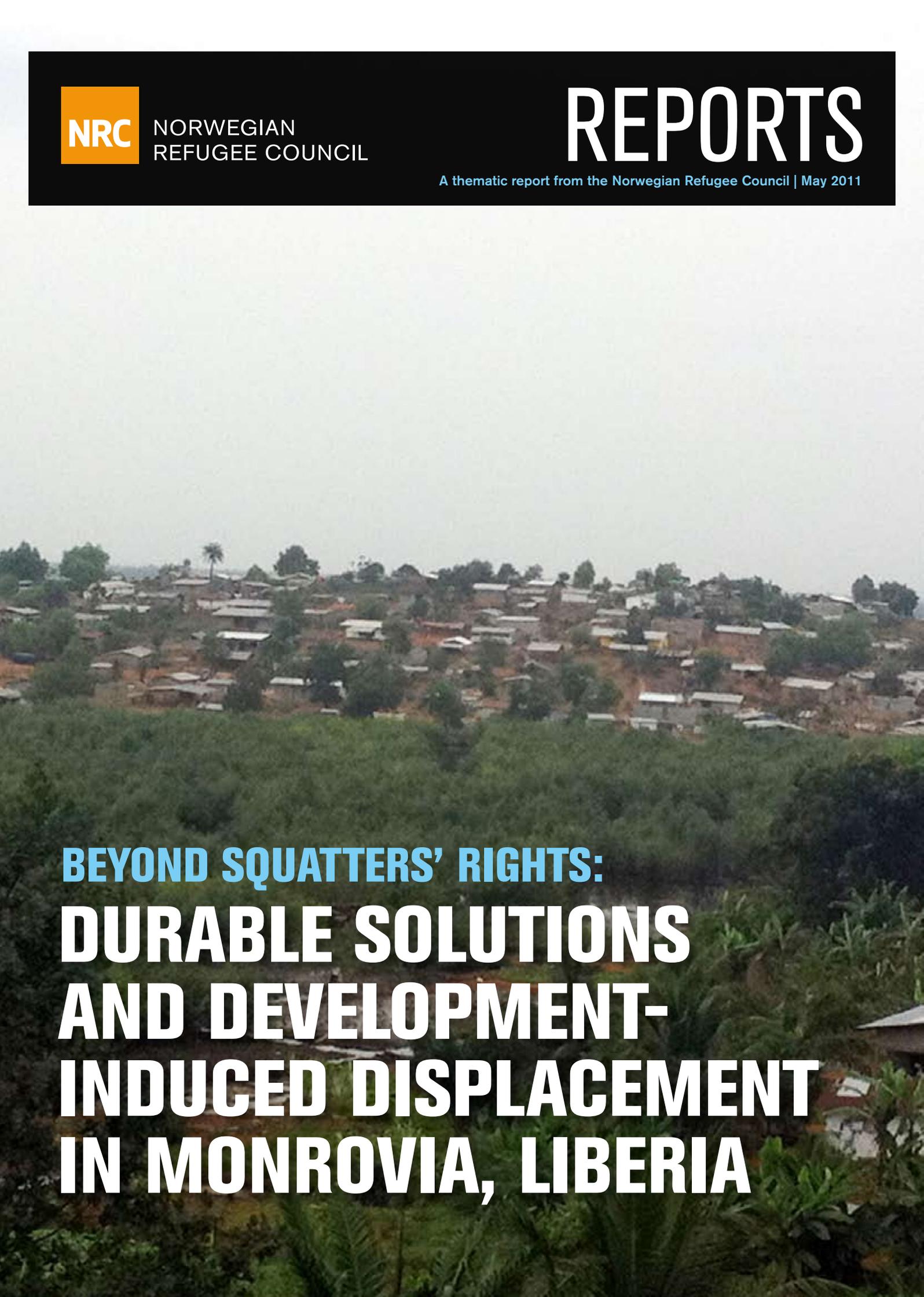




NORWEGIAN  
REFUGEE COUNCIL

# REPORTS

A thematic report from the Norwegian Refugee Council | May 2011



**BEYOND SQUATTERS' RIGHTS:  
DURABLE SOLUTIONS  
AND DEVELOPMENT-  
INDUCED DISPLACEMENT  
IN MONROVIA, LIBERIA**

# THE NORWEGIAN REFUGEE COUNCIL

The Norwegian Refugee Council (NRC) is an independent, humanitarian non-governmental organisation which provides assistance, protection and durable solutions to refugees and internally displaced persons worldwide. To learn more about the NRC and its programmes, please visit our website: [www.nrc.no](http://www.nrc.no)

## THE NRC IN LIBERIA

The 1989–2003 civil conflict in Liberia killed 200,000 people, displaced one million and destroyed the country's infrastructure and economy. Since the Accra Peace Agreement in 2003 more than 100,000 former combatants have been demobilised and virtually all internally displaced persons and refugees have returned to their homes or have been resettled. Despite progress in reconstruction and development, the security situation is fragile and serious humanitarian needs persist as returnees work to rebuild their lives. The NRC has been working in Liberia since 2003, providing protection and assistance to support the return and reintegration of refugees and internally displaced persons.

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# **FOREWORD**

This report is the fourth in a series of reports published by the NRC about housing, land and property rights, land tenure and land-related conflict in Liberia. Since 2006, the NRC Information, Counseling and Legal Assistance (ICLA) project has assisted individuals and communities in Liberia to resolve land disputes resulting from the 1989–2003 civil conflict. Supporting local stakeholders and institutions to prevent, manage and resolve land conflict is a critical component of the NRC’s work in Liberia. The intention of this series of reports is to provide original research and analysis that supports the efforts of the Government of Liberia and civil society organisations to protect and promote housing, land and property rights in Liberia.



Source: Norwegian Refugee Council; UN DPKO.

# INTRODUCTION

In the wake of its protracted civil war, Liberia continues to grapple with many of the legacies of conflict and displacement even as it seeks to move forward in reforming governance, establishing the rule of law and promoting sustainable development. One of the areas in which both the linkages and tensions between addressing the past and shaping a better future are most clearly evident is the issue of development-induced displacement in the capital city, Monrovia. The linkages lie in the fact that many, if not most of the slum-dwellers threatened with eviction as the city recovers from the war were originally displaced to Monrovia by conflict and are actively pursuing local integration as a durable solution. The tensions lie in the fact that informal settlements continue to be seen as an obstacle to development even as slum dwellers argue – with much justification – that they have contributed significantly to reconstruction through both their labor and the sweat equity represented by the neighborhoods they have built.

One of the most visible legacies of the 1989-2003 war in Liberia is the demographic and spatial changes that resulted in Monrovia. Prior to the conflict, the capital had a population of almost 600,000, with a mixed residential pattern including several well-established informal settlements. At the height of the conflict Monrovia became a place of refuge and its population nearly tripled as waves of internally displaced persons (IDPs) arrived from rural combat zones.<sup>1</sup> As reintegration programs got underway in 2004, hundreds of thousands of people returned to their homes of origin but many IDPs remained in Monrovia. Although the return process was considered complete and IDP camps decommissioned by 2006, Monrovia's population remained much higher than before the war, at around one million, and a significant majority of residents lived in the virtually ubiquitous informal settlements that had expanded during the war or sprung up in its wake.<sup>2</sup> In all likelihood, a majority of slum dwellers in Monrovia are IDPs who either could not return or chose to locally integrate in the capital. The last several years have seen increasing numbers of evictions and demolitions in informal settlements in aid of both private investment and public infrastructure projects. Although the Land Commission charged with setting post-war policy has taken up urban land use as a priority issue in 2011, residents of informal settlements throughout Monrovia currently enjoy little security of tenure and remain vulnerable to development-induced displacement.

In post-conflict settings, the issue of development-induced displacement presents a challenge to both humanitarian actors such as the Norwegian Refugee Council (NRC), and their development counterparts. Put simply, in situations in which informal settlements are inhabited by significant numbers of displaced persons, development-induced resettlement processes that may benefit many slum dwellers and the broader public nevertheless risk uprooting displaced communities once again, prolonging and exacerbating their humanitarian vulnerability. This dynamic has been most evident in protracted internal displacement situations, which are characterized primarily by the fact that prolonged political stalemates leave IDPs without any realistic prospect of achieving durable solutions involving return. In such settings, observers have noted that humanitarian aid frequently takes on a development character as IDPs inevitably begin to integrate into local communities, requiring services such as housing, medical care and education that involve capital-intensive investment of a nature not at all characteristic for typical humanitarian action.<sup>3</sup>

<sup>1</sup> UN-HABITAT, "Monrovia: Urban Sector Profile" (undated). According to the UN-HABITAT profile, the population of Monrovia increased during the war from 572,000 to over one million. Anecdotally, the author of this report was told by several interlocutors that the total had been closer to 1.5 million.

<sup>2</sup> Id. UN-HABITAT estimates the post-conflict population of Monrovia at 800,000, but other sources place it as high as 1.1 million.

<sup>3</sup> Brookings-LSE Project on Internal Displacement and Internal Displacement Monitoring Centre (IDMC), "IDPs in protracted displacement: Is local integration a solution? Report from the 2nd Expert seminar on protracted internal displacement" (forthcoming). It is also of particular importance that development efforts in such settings be implemented in a manner sensitive to the needs and rights of internally displaced persons.

Displacement in Liberia does not, by and large, fit into the protracted displacement definition. Although most of the effort to achieve durable solutions for Liberia's war-displaced focused on promoting return to places of origin (which largely proved to be sustainable as a result), local integration for those who did not wish to return was also permitted and remains a viable option in theory. In practice, however, it is not clear that the authorities in Liberia have taken the steps that would be advisable in accordance with the recently adopted international Framework for Durable Solutions for IDPs in order to support local integration.<sup>4</sup> Indeed, in accordance with the Framework one of the most important criteria for durable solutions is whether or not the social and economic rights of IDPs have been secured, including rights to security of tenure in housing and to be protected from arbitrary evictions.<sup>5</sup>

In this sense, the humanitarian actors now scaling back their work in Liberia have a direct interest in the observance of both development and human rights-based standards on secure tenure and development-based resettlement, as these guidelines provide an important guarantee for durable solutions for IDPs who chose to seek local integration in Monrovia. Indeed, such attention to development issues by humanitarian actors should be welcome as a practical exercise in early recovery, defined in the context of the ongoing UN-led humanitarian reform effort as "a multidimensional process guided by development principles that begins in a humanitarian setting, and seeks to build on humanitarian programs and catalyze sustainable development opportunities."<sup>6</sup> While humanitarian actors have repeatedly affirmed the need to adopt early recovery approaches bridging the gap between relief and development in principle, the issue of development-induced displacement in Monrovia represents a concrete example of the manner in which development best practices may be pivotal to ending the humanitarian vulnerability caused by displacement.

