



International Conference on the Great Lakes Region

Protocol on the Property Rights of Returning Persons

30th November 2006

Preamble

We, heads of State and government of the Member States of the International Conference on the Great Lakes Region;

Considering our Declaration on Peace, Security, Democracy and Development in the Great Lakes Region adopted and signed on 20th November 2004 in Dar-es-Salaam;

Reaffirming our commitment to its implementation on behalf of our peoples, particularly its Article 69 under which the Member States committed themselves to ensure that refugees and displaced persons, upon return to their areas of origin, recover their property with the assistance of the local traditional and administrative authorities;

Expressing our commitment to comply with the right of everyone to own property under the Universal Declaration of Human Rights 1948, and the guarantee of the right to property in the African Charter on Human and Peoples' Rights 1981;

Conscious that property disputes arising from claims by internally displaced persons and refugees when returning to their places of origin can be a hindrance to the attainment of the durable solutions of voluntary repatriation and reintegration;

Deeply concerned that the failure to resolve such disputes can be a source of recurrent conflict in the Great Lakes Region;

Agree as follows:

Article 1

Definitions

In this Protocol, unless the context otherwise requires, the following mean:

1. **Children:** human beings below the age of eighteen years, unless under the law applicable to the children, majority is attained earlier, as defined by the Convention on the Rights of the Child;
2. **Communities:** communities, pastoralists and other groups, whose livelihood has a special dependency on and attachment to their lands, in accordance with the provisions of the International Covenant on Civil and Political Rights 1966, the African Charter on Human and Peoples' Rights;
3. **Internally Displaced Persons:** persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border;
4. **Internally Displaced Persons:** also means persons or groups of persons forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of development induced displacement and who have not crossed an internationally recognized State border;
5. **Property:** the autonomous possessions of economic value such as, moveable and immoveable property including land, corporeal and incorporeal possessions like intellectual property or copy right, money, pecuniary gains, debts, and contractual rights;
6. **Refugee:** Every person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, as defined by the United Nations Convention relating to the Status of Refugees 1951 and as amended by the United Nations Protocol relating to the Status of Refugees 1967;
7. **Refugee:** also applies to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to

leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality, as defined by the African Union Convention governing the specific aspects of refugee problems in Africa 1969;

8. **Returns:** internally displaced persons and refugees who return to their original places of residence in their country of origin;
9. **Sub-Committee of Experts:** the Sub-Committee of Experts established under the Coordinating Committee of the Programme of Action on Humanitarian, Social and Environmental Issues.

Article 2

Objectives

The objectives of this Protocol are to:

1. Encourage Member States to provide legal protection for the property of internally displaced persons and refugees in countries of their origin in the Great Lakes Region;
2. Establish legal principles according to which Member States shall ensure that refugees and internally displaced persons, upon return to their areas of origin, recover their property with the assistance of the local traditional and administrative authorities;
3. Provide a legal basis for resolving disputes arising from the recovery of property previously occupied or owned by Internally displaced persons and refugees in the Great Lakes Region;
4. Provide special protection for the property of returning women, children, and communities with special attachment to land in the Great Lakes Region;
5. Ensure legal remedies for the loss or destruction of the property of internally displaced persons and refugees, and persons resettled or relocated elsewhere due to the construction of large scale development projects in the territories of the Member States.

Article 3

General Principles of Protection

1. Member States accept that the following general principles shall form the basis of the legal protection of the property of internally displaced persons and refugees, and those resettled or relocated elsewhere due to development induced displacement:

- a. The right of everyone, including internally displaced persons and refugees, to own property in accordance with the Universal Declaration of Human Rights and the relevance of the International Covenant on Civil and Political Rights as well as that of the International Covenant on Economic, Social and Cultural Rights 1966, and the guarantee of the right to property under the African Charter on Human and Peoples' Rights;
 - b. The guarantee of equal protection of the law for all persons, inclusive of Internally displaced persons and refugees, in keeping with the provisions of the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights;
 - c. Non-discrimination under the International Convention on the Elimination of All Forms of Racial Discrimination 1965;
 - d. Non-discrimination against women under the International Convention on the Elimination of All Forms of Discrimination Against Women 1979, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003, with respect to the protection of the property of women Internally displaced persons and refugees;
 - e. The ratification of, and compliance with, the Convention on the Elimination of All Forms of Discrimination Against Women 1979, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003 and the African Charter on the Rights and Welfare of the Child 1990;
 - f. Implementation of the Convention on the Rights of the Child 1989.
2. Member States undertake, subject to the applicable laws of armed conflict, to protect property belonging to internally displaced persons and refugees in all possible circumstances, and in particular, against the following acts:
 - a. Pillage;
 - b. Direct or indiscriminate attacks or other acts of violence;
 - c. Being used to shield military operations or objectives;
 - d. Being made the object of reprisal;
 - e. Being destroyed or appropriated as a form of collective punishment.
 3. Member States shall ensure that the property of internally displaced persons and refugees shall be protected in all possible circumstances against arbitrary and illegal

appropriation, occupation or use, taking into account the United Nations Principles on Housing and Property restitution.

4. Nothing in this Protocol shall affect the right of Internally displaced persons and refugees to take legal action aimed at recovering their properties through national courts and/or the African Commission or African Court on Human and Peoples' Rights.
5. Statutes of limitations of the Member States shall, where applicable, be without prejudice to the provisions of this Protocol.

