



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

## **Protocol on the Protection and Assistance to Internally Displaced 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 the implementation of the terms of the said Dar-es-Salaam Declaration on behalf of their peoples;

**Recalling** specifically its Article 58 under which we committed ourselves to "respect and use the Guiding Principles on Internal Displacement as proposed by the UN Secretariat, harmonize all the relevant pieces of legislation and define a national and regional framework for the monitoring and follow-up of the standards contained therein and which relate to the access and protection of disaster victims, internally displaced persons, women and children who are victims of conflicts" ;

**Conscious** of the call made by the United Nations Secretary-General in 2005 for the Member States of the United Nations to accept the Guiding Principles on Internal Displacement as the basic international norm for protecting internally displaced persons, and to commit themselves to promote the adoption of these principles through national legislation;

**Noting** the recognition of the Guiding Principles on Internal Displacement as an important international framework for the protection of internally displaced persons by the United Nations Member States at the end of the United Nations Summit of September 2005;

**Deeply concerned** that the magnitude of the phenomenon of internal displacement is continuing on such a large scale that it is necessary to address the plight of internally displaced persons and to eliminate the root causes of their displacement in the Great Lakes Region;

**Mindful** that there is no specific coherent international or regional legal regime and institution mandated to provide protection and assistance to internally displaced persons;

Agree as follows:

## Article 1

### Definitions

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

1. **Authorities:** National and Government Authorities in the Great Lakes Region as defined in the Guiding Principles;
2. **Groups:** armed groups in the Great Lakes Region as defined in the Guiding Principles ;
3. **Guiding Principles:** "the Guiding Principles on Internal Displacement" as proposed by the Secretary-General of the United Nations;
4. **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;
5. **Internally Displaced Persons:** also means 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 large scale development projects, and who have not crossed an internationally recognized State border.

## Article 2

### Objectives

The objectives of this Protocol are to:

1. Establish a legal framework in the Great Lakes Region for ensuring the adoption and implementation by Member States of the Guiding Principles on Internal Displacement;
2. Ensure legal protection by Member States of the physical safety and material needs of internally displaced persons in accordance with the Guiding Principles;
3. Provide a legal basis for the domestication of the Guiding Principles into national legislation by Member States;
4. Commit Member States to prevent and eliminate the root causes of displacement.

## Article 3

### Responsibility for Protecting Internally Displaced Persons

1. Member States undertake to prevent arbitrary displacement and to eliminate the root causes of displacement.
2. Member States shall, to the extent possible, mitigate the consequences of displacement caused by natural disasters and natural causes.

3. Member States accept that they bear the primary responsibility for the protection of the physical and material safety of internally displaced persons during flight, in places of displacement, and upon return, or resettlement elsewhere within the territory of the State.
4. Member States shall be responsible for assessing the needs of internally displaced persons and shall, to the extent necessary, assist them with registration and, in such cases, Member States shall maintain a national data base for the registration of internally displaced persons.
5. Member States shall establish and designate organs of Government responsible for disaster emergency preparedness, coordinating protection and assistance to internally displaced persons, as well as the focal structures responsible for cooperating with international agencies and civil society responsible for internally displaced persons.
6. Member States shall facilitate rapid and unimpeded humanitarian access and assistance to internally displaced persons.
7. Member States shall also ensure the safety and security of humanitarian personnel in areas of displacement.
8. Member States accept the obligation of humanitarian personnel to observe and respect the laws of the country in which they are operating.
9. Member States shall safeguard and maintain the civilian and humanitarian character of the protection and location of internally displaced persons in accordance with international guidelines on the separation of armed elements.
10. Where Governments of Member States lack the capacity to protect and assist internally displaced persons, such Governments shall accept and respect the obligation of the organs of the international community to provide protection and assistance to internally displaced persons.

## **Article 4**

### **Scope of Protection**

1. Member States undertake to:
  - a. Adhere to the principles of international humanitarian law and human rights applicable to the protection of internally displaced persons in general and as reflected in the Guiding Principles in particular;
  - b. Respect and uphold Security Council Resolution 1296 applicable to the protection of the civilian population during armed conflict as well as Security Council Resolution 1325 applicable to the protection of women and their role during armed conflict, including their participation in decision making and administration of programmes, with respect to their safety, welfare, health needs, sanitary care, reproductive rights, food distribution, and the process of return;
  - c. Provide special protection for displaced populations, communities, pastoralists and other groups, with a special dependency on and attachment to their lands, consistently with the provisions of the International Covenant on Civil and Political Rights 1966, the African