Development-induced displacement also presents an important human rights challenge, and this aspect is of particular significance to actors such as the NRC that have embraced a rights-based approach.<sup>7</sup> While there has arguably been significant convergence between human rights and development-based standards related to development-induced displacement, the political sensitivities of this topic have left human rights viewpoints relatively marginalized to date.<sup>8</sup> However, the need to take into account the particular vulnerability of displaced persons lacking tenure security in post-conflict settings such as Liberia underscores the importance of human rights-based analysis. It should also be noted that the authorities in Liberia are visibly committed to resolving these issues in a manner compatible with both national sustainable development imperatives and their international obligations.

The current circumstances in Monrovia present a risk that development-induced displacement may both undermine the fragile achievements of displaced persons seeking to integrate in Monrovia and frustrate the goal of sustainable urban development by excluding the urban poor who make up the city's largest and most important constituency. However, the same circumstances also present a unique opportunity for the application of established human rights and development standards to address the effects of past mass displacement and lay the ground for sustainable urban development.

This Report begins with a discussion of international policy perspectives on development-induced displacement, including human rights and development approaches and the ways in which such displacement has come to impinge on the roles of humanitarian and early recovery actors responding to the effects of conflict and displacement. The second section provides an overview of the international standards governing development-induced focusing on key points of consensus such as the importance of a participatory approach, the need to responsibly balance individual interests with public aims, and the need to address the needs of vulnerable

<sup>4</sup> UN Human Rights Council, "Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin: Addendum – Framework on Durable Solutions for Internally Displaced Persons", UN Doc. A/HRC/13/21/Add.4 (29 December 2009). The Framework was endorsed by the Inter-Agency Standing Committee Working Group in December 2009.

<sup>5</sup> *Id.*, Section V (B).

<sup>6</sup> Cluster Working Group on Early Recovery (CWGER), "Guidance Note on Early Recovery" (April 2008), 9. The definition goes on to note that early recovery "encompasses the restoration of basic services, livelihoods, transitional shelter, governance, security and rule of law, environment and other socio-economic dimensions, including the reintegration of displaced persons."

<sup>7</sup> Norwegian Refugee Council (NRC), "Information, Counselling and Legal Advice Policy" (undated).

<sup>8</sup> Rhodri C. Williams, "International Standards Governing Evictions from Public Property", International Network to Promote the Rule of Law Consolidated Response 10-010 (September 2010).

groups. The third section describes the domestic framework in Liberia, which currently consists of an antiquated and incomplete collection of laws, regulations and practices on the part of the authorities, along with an inconsistent set of resettlement standards and practices applied by donors and investors. While the current framework provides little objective protection to Monrovia's slum dwellers, a tacit policy of encouraging the use of available land has nevertheless contributed to a subjective sense of tenure security. This section also examines the protection challenges faced by communities at risk as well as some of the opportunities they perceive to contribute to sustainable urban development.

The fourth section of the report sets out a number of observations on the conformity of current practice in Liberia with the applicable international standards. The main finding of this section is that the regulatory ambiguity that has prevailed to date has allowed the issue of informal settlements to be dealt with in an essentially constructive manner but without providing any meaningful guarantees of future tenure security for slum residents. The decision of Liberia's Land Commission to give a higher profile to urban land issues in 2011 with a view to the development of a policy is therefore both timely and welcome. The Report concludes with recommendations addressed to the national authorities in Liberia as well as international humanitarian and development actors.

# **1. DEVELOPMENT-INDUCED DISPLACEMENT AND DURABLE SOLUTIONS**

Development-induced displacement is thought to affect at least as many people worldwide as conflict and natural disasters combined, yet it receives relatively little attention in humanitarian and human rights circles. The severe impact of development-induced displacement is acknowledged in a number of international standards related to human rights and displacement. However, both in the formulation of such documents and their application, development-induced displacement tends to be accorded a marginal role. This treatment may reflect the political sensitivities involved. States continue to reserve a great deal of discretion to themselves to pursue development goals on behalf of their populations and tend not to be receptive to the idea that they may, in doing so, be accused of violating the human rights of populations who find themselves quite literally in the way of progress.

In the meantime, development actors including the World Bank and regional development banks have drawn up parallel standards governing the “involuntary resettlement” of populations affected by projects that include many of the same criteria as human rights standards but do not imply that the failure to honor them entails a violation of international law. Although state transgressions against such policies may result in the withdrawal of project funding, observers have questioned the extent to which such safeguards have been effective to date. Nevertheless, the tendency has been for development-induced displacement to be approached as a development policy issue through the promotion of good practice rather than a question of human rights obligations pursued through the identification of violations. In reality, development-induced displacement may be both of these things at once, but this recognition has been slow in coming.

## RIGHTS-BASED APPROACHES TO TENURE SECURITY

Until recently, the broader human rights and development discourses did not refer to each other frequently, despite the many areas of overlap and potential synergy they share.<sup>9</sup> In the area of humanitarian policy, for instance, it is only during the last few years that land tenure and development experts became fully engaged in debates over property restitution and return, but their views have provided an important new perspective that has already begun to be reflected in humanitarian practice.<sup>10</sup> In the area of development-based displacement, human rights and development discourses have tended to be parallel and separate but have more recently begun to converge around shared concepts such as ‘tenure security’.

In both human rights and development terms, the provision of tenure security, or legal guarantees that continued possession and use of property will not be arbitrarily interfered with, is seen as an affirmative act that governments can and should undertake by adopting appropriate laws and policies and giving them effect. Crucially, tenure security should extend even to those who inhabit informal settlements without any form of legal title, protecting them from being evicted or resettled without the observance of minimum safeguards identified in both development and human rights standards. In this sense, outright ownership of property provides a very high degree of tenure security, but other types of formal and informal interests in land and property should also be accorded legal protection.

For development practitioners, the extension of tenure security is recommended as good policy, as it allows the user of a property to make investments that increase its value and productivity. For human rights advocates, tenure security is increasingly seen as a right in itself, as well as a component of the broader right to adequate housing.<sup>11</sup> Moreover, from a human rights perspective, the absence of tenure security is not only bad policy but can result in human rights violations in the form of ‘forced evictions’. Such violations of the right to housing are arguably a sub-category of the broader human rights violation of ‘arbitrary displacement’ introduced by the *Guiding Principles on Internal Displacement*.<sup>12</sup> In a more recent set of human rights standards related to development-induced displacement, for instance, the former UN Special Rapporteur on housing rights, Miloon Kothari, made this connection explicit:

Forced evictions constitute a distinct phenomenon under international law, and are often linked to the absence of legally secure tenure, which constitutes an essential element of the right to adequate housing. Forced evictions share many consequences similar to those resulting from arbitrary displacement [as defined in the Guiding Principles] ....<sup>13</sup>

The emphasis in human rights practice on both obligations and accountability for violations may be a factor in the continuing reluctance of development actors to invoke human rights standards in arguing for tenure security.<sup>14</sup> However, it is important to note that advocacy for housing rights does not consist solely in the condemnation of violations. In fact, recent advocacy against forced evictions has emphasized the promotion of policy alternatives that can proactively prevent forced evictions from occurring.<sup>15</sup> Such a preventive focus is thoroughly compatible with development assistance approaches and would facilitate the advocacy tactics of active engagement with

9 See Galit A. Sarfaty, “Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank”, *American Journal of International Law* vol. 103 no. 4 (October 2009).

10 See Sara Pantuliano (ed.), *Uncharted Territory: Land, Conflict and Humanitarian Action* (Practical Action Publishing, 2009).

11 The right to adequate housing is included in the right to an adequate standard of living in Article 14 the International Covenant on Economic, Social and Cultural Rights (ICESCR). Liberia ratified the ICESCR on 22 September 2004.

12 Guiding Principle 6 provides a number of examples of types of displacement that are ‘arbitrary’, or wrongful under international law, including “large-scale development projects, which are not justified by compelling and overriding public interests”. Guiding Principle 7 (3), which is based in part on development standards, sets out a number of guarantees necessary to ensure that development-induced displacement is not undertaken in an arbitrary manner.

13 UN High Commissioner on Human Rights, *Basic Principles and Guidelines on Development-based Evictions and Displacement: Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (A/HRC/4/18)*, paragraph 5.

14 See, Rhodri C. Williams, “Title Through Possession or Title Through Position? Respect for Housing, Land and Property Rights in Cambodia,” *COHRE Occasional Paper* (November 2008).

15 UN-HABITAT, “Forced Evictions – Towards Solutions? Second Report of the Advisory Group on Forced Evictions to the Executive Director of UN-HABITAT” (2007), 1.

state authorities and technical capacity building that are proven means of promoting human rights standards.<sup>16</sup> It is also important to note that development actors are increasingly receptive to incorporating rights-based arguments on tenure security. For instance, UN-HABITAT's approach to promoting tenure security consists of technical and policy-based recommendations grounded in a philosophy of 'the right to the city', encouraging informal settlement residents to consider themselves agents, rather than objects of urban development.<sup>17</sup>

Development has long been recognized alongside conflict and natural disasters as a cause of internal displacement that can potentially give rise to international concern.<sup>18</sup> In the 1998 Guiding Principles on Internal Displacement, for instance, one of the examples given of 'arbitrary displacement' in violation of international law was "large scale development projects, which are not justified by compelling and overriding public interests".<sup>19</sup> However, over the course of the last two decades, advocacy for IDPs has focused almost exclusively on conflict-based internal displacement and only recently broadened to take in the effects of natural disasters as well.<sup>20</sup> However, while development-induced displacement has not been the object of sustained advocacy, its significance has been affirmed. One significant development in this regard has been the October 2009 adoption of the African Union (AU) Convention on the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), which includes provisions on development-induced displacement.<sup>21</sup> More recently, the previous Representative of the Secretary General on the Human Rights of IDPs, Walter Kälin, confirmed the importance of the issue in his final report:

Another area that requires more attention is the protection of persons who are obliged to leave their homes due to development projects, including urban planning and construction activities. Such persons are without doubt internally displaced persons.<sup>22</sup>

However, despite these developments, humanitarian attention to the issue of development-induced displacement has remained muted in practice. From the perspective of the humanitarian *raison d'être*, this disinterest is understandable. Development-induced displacement is substantively different from that caused by conflict or natural disasters in that it is planned and carried out as a matter of course by states in every region of the world. Should involuntary resettlement programs give rise to the kind of elemental, life-threatening conditions normally addressed by humanitarian actors, this would represent a profound failure of governance, and even then it is not clear that any humanitarian actors other than domestic relief societies would have a clear mandate to offer their services. Thus, while development undoubtedly uproots people, this displacement tends to be of a nature that engages the mandates and expertise of human rights and development experts rather than the humanitarian actors that have traditionally been the 'first responders' to other forms of displacement.