Article 4

Recovery and Restoration of the Property of Internally displaced persons and refugees and Resettled Persons

1. Member States shall assist internally displaced persons and refugees and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement.
2. When recovery of such property and possessions is not possible, Member States shall provide or assist such persons in obtaining appropriate compensation as provided for in Article 8.
3. In particular, Member States shall:
 - a. Elaborate legislative procedures under which the local traditional and administrative authorities referred to in Article 69 of the Dar-es-Salaam Declaration, can assist to recover the property of returning refugees and displaced persons;
 - b. Establish simplified formal judicial procedures to enable Internally displaced persons and refugees to lodge formal claims relating to the loss or recovery of their property;
 - c. Establish alternative and informal community based mechanisms and processes for resolving property disputes, with simple requirements of proof of ownership based upon reliable and verifiable testimony;
 - d. Establish an affordable property registration scheme under which title to property, including land, held under both customary and statutory land tenure systems is recognized.

4. The obligation of Member States to accord legal protection to the properties of internally displaced persons and refugees shall be binding on all successive Governments in each of the Member States.
5. Member States may exercise the authority of the State to acquire or expropriate property abandoned by internally displaced persons or refugees in compelling and overwhelming circumstances which are justified in the general interest of the public or community, provided that such acquisition or expropriation shall be carried out under procedures prescribed by law.
6. A Member State that acquires or expropriates property belonging to internally displaced persons or refugees shall maintain a fair balance between their right to own such property and the acquisition or expropriation of that property by ensuring that:
 - a. Internally displaced persons or refugees shall not disproportionately or unreasonably bear the burden of the loss of their property without being compensated or restituted for such loss;
 - b. The loss of the property of internally displaced persons or refugees does not violate other related rights, such as their right to family life, home and adequate housing.

Article 5

Protection of the Property of Returning Spouses

1. Member States undertake to deal with special claims of protection by returning spouses, single parents, and single women with respect to disputes on the ownership of family or other property when a displaced spouse is deceased.
2. Member States undertake to eliminate gender based discrimination against women according to the International Convention on the Elimination of All Forms of Discrimination Against Women, the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
3. Member States shall give effect to the legal capacity of returning women and all women, including single women, to own land and other property in their own right, without discrimination of any kind.
4. Any land or property registration scheme established under Article 4(1)(d) shall accord women the legal capacity to register title to land or property owned by them under both customary and statutory land tenure systems so as to enable them to own such land or

property in their own right, and to avoid conflicting claims relating to their ownership of such land or property.

5. Member States undertake to ensure that legislative, administrative, legal and other mechanisms shall be established to guarantee that returning spouses succeed to the property of their deceased spouses.

Article 6

Protection of the Property of Returning Children and Orphans

1. Member States shall address the plight of all returning children, without discriminating between girls and boys, orphans, children born out of wedlock, and adopted children, where such children are likely to be disinherited, or dispossessed, of family property. In particular, Member States shall guarantee:
 - a. The protection of these children's right to inherit family property when both parents died during displacement or refuge;
 - b. Legal arrangements for holding these children's inheritance of property in trust until they attain legal capacity;
 - c. Protection of the property interests of children in national laws on inheritance and succession, based upon the principle of the best interest of the child;
 - d. To harmonize national laws on the attainment of the legal capacity of children at the age of 18 in accordance with the Convention on the Rights of the Child;
 - e. To harmonize national laws on inheritance and succession, taking into account the principle of the best interest of the child;
 - f. Adherence to the best interest of the child as the overriding principle applicable to all returning children who are orphaned or have lost both parents while in displacement or refuge;
 - g. Rapid and unimpeded access by children to the enjoyment or use of the property of their deceased parents.

Article 7

Protection of the Property of Returning Communities

1. Member States recognize special protection of the property of returning communities, pastoralists and other groups whose mode of livelihood depends on special attachment to their lands in situations where such communities or groups exist.
2. Member States shall ensure that such communities, pastoralists or other groups, shall be reintegrated in areas previously occupied them.
3. When such reintegration or return is not possible, these communities shall be provided in all possible cases with lands at least equal in value to those previously occupied by them.
4. Where alternative lands of equal value cannot be allocated, an appropriate compensation package shall be made available as provided for in the national legislation of the Member States.

Article 8

Compensation

1. Member States undertake responsibility for compensating the loss of the property of internally displaced persons and refugees in situations where they are directly responsible for such loss.
2. Member States undertake to establish a framework for enabling the compensation of internally displaced persons and refugees by those responsible for the loss of the property of internally displaced persons and refugees in situations where Member States bear no direct responsibility for such loss.
3. Member States shall determine an appropriate compensation package for the loss of the property of internally displaced persons and refugees on the basis of national legislation which shall set out the terms of such a compensation package.

Article 9

Monitoring

1. A Sub-Committee of Experts established under the Coordinating Committee of the Programme of Action on Humanitarian, Social Issues and which has specific responsibility for land and property issues shall ensure that this Protocol is implemented in the Member States.

Article 10

Final Provisions

1. This Protocol shall be an integral part of the Pact and shall not be subject to separate signature and ratification by the Member States.
2. For any Member State which has ratified the Pact in terms set out in Article 30 of the Pact, this Protocol shall automatically enter into force at the same time as the Pact in accordance with Article 33 of the Pact.
3. Nothing contained in this Protocol shall be construed to be contrary to the provisions of the Pact, the Constitutive Act of the African Union, and the Charter of the United Nations.