then they must also provide women with a mechanism for securing those rights that extends into the private sphere.

International actors must recognize that the realization of human rights of refugees cannot be the sole responsibility of host states, and that a multi-layered accountability system is desperately needed. First, in order to prevent violations from slipping from view, accountability must flow from the aid provider to the refugee. Aid providers answer to many stakeholders, including donors, staff, and their beneficiaries; but all too often donors are the focus of accountability initiatives.²⁷⁰ UNHCR, for instance, has a series of accountability mechanisms in place that answer to the concerns of donors and other UN bodies at the expense of the individual beneficiary.²⁷¹ Accountability mechanisms must be used to empower women refugees; aid providers must be answerable to their ultimate customers.

Second, because aid providers have multiple duties – the duty not to violate and the duty to prevent – an appropriate system of accountability mechanisms must be responsive to multiple types of complaints. At an absolute minimum, UNHCR and NGOs must be held responsible for implementation of their policies minimizing the vulnerability of women and girl refugees to sexual violence. In 2001, the former High Commissioner made five commitments to refugee women – including involvement in food distribution, increased access to camp leadership, and more effective gender-based violence prevention programs – that could reduce women's vulnerability to sexual violence.²⁷² Refugee women must be able to hold UNHCR accountable for the realization of those commitments. More importantly, however, individual refugee women must be able to bring complaints, and those complaints must receive speedy treatment and effective remedies.

Through the SPHERE Project and similar initiatives, NGOs have taken significant steps towards incorporating rights-based humanitarianism in refugee operations. Now, they need to follow through on the nascent

268. Copeland, *supra* note 109, at 106.

269. See Oloka-Onyango, *supra* note 85, at 17-18 (arguing that women are disproportionately affected by violations of economic and social rights).

270. Frances Williams, *Audit Culture Learns From Corporations' Governance: But Accountability Must Not Prevent the Real Job from Being Done*, FINANCIAL TIMES, May 5, 2005, at 3.

271. See Pallis, *supra* note 107, at 15-27 (giving a full discussion of the various accountability mechanisms currently used by UNHCR).

272. UNHCR, REPORT ON THE DIALOGUE WITH REFUGEE WOMEN, *supra* note 38, at 38-39.

efforts to create a humanitarian ombudsman that would self-regulate NGO operations.²⁷³ Through an ombudsman, individual refugees could, perhaps with the help of an independent NGO, register cases against other NGOs. An ombudsman could be both proactive and reactive,²⁷⁴ so the process could help shape policies that effectively meet the concerns of refugee women. In addition, one NGO-wide ombudsman could help diminish the negative effects of competition for donor resources by establishing a framework of comparison across all agencies.

Though NGOs have taken a vital first step, UNHCR is the organization most desperately in need of an oversight body to provide accountability. UNHCR faces far more organizational and financial challenges to instituting effective systems of accountability than the NGOs. An accountability body for UNHCR would require cooperation across the international community, and a significant commitment to restructuring the organizational culture of the Office.²⁷⁵ Some accountability mechanisms do already exist, such as the UNHCR-based Evaluation and Policy Analysis Unit and the UN-wide Office of Internal Oversight Services, but these do not fundamentally address the lack of beneficiary-based accountability.²⁷⁶

In the short term, UNHCR should insist that memoranda of understanding include realistic provisions for reducing barriers to justice faced by refugee women, and UNHCR should work with local NGOs to build capacity and strengthen access to domestic courts. Short-term changes that could impact UNHCR accountability could take on many forms, but two in particular come to mind. First, UNHCR could work with NGOs to participate in an ombudsman system such as that identified by the SPHERE Project. This would potentially provide individual refugees with a forum in which to bring complaints. Second, UNHCR can and must establish external, independent evaluation mechanisms. Independent audits of UNHCR's protection efforts should be established for each operation run by UNHCR, and the organization must account publicly for policy failures resulting in violations of refugees' fundamental rights.²⁷⁷

In the long term, deeper reform of UNHCR operations is needed in order to provide accountability for refugee women. UNHCR has a dual role as both a tool of states and a defender of individual rights.²⁷⁸ Any

273. See HUMANITARIAN ACCOUNTABILITY PARTNERSHIP, HUMANITARIAN OMBUDSMAN PROJECT: VISION/ MISSION STATEMENT, (Sept. 22, 1999), available at www.hapinternational.org/hapgeneva/OMBUDSMAN/STATEMEN.html (last visited Mar. 4, 2006); John Mitchell & Deborah Doane, *An Ombudsman for Humanitarian Assistance?* 23(2) DISASTERS 115 (1999).

274. Mitchell & Doane, *supra* note 273, at 118.

275. See Harrell-Bond, *supra* note 174, at 71 (discussing the dysfunctional organizational culture of humanitarian organizations).

276. See Pallis, *supra* note 107, at 15-27 (giving a full review of UNHCR accountability mechanisms).

277. See LOESCHER, *THE UNHCR AND WORLD POLITICS: A PERILOUS PATH*, *supra* note 20, at 375.

278. *Id.* at 2.

effective long-term accountability mechanisms must incorporate the interests of both these groups. UNHCR's operational policies need to be revised in order to give the organization the capacity to protect individual rights in situations of mass influxes where the host government may try to limit refugee rights.²⁷⁹ UNHCR's dual role – encompassing both refugee protection and state compliance with the Convention – makes promoting human rights norms more complicated, and so the mandate must be revised or clarified so that participating states fully understand and anticipate the organization's commitment to individual rights.²⁸⁰ Finally, the Convention must be authoritatively interpreted or rewritten in order to clarify the role of human rights norms in refugee protection.²⁸¹

Accountability and access to justice are crucial if the incorporation of human rights in refugee protection is to be more than just a hollow gesture. Women are subject to systematic violations of their human rights, despite the rights-based rhetoric employed by aid providers. Aid providers in Guinea and elsewhere must realize that their state-like functioning and their rights-based rhetoric should be accompanied by refugee-driven accountability mechanisms. Women's rights violations are central problems in long-term refugee camps in Guinea and in many other places. Without addressing these systemic violations through accountability and access to justice, rights-based refuge will remain incomplete.

279. See Clark, *supra* note 76, at 595-99.

280. Loescher, *UNHCR at Fifty*, *supra* note 37, at 4-5 (discussing the political problems inherent in UNHCR's conflicting double mandate).

281. Clark, *supra* note 76, at 585-86.