While humanitarian actors may not enjoy a free-floating mandate to address development-induced displacement

16 One of the foremost examples of this type of human rights advocacy is the campaign for acceptance and implementation of the Guiding Principles on Internal Displacement. See Thomas G. Weiss and David A. Korn, *Internal Displacement: Conceptualization and its consequences* (New York: Routledge, 2006).

17 UN-HABITAT, *Handbook on Best Practices, Security of Tenure and Access to Land: Implementation of the Habitat Agenda* (Nairobi: UN-HABITAT, 2003), 8. The Handbook also relies on human rights standards in arguing for the existence of a right to land and promoting gender equality in land tenure. *Id.*, 29.

18 Cross-border displacement arising from development projects would be unlikely to be deemed grounds for claiming international protection under refugee law unless it took place in the context of broader patterns of persecution and human rights violations.

19 Guiding Principles on Internal Displacement, Principle 6. Several specific criteria for avoiding arbitrariness in development-induced displacement are set out in Principle 7 (2).

20 See, e.g., The Brookings-Bern Project on Internal Displacement, *IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters* (January 2011).

21 Convention on the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Article 10.

22 UN Human Rights Council, "Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin" (Kälin final report), UN Doc. A/HRC/13/21 (5 January 2010), para. 45.

wherever it occurs, this does not mean that specific issues may not arise in connection to their work. The most obvious example is that posed by Liberia, where the prospect of urban development poses a threat to the efforts of many persons displaced by the earlier conflict to achieve local integration in the capital, Monrovia. For humanitarian actors assisting internally displaced persons, the achievement of durable solutions, whether in the form of sustainable return to homes of origin or integration elsewhere in the country, is a crucial benchmark. Where durable solutions occur in a manner that meets the criteria set out in the December 2009 Framework on Durable Solutions for Internally Displaced Persons, the humanitarian consequences of displacement have effectively been addressed.<sup>23</sup>

However, this state of affairs poses a dilemma for humanitarians when political stalemates and frozen conflicts leave IDPs in situations of 'protracted displacement' during which the process for seeking durable solutions – and particularly return – has 'stalled' indefinitely.<sup>24</sup> In protracted displacement situations, humanitarian actors that initially provided life-saving aid in emergency contexts have found themselves in an ambiguous position as the situations faced by IDPs shifted from immediate, life-threatening risks to longer-term dependence and social vulnerability. Under such circumstances, humanitarian agencies have essentially come to play a development role, acquiring expertise in areas such as livelihoods support and the construction of permanent housing.<sup>25</sup>

In this context, the situation of Liberians who have remained in Monrovia after being displaced there during the war is somewhat ambiguous. Displacement cannot be considered protracted in Liberia and many of those uprooted during the 1989-2003 conflict have clearly attained durable solutions since the initiation of a return and reintegration process in November 2004.<sup>26</sup> Although more assistance was given in support of return to places of residence, IDPs who chose to integrate in Monrovia appear to have benefited to date from a tacit policy of allowing the use of available land (discussed at more length below, Section 3). However, despite the fact that internal displacement is generally considered a thing of the past, it is not clear that the solutions found by all IDPs are durable. For instance, for some returnees, the continued prevalence of land disputes in the countryside constitutes an ongoing threat.<sup>27</sup> For those choosing local integration in Monrovia, however, insecurity of tenure is the rule rather than the exception. Living without formal title in largely unserved shantytowns, Monrovia's former IDPs have achieved a degree of integration, the sustainability of which remains entirely at the pleasure of the authorities. In this sense, one of the key criteria for the achievement of durable solutions identified in the 2009 Framework – 'enjoyment of an adequate standard of living without discrimination' – has yet to be fully achieved.<sup>28</sup>

In drawing this conclusion, it is important to include a number of caveats, taking into account the ambiguities of the current situation in Monrovia. First, discrimination against IDPs in the enjoyment of their right to an adequate standard of living does not appear to be the issue.<sup>29</sup> None of the respondents interviewed for this Report hinted at any differential treatment of IDPs vis-à-vis other slum-dwellers. Indeed, the problem appears to lie in the fact that all residents of informal settlements, whether originally displaced or not, now share housing conditions that do not meet the minimum standards necessary to satisfy the right to an adequate standard of living. In other words, the durability of the solution IDPs have found to their humanitarian vulnerability is contingent on the extent to which development gaps affecting the entire community they have integrated into are resolved.

Seen in this light, the issue of tenure security in Monrovia's informal settlements presents a compelling example

23 The Framework defines durable solutions as achieved when "former IDPs no longer have specific assistance and protection needs that are linked to their displacement and such persons can enjoy their human rights without discrimination resulting from their displacement." (para. 8).

24 The Brookings-Bern Project on Internal Displacement, "Expert Seminar on Protracted IDP Situations" (2007), 2.

25 In Serbia, for instance, humanitarian agencies that arrived in the 1990s to provide assistance to refugees from Croatia and Bosnia as well as internally displaced persons from Kosovo have in some cases become implementing partners in programs to build or finance the purchase of permanent housing for these groups. Rhodri C. Williams, "Protracted Internal Displacement in Serbia" (Brookings-LSE Project on Internal Displacement and IDMC, forthcoming). Anecdotally, one NRC Shelter Programme staff member is said to have remarked that the cost of the units provided in different settings can vary between \$200 (for a tent) and \$40,000 (for the construction of an apartment).

26 Internal Displacement Monitoring Centre (IDMC), "Liberia: Focus for IDP returnees moves from conflict to development" (27 July 2007).

27 See, e.g., Gregory Norton, "Searching for Soap Trees: Norwegian Refugee Council's Land Dispute Resolution Process in Liberia", NRC Thematic Report (January 2011). In accordance with section V (D) of the Framework on Durable Solutions for IDPs, the existence of "effective and accessible mechanisms to restore housing, land and property" is an important criterion for the achievement of durable solutions.

28 Framework for Durable Solutions for IDPs, Section V (B).

of an early recovery problem; in this case, the legacy of past humanitarian policies (neglect of local integration of IDPs in favor of active support to return) has a knock on effect for incoming development actors (in the form of expansion in both the number and size of urban slums and the vulnerability of their inhabitants), while the decisions taken by development actors (regarding whether to upgrade or clear informal settlements) can lead to either the final resolution or the reemergence of the war-era humanitarian issues.<sup>30</sup> This type of early recovery dynamic is a common feature across the increasing number of contemporary post-conflict settings characterized by displacement from rural to urban areas. In addressing the issue of the 'invisible' urban displaced, former UN Representative on IDPs Walter Kälin emphasized the importance of both shifting from humanitarian to development interventions and targeting entire communities affected by displacement:

Host communities and host families often end up assuming considerable burdens due to the influx of displaced persons, which may create social tensions and further protection concerns. In this respect a concept of "displacement-affected communities" is helpful in recognizing that not only displaced communities but also communities which host or (re)integrate them are affected by internal displacement. The Representative has consistently encouraged donors and humanitarians to expand their focus and extend protection and assistance to a broader spectrum of beneficiaries. Such activities should go beyond delivering humanitarian aid and include development interventions to strengthen basic infrastructure such as water and sanitation and basic services such as health and education, and increase food security and the availability of shelter. Such interventions may be less costly in the long run and would not only help to address the needs of the displaced but, at the same time, contribute to the development of areas and communities receiving them.<sup>31</sup>

The current state of urban land policy in Monrovia still leaves locally integrating IDPs exposed to the possibility of development-induced displacement and forced evictions. However, as described below, the authorities' previous attitude of benign neglect combined with the current determination of the Liberian Land Commission to develop policies in line with international standards bode well for the achievement of both durable solutions and tenure security. Without necessarily having been fully conscious of it, humanitarian and urban land actors in Monrovia have placed themselves in the center of broader international policy discourses surrounding human rights, development and early recovery. If policies reflecting key international human rights and development standards are adopted and implemented, Liberia will find itself at the cutting edge of humanitarian efforts to address emerging patterns of rural to urban displacement.<sup>32</sup>

29 Section V (B) of the framework appears to pose two requirements. Most obviously, there should be no discrimination against IDPs in their enjoyment of the right to an adequate standard of living. However, the Framework also indicates that if IDPs share conditions with non-displaced populations that do not meet the minimum requirements for enjoyment of this right, the competent authorities are required to take steps to address this gap for all affected persons. *Ibid.*, paragraphs 67 and 69.

30 Early recovery is defined in the context of the ongoing UN-led humanitarian reform effort as "a multidimensional process guided by development principles that begins in a humanitarian setting, and seeks to build on humanitarian programs and catalyze sustainable development opportunities." It "encompasses the restoration of basic services, livelihoods, transitional shelter, governance, security and rule of law, environment and other socio-economic dimensions, including the reintegration of displaced persons." CWGER, 9.

31 UN Human Rights Council, Kälin final report, para. 49.

32 These issues are particularly significant in Africa. At a general level, the rapid pace of urbanization in contemporary Africa has led to increasing concerns about rising levels of forced evictions across the Continent. See, e.g., Amnesty International, "Africa: Human Rights Live Here: Stop forced evictions in Africa" (31 March 2011). However, in African humanitarian settings, observers such as ODI have noted a pattern by which displacement often occurs from rural to urban settings, with many of those affected opting not to attempt to return. Sara Pantuliano, Margie Buchanan-Smith, Victoria Metcalfe, Sara Pavanello and Ellen Martin, "City limits: Urbanisation and vulnerability in Sudan – Synthesis Report", UKAid and ODI (January 2011).