Charter on Human and Peoples' Rights 1981, and the Guiding Principles on Internal Displacement;

- d. Provide special protection for women, children, the vulnerable, and displaced persons with disabilities;
- e. Extend protection and assistance, according to need, to communities residing in areas hosting internally displaced persons;
- f. Ensure the safe location of internally displaced persons, in satisfactory conditions of dignity, hygiene, water, food and shelter, away from areas of armed conflict and danger, and having regard to the special needs of women, children, the vulnerable, and persons with disabilities;
- g. Ensure freedom of movement and choice of residence within designated areas of location, except when restrictions on such movement and residence are necessary, justified, and proportionate to the requirements of maintaining public security, public order and public health;
- h. Facilitate family reunification, and to provide, if necessary, special protection for families of mixed ethnic identity;
- i. Observe humanitarian principles and ethical standards relating to the provision of assistance to displaced persons in need of such assistance;
- j. Establish a regional mechanism in the Great Lakes Region for monitoring the protection of internally displaced persons under this Protocol, provided that such a mechanism shall not affect the supervisory role of the United Nations Commission on Human Rights and treaty bodies, and the African Commission and Court on Human and Peoples' Rights, and the right of internally displaced persons to bring complaints before these bodies;
- k. Guarantee that this Protocol shall neither, abrogate the right of internally displaced persons to seek and enjoy asylum in other States in accordance with the Universal Declaration of Human Rights 1948 and the African Charter on Human and Peoples' Rights 1981, nor derogate upon the fundamental principle of non-refoulement, as contained in 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.

## **Article 5**

### **Development-induced Displacement**

1. Member States shall ensure that displacement owing to large-scale development projects shall be justified by compelling and overriding public interest and development. Member States shall therefore ensure that all feasible alternatives of development are explored in order to avoid development induced displacement altogether.
2. Where no alternatives exist, Member States undertake to avoid arbitrary displacement and shall take all measures necessary to minimize displacement and to mitigate the adverse effects of development induced displacement.

3. In such cases, Member States shall obtain, as far as possible, the free and informed consent of those to be displaced prior to undertaking displacement justified by compelling and overriding public interest and development.
4. Member States shall provide full information on the reasons and procedures concerning development induced displacement and, where applicable, on compensation and relocation.
5. Member States shall provide adequate and habitable sites of relocation and shall ensure, to the greatest practicable extent, that proper accommodation is provided to persons displaced by large scale development projects and that their displacement is effected in satisfactory conditions of safety, nutrition, health and hygiene.
6. Member States shall ensure the effective participation of internally displaced persons, particularly women, in the planning and management of their relocation, as well as their return and reintegration, or resettlement.
7. Member States shall undertake to return and reintegrate, or resettle the displaced persons and populations as provided for under Section V of the Guiding Principles.

## **Article 6**

### **Adoption and Implementation of the Guiding Principles**

1. Member States undertake to adopt and implement the Guiding Principles as a regional framework for providing protection and assistance to internally displaced persons in the Great Lakes Region.
2. Member States accept to use the “Annotations of the Guiding Principles on Internal Displacement” as an authoritative source for interpreting the application of the Guiding Principles.
3. Member States shall enact national legislation to domesticate the Guiding Principles fully and to provide a legal framework for their implementation within national legal systems.
4. Member States undertake to ensure that such legislation shall:
  - a. Define internally displaced persons according to Article 1(4)(5) of this Protocol;
  - b. Prescribe the procedures for undertaking development induced displacement;
  - c. Specify the organs of government responsible for providing protection and assistance to internally displaced persons, disaster preparedness and the implementation of the legislation incorporating the Guiding Principles;
  - d. Provide for the channels of engagement and cooperation between the organs of government, organs of the United Nations, the African Union, and civil society;
  - e. Enable the holistic incorporation of the Guiding Principles.
5. Member States shall ensure the effective participation of internally displaced persons in the preparation and design of the said legislation.

## **Article 7**

### **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**  
**Guiding Principles on Internal Displacement**

**Introduction - Scope and Purpose**

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

2. For the purposes of these Principles, internally displaced persons are 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.

3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:

(a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;

(b) States when faced with the phenomenon of internal displacement;

(c) All other authorities, groups and persons in their relations with internally displaced persons; and

(d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

**Section I. General Principles**

***Principle 1***

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

***Principle 2***

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

***Principle 3***



1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

#### ***Principle 4***

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

### **Section II. Principles relating to Protection from Displacement**

#### ***Principle 5***

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

#### ***Principle 6***

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement:

(a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;

(b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

(c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;

(d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and

(e) When it is used as a collective punishment.

