



# **International Conference on the Great Lakes Region**

## **Protocol on the Property Rights of Returning Persons**

**30<sup>th</sup> 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 20<sup>th</sup> 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.

Annex to  
the Protocol on the Property Rights of Returning Persons

**Model Legislation on Property Rights of Returning Persons**

**Nairobi**

**5-7 September 2006**

# **Property Rights of Returning Persons Act**

## **Chapter ....of the Laws of the Republic**

An Act to give effect to the Protocol on the Property Rights of Returning Persons and to make provision for an administrative framework for the implementation of the said Protocol and other related matters.

**BE IT ENACTED** by the Parliament of the Republic as follows:-

### **ARRANGEMENT OF SECTIONS**

Section

1. Title

#### **PART ONE**

2. Definitions

#### **PART TWO**

3. Legal Effect

#### **PART THREE**

Measures of Protection and Application

4. Powers of the Minister

5. Establishment of Local Panels

6. Functions of Local Panels

7. Establishment of the Commission

8 Functions of the Commission

9. Compensation

#### **PART FOUR**

Miscellaneous Provisions

## **Schedule 1**

United Nations Principles on Housing and Property Restitution in the context of the return of refugees and internally displaced persons, E/CN.4/Sub.2/2005/17/Add.1, 11 July 2005.

## **Title**

S.1. This Act may be cited as the Property Rights of Returning Persons Act.

## **PART ONE**

### **Definitions**

S.2. In this Act, unless the context otherwise requires:

- (1) “Children” shall mean human beings below the age of eighteen years, unless under the law applicable to the children, majority is attained earlier;
- (2) “Commission” shall mean the Property Claims Commission for Returnees referred to in S. 7.
- (3) “Communities” shall mean communities, pastoralists and other groups, whose livelihood has a special dependency on and attachment to their lands;
- (4) “Internally Displaced Persons” shall mean 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;
- (5) “Internally Displaced Persons” shall also mean 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 development induced displacement and who have not crossed an internationally recognized State border;
- (6) “Local Panels” shall mean Local Property Recovery Panels referred to in S. 5.
- (7) “Property” refers to autonomous possessions of economic value such as, moveable and immovable property including land, housing, corporeal and incorporeal possessions like intellectual property or copy right, money, pecuniary gains, debts, and contractual rights;
- (8) “Refugees” shall apply to 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;

- (9) “Refugees” shall also apply 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;
- (10) “Returnees” shall mean internally displaced persons and refugees who return to their original places of residence, or who resettle elsewhere, in their country of origin;
- (11) “Women” shall mean human beings of the female sex.

## **PART TWO**

### **Legal Effect**

S. 3 Subject to the provisions of this Act:

- (1) The Protocol shall have legal effect within, and throughout, the Republic;
- (2) The Protocol shall provide the legal basis for guaranteeing the right to ownership of property or land and housing abandoned by internally displaced persons and any persons fleeing from the Republic to other States as refugees;
- (3) Property or land and housing belonging to internally displaced persons and refugees shall be protected against the following acts in all possible circumstances and to the extent provided by the applicable laws of armed conflict:
  - 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;
- (4) No order shall be made authorizing the acquisition or expropriation or transfer by coercion or eviction, of property or land, including housing, that has been vacated or abandoned by internally displaced persons or refugees except in compelling and overwhelming circumstances which are justified in the general interest of the public or community, unless procedures for making such an order have been lawfully authorized by a statutory instrument made under this Act;

- (5) Special provision is hereby made, in accordance with the provisions of the Protocol, for the protection of property rights for returning women, children, and communities with special attachment to the land;
- (6) All women, including returning women and single women, shall have the legal capacity to own and inherent land and other property in their own right, without discrimination of any kind, as provided for in the Protocol;
- (7) Notwithstanding any other law of the Republic, children shall attain legal capacity at the age of 18 years;
- (8) Property which orphans are entitled to inherit shall be held in trust until such children attain legal capacity;
- (9) The best interest of the child shall be applied as the overriding principle in all cases involving children's rights to ownership of property, inheritance and succession;
- (10) Property belonging to returning communities, pastoralists and other groups whose mode of livelihood depends on special attachment to their lands shall be restored to them upon returning to their countries or places of origin, except as provided in S. 8(9);
- (11) All laws, procedures and regulations of the Republic which regulate ownership of property, inheritance and succession shall be construed in conformity with the provisions of the Protocol;
- (12) Any statute of limitation in force in the Republic shall be without prejudice to the provisions of this Act.

## **PART THREE**

### **MEASURES OF PROTECTION**

#### **Powers of the Minister**

S. 4 The Minister shall be responsible for the legal and administrative implementation of this Act. For this purpose, the Minister shall:

- (1) Prescribe by statutory instrument regulations for the implementation of this Act consistent with the Protocol;
- (2) Ensure that the property or land, including housing, of internally displaced persons and refugees shall be protected, in all possible circumstances, against arbitrary and illegal appropriation, forceful or coercive seizure, occupation or use;
- (3) Ensure the establishment of Local Property Recovery Panels under S.5;



(4) Appoint Members of the Commission under S.7;

(5)Ensure the creation of an affordable land or property and housing registration scheme and a database for title to land held under both customary and statutory land tenure systems in order to avoid conflicting claims relating to ownership of such land or property and housing;

(6)Ensure that any such land or property and housing registration scheme shall accord women the legal capacity to register title to land or property and housing owned by them under customary or statutory land tenure systems;

(7)Ensure that any such land or property and housing registration scheme shall accord children, upon attaining the age of 18 years, the legal capacity to register title to land or property entitled to them under customary or statutory land tenure systems.