## 2. INTERNATIONAL STANDARDS AND PRACTICE

The human rights commitments undertaken by Liberia include rules regulating the conditions under which private persons can be evicted from property that they are residing in or using without permission. Numerous international and regional development standards also provide guidance on best practices in the ‘involuntary resettlement’ of persons affected by development projects. What both human rights and development standards have in common is that they seek to balance the interests of society as a whole against the rights of individuals facing involuntary relocation and the loss of their homes. In doing so, these standards are differentiated primarily by their entry points into the issue; while human rights standards begin by setting out individual rights and then list the public purposes that justify restricting them, development standards proceed from the public interest in development but note that this cannot be achieved at the cost of impoverishing those most directly affected.

The most important human rights rules applicable to development-based displacement are set out in two key UN human rights treaties, the International Covenant on Civil and Political Rights (ICCPR)<sup>33</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>34</sup> Liberia ratified both Covenants in September 2004, one year after the end of the recent conflict.<sup>35</sup> In Liberia’s case, the rules set out in these two universal covenants are reinforced by a compatible set of human rights rules in a regional convention, the African Charter on Human and Peoples’ Rights (ACHPR).<sup>36</sup> Authoritative interpretations of all three of these treaties exist in the form of statements by independent expert bodies set up to oversee their application, namely the UN Human Rights Committee (in relation to the ICCPR), the UN Committee on Economic, Social and Cultural Rights (or ‘UN CESCR’, responsible for the ICESCR), and the African Commission on Human and Peoples’ Rights (for the ACHPR). In situations of development-induced displacement, three categories of rights protected in these three instruments are particularly relevant:

**The Right to Freedom of Movement and Choice of Residence:** The right to freely move within one’s own country and to choose one’s place of residence is set out in Article 12 of the ICCPR as well as Article 12 of the ACHPR.<sup>37</sup> This right has been interpreted by the UN Human Rights Committee to include “protection against all forms of forced internal displacement.”<sup>38</sup> In other words, even where individuals are illegally occupying their current “residence”, they still have a right not to be arbitrarily moved somewhere else against their will.

**The Right to Privacy:** Article 17 of the ICCPR protects all persons from unlawful or arbitrary interference with their personal and family life, including their home.<sup>39</sup> The UN Human Rights Committee has defined the concept of “home” broadly to mean “the place where a person resides or carries out his usual occupation.”<sup>40</sup> In other words, even where individuals do not have legal rights to their homes and workplaces, their possession and use of such property may not be curtailed in an unlawful or arbitrary manner.

33 International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

34 International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

35 Liberia signed both Covenants on 18 April 1967 and ratified them on 22 September 2004.

36 African (Banjul) Charter on Human and Peoples’ Rights (ACHPR), adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986. Liberia ratified the ACHPR on 04 August 1982.

37 Article 12 (1) of the ICCPR states that: “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”

38 UN Human Rights Committee, General Comment No. 27 (1999), paragraph 7.

39 Article 17 (1) of the ICCPR states that: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

40 UN Human Rights Committee, General Comment No. 16 (1988), paragraph 5.

The Right to Adequate Housing: The right to an adequate standard of living in Article 11 of the ICESCR includes a right to housing.<sup>41</sup> In 1991, the UN CESCR identified seven criteria for evaluating the “adequacy” of housing available to ordinary people, one of the most important being security of tenure, or legal protection against forced evictions.<sup>42</sup> Six years later, the Committee defined forced evictions as:

...the permanent and temporary removal against their wills of individuals, families, and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal and other protection.<sup>43</sup>

As a component of the right to adequate housing, the right to be free from forced evictions applies even to residents of informal settlements.<sup>44</sup> The focus of this right on protecting individuals’ domestic lives and livelihoods (as opposed to formal property interests) links it so closely with the right to privacy in the home under the ICCPR that the UN CESCR has declared that the same set of principles should be used to guide the application of both rights.<sup>45</sup> Although the ACHPR does not include either right, the African Commission for Human and Peoples’ Rights has issued rulings in several complaints against African states finding an implied right to adequate housing and to be free from forced evictions in several of the Charter’s other provisions.<sup>46</sup>

In situations of development-induced displacement, development standards and best practices should be applied together with human rights rules.<sup>47</sup> Development standards tend to stress the idea that where people and communities face involuntary resettlement in the name of development, they should share the benefits of such development along with the broader public – or at least not suffer a deterioration of their living standards as a result. These standards resemble the corresponding human rights rules in mandating protective measures for individuals and communities facing relocation even in cases where they do not have formally recognized legal rights to the homes and workplaces they are to be evicted from.

Although several regional banks including the African Development Bank have policies on involuntary resettlement, the most relevant rules for Liberia are derived from the World Bank’s Operational Policy 4.12 (OP 4.12).<sup>48</sup> As discussed below, the World Bank is currently financing a number of projects in Liberia, providing opportunities to familiarize both the authorities and the public with its ‘involuntary resettlement’ guidelines and to put them into practice. While the national authorities bear the primary responsibility for applying both sets of standards, they are encouraged in doing so to make full use of both their own resources and those available from humanitarian and development partners:

National authorities have the principal responsibility to ensure that these core needs are met and must make the requisite budget allocations. They should also call upon humanitarian and development actors to assist in addressing these concerns where State resources are insufficient.<sup>49</sup>

41 Article 11 (1) of the ICESCR states that: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

42 UN CESCR, General Comment No. 4 (1991), paragraph 8(a).

43 UN CESCR, General Comment No. 7 (1997), paragraph 3.

44 UN CESCR, General Comment No. 4 (1991), paragraph 8(a).

45 Ibid, paragraph 14.

46 See Bret Thiele, “Centre on Housing Rights and Evictions (COHRE) v. Sudan: Applying the African Charter on Human and Peoples’ Rights to Atrocities in Darfur”, *Housing and ESC Rights Law Quarterly*, vol. 7, no. 3 (September 2010).

47 Two human rights standards addressing development-induced displacement have also been developed UN human rights mechanisms, namely the Comprehensive Human Rights Guidelines on Development-Based Displacement (UN Commission on Human Rights, 1997) and the Basic Principles and Guidelines on Development-based Evictions and Displacement (UN Special Rapporteur on the Right to Adequate Housing, 2006). In order to focus on standards most directly relevant to Liberia, these standards are not elaborated on in this Report.

48 World Bank, Operational Policy 4.12 (OP 4.12) - Involuntary Resettlement (2001). See also, Bank Procedures 4.12 - Involuntary Resettlement.

49 Framework for Durable Solutions for IDPs, paragraph 67. This accords with the broader humanitarian principle that assistance can be provided both through direct government action and through facilitating the work of non-governmental humanitarian actors, as well as contemporary understandings of the role of international development cooperation in the progressive implementation of social and economic human rights.

Organizations such as UN-HABITAT, which is active in Liberia, provide an important bridge between development-related technical expertise in areas such as urban planning, land management and tenure options and a rights-based understanding of the central importance of involving local communities and responding to the needs of vulnerable groups.<sup>50</sup> Taken together, the spectrum of human right, development and urban planning standards relevant to Liberia provide a framework for undertaking necessary urban development in a manner that is neither 'arbitrary', e.g., incompatible with international law, nor unsustainable. The remainder of this section extracts several key points from these standards in order to propose a set of themes that should guide how the issue of development-induced displacement might best be addressed in the Liberian context. While it is beyond the scope of this report to exhaustively describe the contents of each of these standards, they are concise and broadly accessible, and should serve as useful reference points in the formulation of urban land policy.

*The following international standards on tenure security and development-induced displacement are of particular relevance to the situation in Monrovia:*

UN Committee on Economic, Social and Cultural Rights (UN CESCR), General Comment No. 4, "The right to adequate housing (article 11.1 of the Covenant)" (Sixth session, 1991):

Available at: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

UN Committee on Economic, Social and Cultural Rights (UN CESCR), General Comment No. 7, "The right to adequate housing (article 11.1 of the Covenant): forced evictions" (Sixteenth session, 1997):

Available at: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

UN-HABITAT, Handbook on Best Practices, Security of Tenure and Access to Land (Nairobi: UN-HABITAT, 2003):

Available at: [http://www.unhabitat.org/campaigns/tenure/bp\\_tools.asp](http://www.unhabitat.org/campaigns/tenure/bp_tools.asp)

World Bank, Operational Policy 4.12 – Involuntary Resettlement (January 2001):

Available at: <http://go.worldbank.org/ZAIUSU8970>

## BALANCING AND PROPORTIONALITY

Every decision to remove people from their homes should be based on an effort to balance the public interest in undertaking such measures against the private rights and interests that are negatively affected. This 'balancing test' is implicit in development standards such as the World Bank's OP 4.12, which take the public interest in economic development as their departure point but set out measures to mitigate the "severe economic, social, and environmental risks" that the pursuit of such objectives can impose on directly affected individuals and groups.<sup>51</sup> In human rights analysis, the balancing test is explicit and performs a central role in distinguishing interferences – or actions by governments that affect the enjoyment of individual rights but may possibly be justified on public interest grounds – from violations, which are unjustified or disproportional interferences with individual rights.

Most traditional 'civil and political' human rights, such as those set out in the ICCPR, include 'restrictions clauses' setting up such balancing or 'proportionality' analysis by setting out the conditions under which interferences with enumerated rights will not be considered violations. The balancing of public interests against individual

<sup>50</sup> See, e.g. UN-HABITAT, Handbook on Best Practices, Security of Tenure and Access to Land.

<sup>51</sup> *Ibid.*, paragraph 1

rights is also crucial in the newer area of social, economic and cultural rights, as set out in the ICESCR.<sup>52</sup> As a general matter, the latter rights are to be achieved “progressively”, to the maximum of each state's available resources<sup>53</sup> However, the rights set out in the ICESCR are also subject to a general restrictions clause setting out the basic elements familiar from the ICCPR.<sup>54</sup> The third paragraph of Article 12 of the ICCPR (on freedom of movement) constitutes a typical restrictions clause:

The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order ..., public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.<sup>55</sup>

Many of the criteria set out in the above clause will be described in more detail, below. However it is important to note that while some of these factors in the human rights balancing test are absolute, others are to be considered in light of the particular context. For instance, the requirements of legality (“provided by law” in the above quote) and the existence of a public purpose (“national security,” etc.) cannot be dispensed with under any circumstances. However, other factors such as participatory approaches and attention to the needs of vulnerable groups are applied somewhat more flexibly.<sup>56</sup> However, this is not to say that they can be ignored. In a comment on the right to freedom of movement under the ICCPR, for instance, the Human Rights Committee expressed a rigorous view of the type of measures necessary to prevent a permissible interference with human rights from degenerating into a violation:

... it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.<sup>57</sup>

## LEGALITY

The legality requirement means that public authorities must have a mandate in the form of valid law in order to proceed with evictions and relocations. Such laws should set out the criteria and procedures for initiating and implementing evictions as well as the rights and obligations of persons facing evictions. However, the formal existence of such legislation does not fulfill this requirement on its own. Instead, laws and policies relating to development-induced displacement should ideally result from consultative processes in which all interested groups are invited to participate not only in the development of the relevant rules but also, where appropriate, in their implementation. Legal instruments regulating evictions should also be accessible and sufficiently clear to allow those affected by them to understand their rights and obligations. Finally, such laws should incorporate the safeguards recommended in international standards to ensure that evictions are undertaken only when justified and then in a proportional manner. The UN Human Rights Committee has recommended that laws authorizing relocation “should use precise criteria and may not confer unfettered discretion on those charged with their execution.”<sup>58</sup> The substantive rules in such laws should also be in accordance with broader human rights requirements.