### **Local Panels**

S. 5 Pursuant to S. 4(3), provision is hereby made for the establishment of Traditional Property Recovery Panels in every district or administrative unit of the Republic.

1. Local Recovery Panels shall consist of:

(a) A local Chief who shall serve as Chairperson;

(b) A local Councilor who shall serve as Secretary;

(c) A local headman who shall serve an ordinary member;

(d) Four local women, including a returnee, nominated by women residing in the locality shall serve as ordinary members.

### **Functions of the Local Panels**

S. 6 The functions of the Local Panels shall be to:

(1)Provide an alternative community based mechanism for recovering traditional property belonging to returning persons;

(2)Assist returning persons to recover their property, land and, where possible, housing;

(3)Settle any disputes relating to such recovery on the basis of simple requirements of proof of ownership or possession or occupation, based upon reliable and verifiable testimony, provided that a returning person who is not satisfied with a decision made by a Local Panel shall lodge a claim with the Commission under S.8(3);

(4) Maintain a record of any decisions made;

(5) Communicate such decisions in writing to a local administrative authority which shall maintain a record of all such decisions.

### **Establishment of Property Claims Commission for Returnees**

S.7 There shall be established a Property Claims Commission for Returnees which shall be a full-time inquisitorial and quasi-judicial body.

(1) The Commission shall consist of five persons appointed by the Minister under S. 4(4).

(2) The Minister shall appoint a Chairperson of the Commission from amongst its Members.

(3) Members of the Commission shall consist of three women and two men of high integrity who shall be qualified in the fields of property law, land survey, land use and planning.

(4) Members of the Commission shall enjoy security of tenure on the same terms or conditions as judicial officers.

### **Functions of the Commission**

S. 8 The functions of the Commission shall be to:

i. Advise the Minister to ensure that the property or land, including housing, of internally displaced persons and refugees shall be protected, in all possible circumstances, against arbitrary and illegal appropriation, forceful or coercive seizure, occupation or use;

ii. Examine and resolve disputes arising from the recovery or loss of any property previously occupied or owned by returning persons;

iii. Receive claims from or on behalf of returning persons or their next of kin, with respect to the loss or recovery of their property and possessions which they abandoned or were dispossessed of upon being displaced;

iv. Resolve special claims made by returning spouses, single parents, and single women, in relation to disputes on the ownership of family or other property following the death of a spouse or relative;

v. Guarantee that returning spouses succeed to the property of their deceased spouses;

vi. Ensure that children shall have rapid and unimpeded access to the enjoyment or use of the property of their deceased parents;

- vii. Guarantee the right of orphans or bereaved children to inherit family property where both of their parents were deceased during displacement or refuge, without any discrimination between girls and boys, children born out of wedlock, and adopted children;
- viii. Ensure, that returning communities, pastoralists or other groups, shall be reintegrated in areas previously occupied by them to preserve the dependency of their livelihood on their special attachment to lands which they owned or possessed prior to their flight or displacement;
- ix. Where such reintegration or return is not possible, the Commission shall ensure that these communities shall be provided in all possible cases with lands at least equal in value to those previously occupied by them;
- x. Where alternative lands of equal value cannot be allocated, the Commission shall ensure that an appropriate compensation package based on S.9 shall be made available and accessible to such Communities.

## **Compensation**

S. 9 The Commission shall determine the modalities of compensation and decide on an appropriate compensation package for the loss of the property or land and housing of returnees where such property or land and housing cannot be recovered or restored to them.

- (1) For this purpose, the Commission shall determine the person or organ of the Republic responsible for paying out such compensation in whole or in part.
- (2) The Commission shall decide on an appropriate compensation package based on the following principles:
  - (a) Actual loss of the value of the property;
  - (b) Striking a fair balance between the right to own property and the loss or acquisition or expropriation of such property under S. 3(4);
  - (c) Denial of the enjoyment of rights, such as family life, home and adequate housing, whose fulfillment depend on such property;
  - (d) Non-discrimination against women and application of the equal protection of the law to any claim involving women;
  - (e) The best interests of the child in any claim involving a child;
  - (f) United Nations Principles on Housing and Property Restitution in the context of the return of refugees and internally displaced persons as provided for in Schedule 2 of this Act.

## **PART FOUR**

### **Miscellaneous Provisions**

S. 10 Nothing contained in this Act shall affect the Republic's international obligations or commitments pertaining to the right to own property with respect to any applicable treaty to which the Republic is a Party.

S. 11 Nothing contained in this Act shall affect the Republic's international obligations pertaining to refugees under the United Nations Convention Relating to the Status of Refugees 1951 and the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa 1969.

S.12 Nothing contained in this Act shall affect the Republic's international obligations pertaining or commitments to Internally Displaced Persons under the Great Lakes Protocol on The Protection and Assistance to Internally Displaced Persons 2006.

S. 13 Nothing contained in this Act shall affect the right of returnees to take legal action aimed at recovering, or obtaining redress for the loss of, their properties before the judicial organs of the Republic or the African Commission or African Court on Human and Peoples' Rights, or any other human rights body established by a treaty to which the Republic is a Party after exhausting all appropriate local remedies available.

S. 14 The Principles contained in this Act shall also apply to the compensation of persons referred to in S.2(3) of this Act in any case where the issue of such compensation arises under S.3(5) of the model legislation on the Implementation of the Protocol on the Protection and Assistance to Internally Displaced Persons.

S. 15 This Act shall come into effect on such a date as the Minister may decide.