<sup>52</sup> Economic, social and cultural rights are sometimes referred to as ‘second generation’ human rights, in contrast to the more historically established ‘first generation’ civil and political rights.

<sup>53</sup> See ICESCR, Article 2, as well as UNCESCR, General Comments 3 (1990) and 9 (1998).

<sup>54</sup> ICESCR, Article 4.

<sup>55</sup> ICCPR, Article 12 (3).

<sup>56</sup> Many human rights treaty bodies with a mandate to receive complaints against states, such as the UN Human Rights Committee and the African Commission on Human and Peoples’

Rights, apply variants of a three part test, in which the existence of a legal basis and a valid justification for an interference must be found before the more contextually sensitive issues related to proportionality are taken up. See, Williams, “International Standards”.

<sup>57</sup> UN Human Rights Committee, General Comment No. 27 (1999), paragraph 14.

<sup>58</sup> UN Human Rights Committee, General Comment No. 27 (1999), paragraph 13.

## **PUBLIC PURPOSE**

Acts such as the eviction and relocation of families from informal settlements must be justified on the basis of specific public interest grounds, particularly in situations where they are living on public property without authorization. As a general rule, the blanket removal of squatters from public property could probably not be justified solely as a measure necessary to re-assert the authority of the state or reinforce the rule of law. Although there is undoubtedly a public interest in ensuring respect for the law, this interest alone is relatively diffuse compared to the concrete dependence of vulnerable squatters on occupied public property for meeting their basic needs.

In cases of occupation of private property, the issue is more straightforward, at least in theory. In situations where the owners have sought and received a valid final decision ordering the removal of squatters in legal proceedings, its enforcement is typically justified by the public interest in upholding the owner's legal rights.<sup>59</sup> As discussed below, however, in post-conflict situations in which the legal status of occupied land is unclear and contested, and both the institutional and normative frameworks for land administration are the subject of a comprehensive reform process, some caution may be due in enforcing private claims.

As reflected in the relevant standards, involuntary resettlement necessary to facilitate development projects generally qualifies as being in the public interest, particularly where such projects involve the extension of services and infrastructure that benefit local communities. For instance, the UN Guiding Principles on Internal Displacement treats such displacement as justified where such projects serve "compelling and overriding public interests."<sup>60</sup> Perhaps the most clear-cut cases of permissible relocation are those necessary for public safety grounds, such as the demolition of structures blocking fire lanes and access roads in dense urban areas.

## **PARTICIPATORY APPROACH**

In some settings, the extent to which development-induced displacement is justified by important public purposes may be borne out by the level of support for such measures within affected communities. As discussed below, one of the more promising outset conditions in Liberia's current effort to develop an urban land policy is the fact that many residents of informal settlements appear to be aware of the fact that development will require a degree of displacement and have even attempted to preventively enforce minimum planning controls in their own communities.

It is worth noting that all relevant guidelines require consultation with affected communities with a view to seeking their consent, even though none of them set the achievement of consent as an absolute precondition for evictions to go forward.<sup>61</sup> This implies that the objective of consultations might best be seen as seeking buy-in from affected persons not only by giving serious consideration to their suggestions of how displacement can be minimized and mitigated, but also through jointly seeking ways that development can directly benefit those in its path. For instance, the World Bank Operational Policy not only requires consultation but also opportunities for affected persons to "participate in planning and implementing resettlement programs", a stipulation that goes well beyond simply seeking the passive consent of affected individuals to be moved.<sup>62</sup>

<sup>59</sup> In human rights terminology, the interference would be "necessary to protect . . . the rights and freedoms of others. . ." See, e.g. ICCPR, Article 12 (3).

<sup>60</sup> UN Guiding Principles on Internal Displacement, Principle 6 (2) (c).

<sup>61</sup> See, e.g. UN CESCR, General Comment 7, paragraph 15, World Bank, OP 4.12, paragraph 2 (b).

<sup>62</sup> World Bank, OP 4.12, paragraph 2(b).

In order to give effect to the spirit as well as the letter of such consultation requirements, national authorities are well-advised to consider an emerging realization in many developing countries that urban squatters can be a driver, rather than an obstacle, for urban development.<sup>63</sup> This understanding is perhaps best expressed in UN-HABITAT's 2003 Handbook on Tenure Security and Land Access, which notes that "most shelter in the developing world is being supplied through informal land development" and encourages urban planners to understand the ways in which informality can be an asset.<sup>64</sup> From this perspective, the participatory aspect of project and policy design involves not only encouraging those squatters required to leave to do so peaceably, but also encouraging those who remain to continue investing in urban neighborhoods in a sustainable manner.

In the case of Liberia, it is important to recall that the informal settlements where most Monrovia live frequently represent their only assets. What they have managed to build may comprise their life savings and the location where they have built it may be their sole guarantee of continued work or educational opportunities, as well as the survival of family and social networks. At the same time, the informal settlements in Monrovia represent a significant achievement, given that their residents built them from almost nothing into functional urban neighborhoods with minimal outside help. From a development perspective, this state of affairs calls for sensitivity not only to the current vulnerability of such settlements but also their potential to become fully sustainable at minimal public cost through basic planning, the extension of tenure security, and equitable access to services.<sup>65</sup>

## PROTECTION OF VULNERABLE GROUPS

Human rights and development standards share a concern for ensuring that evictions and relocations do not compound the vulnerability of groups that are already marginalized. For instance, the UN Human Rights Committee has not only noted that disadvantaged groups should be "ensured some degree of priority consideration" in the provision of housing,<sup>66</sup> but also recommended that such groups should be provided particular protection against forced evictions:

Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable .... The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.<sup>67</sup>

One of the most fundamental obligations on any state-party to the ICESCR is the adoption and updating of a national housing strategy defining the objectives of state housing policy.<sup>68</sup> In adopting such a policy, both private and public sector approaches should be considered and combined in a manner geared to achieving cost-effective outcomes.<sup>69</sup> However, whatever modalities are chosen, the priority beneficiary groups of such policies must be those most vulnerable to the loss of their homes:

<sup>63</sup> While urbanization is generally seen as having the potential to create significant new opportunities for social mobility, it is important to note that it also has the potential to trap the urban poor in new cycles of poverty and underdevelopment. See, e.g., Ursula Grant, "Spatial Inequality and Urban Poverty Traps", ODI Working Paper 326 (December 2010).

<sup>64</sup> UN-HABITAT, "Handbook of Best Practices", 46.

<sup>65</sup> UN-HABITAT provides numerous examples of programs that have provided incremental forms of tenure and access to services to informal settlement residents that allowed them to gradually invest in the development of their own neighborhoods on a cost-recovery basis. UN-HABITAT, "Handbook on Best Practices".

<sup>66</sup> UN Human Rights Committee, General Comment 4 (1991), paragraph 8(e). See also paragraph 11.

<sup>67</sup> UN Human Rights Committee, General Comment 7 (1997), paragraph 10.

<sup>68</sup> UN Human Rights Committee, General Comment 4 (1991), paragraph 12. On the practical modalities of such plans, see UN-HABITAT, Handbook on Best Practices, Chapter 3.

<sup>69</sup> UN Human Rights Committee, General Comment 4 (1991), paragraph 14.

States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions.... However, ... despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction.<sup>70</sup>

Development standards also emphasize special measures to protect the most marginalized members of communities facing eviction and resettlement. For instance, the World Bank's Resettlement Policy calls for "particular attention to the needs of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women and children, indigenous peoples, ethnic minorities, or other displaced persons who may not be protected through national compensation legislation."<sup>71</sup> Given the current trend toward internal displacement feeding into broader processes of urbanization, IDPs are increasingly recognized as an important vulnerable category in post-conflict urban settings. For instance, in its Global Overview of trends in 2010, the Internal Displacement Monitoring Centre (IDMC) identified urban displacement as a key issue, confirming the need to address the needs of entire displacement-affected communities but also urging caution in identifying displacement-specific needs and risks for IDPs in urban settings:

...the needs of urban IDPs must be addressed in the broader context of urbanisation processes; targeted assistance may lead to preferential treatment for IDPs, increasing the potential for tensions and exposing IDPs who wish to remain anonymous. There is a need to address the needs of both IDPs and the communities around them, to assist entire urban areas. However, the studies [undertaken by IDMC] underlined that IDPs still needed specific support to resolve the challenges related to their displacement and integrate fully in their urban setting if they wish to do so.<sup>72</sup>

By all indications, the large numbers of current slum dwellers in Monrovia who arrived as IDPs are both well accepted by other residents of informal settlements and thoroughly integrated into local social networks. However, this should not obscure the need for future profiling and needs assessments of slum residents in Monrovia to take into account specific types of residual vulnerability that may still disproportionately affect those who were internally displaced.

<sup>70</sup> UN Human Rights Committee, General Comment 4 (1991), paragraph 11.

<sup>71</sup> World Bank, Operational Policy 4.12: Involuntary Resettlement (2001), paragraph 8. The Bank's reference to compensation legislation is significant. Most resettlement standards clearly point out that the authorities are not only required to pay formal compensation for any lost assets but also provide assistance in relocating to ensure that persons without formally recognized assets capable of being expropriated are not left worse off by the process. *Ibid.*, paragraphs 15-16.

<sup>72</sup> Internal Displacement Monitoring Centre (IDMC), "Internal Displacement: Global Overview of Trends and Developments, 2010" (2010), 21.

# 3. DOMESTIC FRAMEWORK AND PRACTICE IN LIBERIA

The current conditions related to tenure security and development-induced displacement in Monrovia are undoubtedly problematic at first glance but in fact may comprise a promising starting point for the longer term formulation of urban land policies. The negative factors come at all levels. Most residents of Monrovia are slum dwellers with little current security of tenure or access to services. The prospect for future regularization is unclear, with much of the occupied land affected by competing claims and a general lack of documentation of title. The legal framework for land throughout Liberia is antiquated and only partially still in active use, with many of the administrative acts affecting slum dwellers essentially based on established practice rather than a formal legal or even policy basis.<sup>73</sup>

Multiple institutions at the township, municipal and national level share overlapping jurisdiction over the greater Monrovia area and have independent powers to demolish structures and evict their residents in accordance with their respective mandates. Levels of private investment and public infrastructure projects have increased, but investors, lenders and donors still act according to disparate and inconsistent resettlement guidelines – or no guidelines at all. Although slum dwellers have organized themselves quite effectively at the neighborhood level, they have yet to coalesce into an effective interest group with the capability to formulate clear policy proposals and lobby for them.<sup>74</sup>

On the other hand, there are a number of positive factors that bode well for sustainable urban development patterns in Monrovia. The attitudes of both the public authorities and informal settlement residents are open and constructive, with none of the parties having taken entrenched or absolutist positions. The official attitude to informal settlements has long been one of benign neglect, with the urban poor tacitly allowed to use available land and evictions limited mainly to enforcement of safety rules. There has even been sporadic improvement of infrastructure in slums.

Public servants at the municipal and national level still tend to view slums primarily as an obstacle to development but are conscious of both the important role slum-dwellers play in the economic life of the city and the impracticability of plans based exclusively on demolition and resettlement. Meanwhile residents of informal settlements have in virtually all cases organized themselves and become accustomed to paying de facto taxes to local government in exchange for 'squatters' rights' certificates. Most slum dwellers interviewed for this Report understood and accepted that evictions and even large scale relocations might be inevitable in the future, and were primarily interested in ensuring that these were accompanied by social protection measures that would prevent the further impoverishment of those affected.

<sup>74</sup> John W. Bruce and Boakai N. Kanneh, "Reform of Liberia's Civil Law Concerning Land: A Proposed Strategy" (unpublished final version, 16 February 2011).

<sup>75</sup> An important first step in this direction came with the 2004 formation of the Slum Dwellers Association of Liberia. Slum Dwellers Association of Liberia (SLUMDAL), "Background of the Formation of SLUMDAL" (undated).

## DOMESTIC REGULATORY FRAMEWORK

One of the most positive factors for sustainable urban development in Monrovia is the fact that the Land Commission, an independent body set up in 2009 to reform land law and policy, has begun to prioritize urban issues this year. The Land Commission signaled its interest in urban issues in a National Urban Conference held in Monrovia in October 2010 that included government officials, national civil society and community-based organizations as well as international partners.<sup>75</sup> In the wake of the Conference, the Commission has expressed its intention to go forward with an inventory of urban land and the development of a National Urban Plan.<sup>76</sup> The Commission will also chair an Urban Task Force including other national and international actors involved in urban issues.

However, the process is likely to encounter both conceptual and practical obstacles as early as the land inventory stage in light of the unclear and contested state of land relations in Monrovia. The main conceptual issue is likely to be whether the Commission should simply identify the multiple claims pertaining to any given parcel of urban property or attempt to adjudicate some or all of them. While identifying disputes without resolving them is unlikely to have an immediate development impact, adjudication could be a protracted and contentious process, particularly in light of the main practical difficulty, namely the fact that decades of mismanagement, conflict and corruption have pushed property relations in Monrovia into a near legal vacuum. A 2006 USAID report summed up the situation as follows:

Current systems are antiquated, records are missing or destroyed, and current recordation systems and tools are inadequate. Maps, deeds, and other land documents are missing. Through investigation the consultants were only able to find one survey map and one real estate tax map of Central Monrovia. The Liberian National Archives within the Ministry of Foreign Affairs has many boxes of crumbled record books and is working to recover other documents. Every Ministry will require technical training and up-to-date technological systems to initiate recovery.<sup>77</sup>

As in many other developing countries, one of the most important questions in determining the fate of informal settlements in Monrovia will be whether they happen to be built on public or privately owned land.<sup>78</sup> While public land can in theory be made available to slum dwellers based on an official decision granting or leasing it, securing tenure to private land requires negotiations with the owners.<sup>79</sup> Due to the historical development of Monrovia, much of the land will be subject to credible claims by owners based on asserted title dating as far back as the 19th century. However, as set out above, documentary evidence supporting such claims is often missing or contradictory. The result is a striking lack of clarity. For instance, residents of the Peace Island informal settlement, interviewed for this Report, claimed to have done a title search on the land and found no valid deeds.<sup>80</sup>

<sup>75</sup> Land Commission, UN-HABITAT and NRC, "National Urban Conference" (unpublished program and presentations, October 2010).

<sup>76</sup> Interview, Land Commission officials, Monrovia, 16 March 2011.

<sup>77</sup> Unattributed, "An Investigation of the Real Estate Registration and Real Property Tax System in Liberia for USAID/OTI and the Ministry of Mines, Land and Energy (October 2006).

While some records were intentionally destroyed during the conflict, it is anecdotally well known that property deeds were also used for quotidian tasks like wrapping fish at the time, as no other paper was available.

<sup>78</sup> UN-HABITAT, Handbook on Best Practices, 42-3.

<sup>79</sup> In the Liberian context, use of public land may be constrained pending the conclusion of a current effort by the Land Commission to review procedures for the sale of public land. Bruce and Kanneh, 14-15.

<sup>80</sup> Interview, 15 March 2011.

In three subsequent interviews, interlocutors stated that Peace Island was the private property of a particular Americo-Liberian family, was public property, and was the private property of a second Americo-Liberian family, respectively.<sup>81</sup>

Meanwhile, the relationship between the slums and the city and local authorities is another area of legal ambiguity. Although informal settlements have existed in Monrovia at least since the 1950s, they proliferated during and after the war and are now home to a majority of the capital's inhabitants.<sup>82</sup> Early on during the conflict, the practice of charging an annual 'squatters' rights' fee to slum residents became widespread among the various local authorities in Monrovia. While ostensibly based on a provision of the 1957 Zoning Code on non-conforming structures, the issuance of squatters rights is, in reality, simply an established de facto practice that is broadly accepted but not clearly legal. Regular payment of the fee entitles the holder "to occupy the area until such time as the government fines [sic] it necessary to use the land in which case, one month notice will be given to vacate the premises."<sup>83</sup>

Squatters' rights permits also prohibit the creation of permanent structures, a rule that is regularly flouted in practice. The fact that slum dwellers persist in building permanent structures indicates that squatters rights, despite their own rules, have given rise to a perception of security of tenure on the part of their holders.<sup>84</sup> However, critics have noted that such rights provide no objective tenure security and that slum dwellers that invest in permanent structures risk "becom[ing] double losers having paid regular annual squatters' rights renewal fees to the Local Authorities with no guarantee for compensation or relocation assistance."<sup>85</sup>

The precarious situation of slum dwellers in Monrovia is underscored by the lack of transparent and consistent policies or procedures related to their involuntary relocation. Evictions and demolitions fall within the remit of the Monrovia City Corporation (MCC), comprising the Mayor and City Council, as well as a number of national-level ministries and agencies, such as the Ministry for Public Works (MPW), which is responsible for applying the Zoning Law, the Ministry of Lands Mines and Energy, the Environmental Protection Agency and others. The approach taken by the MCC has generally been benign, with demolitions to enforce safety codes balanced with some slum upgrading efforts.<sup>86</sup> The current Mayor of Monrovia, Mary Broh, initially sought to implement a more aggressive policy of slum clearance, but since adopted a more cautious approach.<sup>87</sup> However, she has forbidden the further sale of squatters rights by the MCC, citing their unclear legal basis and past failures to transparently document how the proceeds were used.<sup>88</sup> Meanwhile, there is some evidence that increasing numbers of refugees are now returning from abroad and actively seeking to reclaim or otherwise acquire urban land in Monrovia for investment purposes. As a result, property values are likely to rise and an increasing number of attempts to assert private property interests in occupied urban land are to be expected.<sup>89</sup>

In practice, the approach taken by MCC to development-induced displacement has been pragmatic.<sup>90</sup> Resettlement usually begins with notice (a 'citation') to affected persons, information meetings, and service of a removal order. Residents are given up to ninety days notice to remove their effects and demolitions are then carried out. These procedures appear to be consistently followed and well-known to slum residents but are not written.<sup>91</sup> MCC officials are familiar with the World Bank guidelines and follow them in projects funded by the Bank. However, in other cases, the MCC procedures apply and no compensation is paid.

81 Interviews, 16 and 17 March 2011.

82 UN-HABITAT, "Monrovia Urban Sector Profile", 6

83 Text transcribed from an example of a squatters' rights certificate in the West Point settlement that the author was shown on 19 March 2011.

84 Perceived security of tenure is described by UN-HABITAT as a precarious situation that can nevertheless be the starting point for incremental improvement of the housing situation of slum dwellers. UN-HABITAT, Handbook on Best Practices, 10.

85 Bestman D. Toe, "Access and security in urban areas, the urban poor perspective", in Land Commission, UN-HABITAT and NRC, "National Urban Conference", 29.

86 Interview with MCC official, 16 March 2011.

87 Interview with Monrovia Mayor, Hon. Mary Broh, 16 March 2011.

88 Ibid. It is unclear what impact this policy has had as other local authorities allegedly continue to sell squatters rights.

89 Interview with UN-HABITAT staff in Liberia, 17 March 2011.

90 Interview with MCC official, 16 March 2011.

91 An MCC official interviewed for this Report had previously provided NRC with a handwritten note outlining the resettlement process.

A similar situation prevails at the Ministry of Public Works (MPW), which is implementing several World Bank projects alongside its regular activities. In World Bank cases, the Operational Policy is applied and formal Resettlement Action Plans are drawn up and implemented, including through the provision of compensation.<sup>92</sup> However, in other cases, a more ad hoc approach is followed. For instance, slum residents complain that the first notice they receive of forthcoming demolitions typically comes when they arrive home to find structures in the neighborhood marked with a large yellow 'X'.<sup>93</sup> However, a Ministry official clarified that the circulation of information sheets and meetings with affected communities are formal requirements in all cases.<sup>94</sup> Although funds are not normally available for compensation, some form of relocation assistance is occasionally on offer. As with the MCC, written policies or procedures on involuntary resettlement were not readily available.<sup>95</sup>

In fairness to the authorities, it should also be noted that international donors and investors have thus far failed to adopt a consistent approach to the resettlement effects of their activities in Liberia. The World Bank appears to routinely apply OP 4.12 in projects it is involved with and a number of other donors and investors explicitly draw on the World Bank's guidelines in carrying out their own relocation activities.<sup>96</sup> However, there appears to be little consistency in this area. For instance, one important donor stated in an interview that their use of resettlement standards has traditionally focused on macro-projects such as dam construction; as a result, they had placed no resettlement-related requirements on the Ministry of Public Works in implementing an infrastructure project in central Monrovia requiring the eviction of numerous slum dwellers.<sup>97</sup> By contrast, another major development assistance donor applies a strict advance screening process that serves to largely rule out participation in projects that may result in involuntary relocations.<sup>98</sup> As yet, there does not appear to be any form of institutionalized dialogue among donors, investors and the Liberian authorities regarding the issue of development-induced displacement and how it can be mitigated.

## A TALE OF TWO SLUMS

A brief depiction of two informal settlements in Monrovia may serve to illustrate both the problems and the opportunities presented by the patterns of urban development that have prevailed in post-conflict Liberia. In some respects, the communities are at opposite ends of the spectrum. The first, West Point, is long-established, centrally-located, fully integrated into the urban economy and situated on public land. As a result, it is treated as a de facto administrative unit within the city and has received significant infrastructure improvements. By contrast, Peace Island was founded directly after the conflict on contested land in a marginal area outside Central Monrovia. It has been denied recognition and services but tolerated to date. While perceived security of tenure differs accordingly between these two communities, they nevertheless have much in common, including large displaced populations, objective limits on their expansion and even their viability, and a current lack of any objective security of tenure should the prevailing policy of tacit acceptance change.

92 Interview with MPW official, 18 March 2011.

93 Interview with Bestman P. Toe, Slum Dwellers Association of Liberia, 15 March 2011.

94 Interview with MPW official, 17 March 2011.

95 Ibid. The official stated that a written MPW resettlement policy existed but that it would take some time to track it down.

96 See, for instance, ArcelorMittal Liberia Iron Ore Mining Project, "Summary Social Action Plan and Resettlement Plan of the Railway Right of Way Clearance and Rehabilitation, Buchanan to Yekapa" (October 2008), 3. The Plan states that it "follows the principles of the Liberian Constitution, the World Bank (WB) Involuntary Resettlement Policy . . . , and the approved Resettlement framework for the project."

97 Interview with development assistance officials, 17 March 2011.

98 Interview with development assistance official, 17 March 2011. The interviewed official conceded that the reluctance of his own organization to engage in such projects left the field open for other development partners that might be less sensitive to the issue of development-induced displacement.

West Point is Monrovia's best-known informal settlement and one of its oldest. It consists of a flat, sandy spit of land abutting the highly active Water Street market area. The area was built up in the 1940s through the deposit of sand dredged during the construction of the new port facilities on nearby Bushrod Island. As a result, West Point consists largely of recovered land, leaving it in relatively unambiguous public ownership relative to virtually all other areas of Monrovia, where historical claims cannot be ruled out. According to residents, West Point was officially made one of Monrovia's townships in 1960 and now houses as many as 70,000 people in six communities.<sup>99</sup> As many as one-third of the area's residents arrived as displaced persons during the conflict in an influx that led to the physical expansion of the settlement.

Prior to the 1989-2003 war in Liberia, several attempts were made to resettle the residents of West Point and other slums in new housing estates. However, the homes in new estates were allegedly allocated based on connections as well as need and had little impact on the informal settlements they were meant to replace. Indeed, although the pre-war Liberian National Housing Authority remains active, it is currently perceived as focused on market construction and in need of significant reorientation in order to be able to play a role in alleviating current slum conditions.<sup>100</sup> In the meantime, West Point has increasingly taken on the character of a de facto administrative unit with its own township administrative building, a court magistrate, a police station, numerous schools, churches and mosques, and the completion this year of an asphalt access road. Many residents are allegedly above the poverty level based on income from jobs in the Water Street market along with a local fishing industry. The township also takes its local system of squatters' rights certificates quite seriously and considers itself more broadly to have achieved a social contract of sorts with the authorities. Although residents understand that the flat, exposed nature of the area may ultimately rule out continuation of its current dense residential use, they consider themselves entitled to resettlement that would allow the community to remain together and compensate for the loss of livelihoods connected with its current location.

The Peace Island settlement is a promontory surrounded by swamplands that lies within the Congo Town neighborhood to the east of Monrovia's central districts. The area was heavily forested and unsettled when unregistered IDPs initially began to clear it for residential plots in 2003. The population currently stands at nearly 30,000, with most families living on small plots laid out along access roads and fire lanes and demarcated with rocks and trees.<sup>101</sup> The land occupied by the settlement is both valuable and contested, and tenure security has accordingly been tenuous. In 2007, faced with a demolition threat from the Ministry of Mines, Land and Energy, residents appealed to the President, who is said to have guaranteed that evictions would only go forward upon provision of alternative land and housing units. However, government officials have not extended services to Peace Island and are said to have prevented an NGO from providing wells. There are no schools and few jobs available on the island and residents were required to wade through a swamp to access the mainland until an aspiring politician bankrolled a causeway last year.

<sup>99</sup> Information on West Point in this section is based on an extended interview with the Township Council on 19 March 2011, unless otherwise noted. The population of West Point is contested with some observers asserting much lower numbers.

<sup>100</sup> Interview, Ministry of Public Works official, 17 March 2011.

<sup>101</sup> Descriptions of the Peace Island settlement in this section are based on an interview with the community leadership on 15 March 2011, unless otherwise indicated.

Peace Island is different from most other informal settlements in Monrovia because of its recent provenance. However, the community is struggling to acquire the trappings of formality that are viewed as central to achieving tenure security. A population census paved the way for the election of a first township council in 2009, which operates on the basis of a written constitution. Despite high demand for residential land, the community is holding several centrally located plots vacant for an eventual administrative center including a police station and a health clinic. Perhaps most telling, the community has not been able to stop families known to be prone to violence from building in fire access lanes, but have put them on notice that such structures will eventually be torn down without compensation. A popular complaint is that the community would be willing and able to do much more, both in terms of improving their homes and paying for the extension of services, if they had tenure security.

In sum, while official toleration of informal settlements has facilitated a great deal of informal urban development, it has not consistently delivered security of tenure. Some settlements such as West Point have acquired a degree of legitimacy through the passage of time and the necessity of official engagement. This has fostered a clear perception of security of tenure, as manifested by the construction of many permanent structures in West Point, some as many as three stories high. However, this perception is based primarily on a hierarchy of informality where real options for regularizing settlements do not yet clearly exist. The current situation is also divisive; for instance, although the West Point leadership plans to establish advocacy links with other more established slums like nearby Clara Town, they are dismissive of recent settlements such as Peace Island, asserting that “those people are occupying that land illegally.”<sup>102</sup> Such argumentation obscures the fact that strict legality is ultimately not on the side of any of Monrovia’s slums, whereas the many equitable claims they have in common – based on the de facto urban development they have achieved and the vulnerability of many of their residents – may be more persuasive.

<sup>102</sup> Interview, West Point township official, 19 March 2011.

## 4. CONCLUSIONS AND RECOMMENDATIONS

The regulatory ambiguity that has prevailed to date in Monrovia has allowed the issue of informal settlements to be dealt with in an essentially constructive manner but without providing any meaningful guarantees of future tenure security for slum residents. Increasing levels of investment and urban development need not automatically lead to forced evictions and could, in the best scenario, be facilitated through policies that build on the current urban realities in Monrovia, engaging slum dwellers to turn informal settlements into safe, sustainable neighborhoods wherever possible. Such an approach would not only be in accordance with development best practice and relevant human rights standards, but would also guarantee durable solutions for all Liberians uprooted by the 1989-2003 conflict.

The achievement of such a positive outcome will require a significant shift in policy. In this light, the decision of Liberia's Land Commission to give a higher profile to urban land issues in 2011 is a timely and welcome development. However, the Commission will face numerous challenges in moving from the unwritten but broadly accepted policy of benign neglect and avoidance of unnecessary evictions that now prevails to a more active stance that balances the demands of numerous interested actors while aspiring to the human rights and development goals outlined above, in Section 2 of this Report. It is clear that many slum-dwellers in Monrovia currently enjoy a degree of perceived security of tenure in their homes. As noted by UN-HABITAT, this is a promising starting point, but significant work remains to be done before this state of affairs can be transformed into objective security of tenure for the urban poor and a higher degree of legal certainty for all interested parties.<sup>103</sup>

It is also clearly significant that public authorities such as the Monrovia City Corporation (MCC) and the Ministry of Public Works (MPW) now routinely apply the World Bank Operational Policy 4.12 in resettlement caused by Bank-funded projects. However, as the Land Commission begins its deliberations, it would be worthwhile for public authorities to actively consider how to strengthen the safeguards in their 'ordinary' procedures. Ideally, such measures could be undertaken in consultation with development assistance partners and significant private investors in order to achieve as consistent an approach as possible to all development-induced displacement. The initiation of such a discussion could both support the development of a broader policy by the Land Commission and prepare the ground in advance for its implementation.

On the other hand, failure to take such steps may risk strengthening a current perception of arbitrariness in how evictions procedures are carried out. For instance, persons interviewed for this Report who had been affected by the demolition of the 'Happy Corner' informal settlement in connection with the World Bank funded reconstruction of the Via Town Bridge expressed a general skepticism about the role of the Ministry of Public Works (MPW), which implemented the Resettlement Action Plan.<sup>104</sup> Many of them appeared to differentiate between the MPW, which was perceived as interested in simply evicting people by any expedient means, and the official within the Ministry responsible for applying OP 4.12, who was credited with remaining accessible, providing updated information and guaranteeing the delivery of resettlement assistance.

<sup>103</sup> UN-HABITAT, *Handbook on Best Practices*, 10.

<sup>104</sup> Interviews with former Happy Corner residents, 18 March 2011.

This problem of perceptions is understandable in light of the different standards applied in different development projects, and it can and should be addressed. The current procedures applied by both MCC and MPW are satisfactory in many respects. They include important procedural protections such as the provision of advance notice and information, the possibility of judicial appeal, an allotment of time to remove personal belongings and, in some cases, resettlement assistance. However, basic problems include the need for accessible, written procedures, the false expectations raised by payment of 'squatters' rights' fees, and the lack of a consistently implemented and funded policy on compensation and resettlement assistance. Convergence of the various standards applied by public officials in Liberia around the standards of the World Bank OP 4.12 and a more systematic approach to implementing them consistently would go a long way toward addressing these issues.

Finally, as discussed above in Section 2 displacement constitutes a distinct source of vulnerability in many situations of post-conflict urbanization. This is more obvious in settings where IDPs may be distinguished from ordinary migrants or slum dwellers by factors such as the lack of support from family members remaining in the countryside, inability to speak the dominant local language, lack of local support networks and discrimination in access to economic and educational opportunities. The case of Monrovia appears to be exceptional in that IDPs have successfully integrated into local communities and do not appear to enjoy any significant disadvantages vis-à-vis the non-displaced population. Nevertheless, some interlocutors noted that it might be premature to rule out past displacement entirely as a vulnerability factor.<sup>105</sup>

One question of particular significance is whether groups that are recognized as particularly vulnerable within displaced populations, such as female heads of household, disabled persons and persons with chronic illnesses are present in significant numbers in informal settlements and, if so, whether they continue to face particular obstacles as a result of their situation. A related issue is whether displaced persons have truly integrated into local formal and informal social networks to the extent necessary to access education job-training services, credit and employment markets on an equal basis. It is also important to recall that displaced persons who chose not to return may have forfeited important assets (ranging from, land, housing and business property to livestock, tools, agricultural equipment and established clienteles) that they may never be compensated for. The extent to which earlier displacement may still foster residual vulnerability bears further analysis and would need to be taken into account in the formulation of any action plans for large scale involuntary resettlement.

One of the most important means of identifying both displacement related and non-displacement related vulnerability and involving communities in urban planning and policy-making processes is the use of participatory assessment techniques. In conducting an urban land survey, in particular, it will be important to identify not only the formal legal status of the land but also its de facto current use in a manner that both recognizes the legitimate interests and concerns of slum dwellers and sensitizes them to the principles that will guide any necessary involuntary relocation. The experience of UN-HABITAT in developing participatory methodologies for 'enumerating' informal settlement residents will be particularly valuable in this regard. However, such processes should also be guided by the insights of humanitarian organizations such as the Norwegian Refugee Council (NRC) and Internal Displacement Monitoring Centre (IDMC) in 'profiling' IDPs in urban settings.

<sup>105</sup> Interview, Bestman Toe, Slum Dwellers Association of Liberia, 15 March 2011.

<sup>106</sup> One of the most important criteria for the achievement of durable solutions by IDPs is the existence of effective mechanisms to restore their housing, land and property, "regardless of whether they return or opt to integrate locally or resettle elsewhere in the country." Framework for Durable Solutions, paragraph 76.

<sup>107</sup> "Improving data collection for urban planning through participatory enumerations", Global Land Tool Network Brief 2 (March 2010).

<sup>108</sup> Feinstein International Center, Tufts University, Norwegian Refugee Council (NRC) and Internal Displacement Monitoring Centre (IDMC), "Seminar highlights: Profiling Internally Displaced Persons in urban settings (Geneva, 27 May 2008).

## **RECOMMENDATIONS TO THE LAND COMMISSION OF LIBERIA**

The Land Commission has signaled its intention to prioritize the development of a policy approach to urban land issues beginning in 2011. This is a timely and important decision. In working toward a National Policy on urban land issues, the attention of the Commission is drawn to the following considerations:

- In the interim period leading to the development of a policy, the Land Commission may consider recommending that the criteria set out in the World Bank Operational Policy 4.12 be adopted by the Government as an interim policy guiding resettlement of residents of informal settlements. Under such circumstances, the basic rules of OP 4.12 would be applied by all official bodies involved in development-related resettlement, including both national ministries and municipal or county and township level officials. In the event of such a decision, it may be prudent to phase the applicability of the new standard in, so as not to overwhelm current budgets and capacity. The Government might also be advised to request that all development partners, current donors and investors involved in projects giving rise to resettlement begin a process of progressively incorporating the safeguards in the Policy into their procedures if they have not done so already.
- In its deliberations on urban land issues, the Land Commission should consider not only best practices of the nature set out in development frameworks such as the World Bank's OP 4.12 and the African Development Bank's Involuntary Resettlement Policy, but also human rights standards such as those applicable based on Liberia's ratification of the African Convention on Human and People's Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, as well as its signature of the AU Kampala Convention on internal displacement.<sup>109</sup>
- Pending completion of an urban land audit in Monrovia, the Land Commission may wish to consider measures that would afford slum residents a minimum degree of safety and tenure security without unnecessarily prejudicing the outcome of ownership disputes. These could include measures such as interim lease arrangements with residents of informal settlements, who would continue to occupy them with the possibility to access basic services subject to the requirement that they continue to take responsibility for local administration and report violations of zoning rules. A lease system could build on popular acceptance of squatters' rights certificates but with a clearer legal basis and transparency regarding the collection and use of the revenues.
- In approaching the development of an urban land policy, the Commission should consider carefully the balance between the equitable interests of the current slum-dwellers in the informal settlements they have built and administered and the legal interests of holders of valid title. While the destruction and loss of title records should not categorically disqualify the claims of alleged private owners of land in Monrovia, the policies underlying ordinary rules of escheat and adverse possession – e.g. that legal certainty must be balanced with policies to promote productive use and maintenance of landed property – should be borne in mind in assessing such claims. It is also important to note that urban land adjudication need not always be a zero-sum process. In cases in which both owners and current possessors of urban land can demonstrate strong interests, public authorities may be in a position to provide incentives to both parties to negotiate over the possibility of shared use of the land in question.<sup>110</sup>

<sup>109</sup> Liberia signed the Kampala Convention on 23 October 2009, but has yet to ratify it.

<sup>110</sup> UN-HABITAT, *Handbook on Best Practices*, 43-4.

- Ultimately, the Commission might aspire to propose a policy on involuntary resettlement – either as a free-standing regulation or an integral part of a broader National Urban Plan – that would meet or exceed the standards set out in the World Bank’s OP 4.12. In doing so, the Commission might propose that the National Policy be applied in all donor-funded projects in accordance with the World Bank’s policy on using the national systems of borrower countries to address environmental and social issues<sup>111</sup>

## RECOMMENDATIONS TO HUMANITARIAN ACTORS AND DEVELOPMENT PARTNERS:

Humanitarian and development actors are officially expected to coordinate their activities in settings such as Liberia in order to ensure an ‘early recovery’ approach that bridges the gap typically seen between relief and development efforts. However, despite significant potential for synergies in areas such as development-induced displacement, progress in developing and implementing early recovery activities has been mixed. However, the situation in Liberia, where both humanitarian actors such as NRC and agencies with development backgrounds such as UN-HABITAT are jointly engaged in supporting the work of the Land Commission, presents an opportunity to set a positive precedent. Some issues to be considered in developing more effective modes of collaboration might include the following:

- To date, much of the guidance addressed to humanitarian actors on land and property issues has proceeded from the “do no harm” principle. Accordingly, humanitarians have been encouraged to avoid taking steps that could exacerbate tensions over land and to refer issues to land tenure experts wherever possible.<sup>112</sup> However, development-induced displacement situations present an argument in favor of going beyond this conservative starting point and considering a more active role in issues related to core activities such as shelter provision and legal advising.<sup>113</sup>
- In providing shelter for displaced persons, humanitarian actors should be encouraged to consider ways in which both the adequacy of the housing and the tenure security of its occupants can be progressively improved. Although such considerations may be unrealistic in emergency settings, they should become paramount in situations that have stabilized to the point that transitional shelter arrangements are under consideration. In particular in situations in which displaced persons find shelter in informal settlements or other sites that may be subject to development-induced displacement, planning for incremental tenure should begin as early as possible after displacement and should involve the surrounding ‘displacement-affected’ community. Although such efforts should be designed in such a way as not to prejudice decisions by displaced persons to return to their places of origin when conditions allow, they should be designed to anticipate the likelihood that some of the displaced may opt for local integration.<sup>114</sup>

111 World Bank, Operational Policy 4.00 – Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects (March 2005).

112 Global Land Tool Network, CWGER and UN-HABITAT, Land and Conflict: A Handbook for Humanitarians (Draft, September 2009), 7 (“In both emergency and early recovery settings, humanitarian actors are generally advised to seek the advice of land tenure experts wherever necessary. Humanitarian actors should avoid being forced into the role of adjudicating land disputes on an ad hoc basis or taking other similar steps that could potentially undermine the rights and obligations of individuals and communities. Such actions raise significant “do no harm” risks, not least by threatening to undermine both the perceived impartiality of humanitarian workers themselves and the authority of any existing formal or traditional land dispute adjudication bodies.”)

113 This recommendation would appear to be particularly germane for organizations such as NRC with experience navigating the shift from emergency and transitional housing solutions to permanent ones in numerous and diverse displacement settings.

114 See, e.g., The Brookings-Bern Project on Internal Displacement, Protecting Internally Displaced Persons: A Manual for Law and Policy-makers (October 2008), Chapter 9. In providing humanitarian shelter to IDPs, competent authorities are required to take steps to fulfill their right to adequate housing, including not only protecting them from forced evictions but also continuously taking measures, in consultation with IDPs, to improve the adequacy of their shelter and ultimately to support sustainable long-term housing solutions.

- In situations such as that in Liberia where official reintegration assistance was targeted almost exclusively to displaced persons who opted for return, both humanitarian and development actors should emphasize the ongoing vulnerability of IDPs seeking local integration and the need for public authorities to provide them with measures of assistance and protection – including in the area of access to housing and tenure security – that will facilitate durable solutions.
- Humanitarian and development actors should make their expertise available in assisting in needs assessment and data gathering in relation to post-conflict populations at risk of development-induced displacement. In particular, profiling/enumeration exercises should be carried out in a participatory manner with a view to identifying displacement-related vulnerabilities and anticipating displacement-related issues through inquiries related, e.g., to IDPs' language issues, ability to access assets left behind or receive remedies for them that would increase self-reliance, access to local employment markets, etc.
- Humanitarian and development actors should actively compile experience on issues such as improving housing adequacy and tenure security from the early stages of displacement and managing the transition to durable solutions. Ultimately, such information should be used, wherever possible, to provide more systematic guidance to early recovery actors in other settings operating in other post-conflict scenarios characterized by the risk of development-induced displacement.

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