3. Displacement shall last no longer than required by the circumstances.

#### ***Principle 7***

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in

satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

- (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
- (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
- (c) The free and informed consent of those to be displaced shall be sought;
- (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

#### ***Principle 8***

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

#### ***Principle 9***

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

### **Section III. Principles Relating to Protection During Displacement**

#### ***Principle 10***

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

***Principle 11***

1. Every human being has the right to dignity and physical, mental and moral integrity.
2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:
  - (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
  - (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
  - (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

***Principle 12***

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

***Principle 13***

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

### ***Principle 14***

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

### ***Principle 15***

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

### ***Principle 16***

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

### ***Principle 17***

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

### ***Principle 18***

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
  - (a) Essential food and potable water;
  - (b) Basic shelter and housing;
  - (c) Appropriate clothing; and
  - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

***Principle 19***

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.
3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

***Principle 20***

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

***Principle 21***

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, 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; and

(e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

#### ***Principle 22***

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

(a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;

(b) The right to seek freely opportunities for employment and to participate in economic activities;

(c) The right to associate freely and participate equally in community affairs;

(d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and

(e) The right to communicate in a language they understand.

#### ***Principle 23***

1. Every human being has the right to education.

2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.

4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

### **Section IV. Principles Relating to Humanitarian Assistance**

#### ***Principle 24***

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

#### ***Principle 25***

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

***Principle 26***

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

***Principle 27***

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

**Section V. Principles Relating to Return, Resettlement and Reintegration**

***Principle 28***

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

***Principle 29***

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned 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. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

***Principle 30***

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

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Annex to the Protocol on the Protection and Assistance to Internally  
Displaced Persons

Model Legislation on the Implementation of the Protocol  
on Protection and Assistance to Internally Displaced  
Persons

**An Act to give effect to the Protocol on the Protection and Assistance to Internally Displaced Persons and the Guiding Principles on Internal Displacement and to make provision for an administrative framework for the implementation of the said Protocol and the Guiding Principles, and other related matters.**

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

ARRANGEMENT OF SECTIONS

Section

1. Title
2. Definitions
3. Legal Effect
4. Powers of the Minister
5. Establishment of the Committee
6. Functions of the Committee



## 7. Procedures of the Committee

## 8. Final Provisions

### Schedule 1

### Schedule 2

## Title

S.1. This draft legislation may be cited as the Draft Model Legislation on the Implementation of the Protocol on Protection and Assistance to Internally Displaced Persons.

## Definitions

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

- (1) “Committee” means the Committee on the Protection and Assistance of Internally Displaced Persons referred to in S.5 and S.6 of this Act;
- (2) “Humanitarian personnel” shall mean the humanitarian personnel referred to in S. 4(6)(7) of this Act;
- (3) “Internally Displaced Person” 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’;
- (4) “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 large scale development projects, and who have not crossed an internationally recognized State border’;
- (5) “Minister” shall mean the Minister in charge of internally displaced persons as referred to in S.4 of this Act;
- (6) “Private Sector” shall mean the private sector referred to in S. 3(5), inclusive of private actors referred to in S.3(3) of this Act.
- (7) “Public interests” in S.3(4)(5) of this Act shall be construed, in reference to large-scale development projects, the development interests of, and for the benefit of, the people of the Republic as whole, including persons displaced by such projects;

- (8) “Senior public official” shall mean a Senior public official referred to in S.4(5) of this Act;
- (9) “United Nations Agencies” shall mean the United Nations High Commissioner for Refugees and mandated Agencies, Funds, Offices and Programmes of the United Nations, referred to in S. 6(4)(a)-(b) of this Act;
- (10) “Civil society” shall mean national and international non- governmental organisations referred to in S.6(5) of this Act;
- (11) “Protocol” shall mean the Draft Protocol on Protection and Assistance to Internally Displaced Persons referred to in S.3(1) and which shall be applicable in the Republic and which is set out in Schedule 1 to this Act; and
- (12) “Guiding Principles” shall mean the Guiding Principles on Internal Displacement referred to in Article 1(3) of the Protocol and which shall be applicable in the Republic and set out in Schedule 2 to this Act.

## Legal Effect

### S.3 Subject to the provisions of this Act-

- (1) The Protocol and the Guiding Principles annexed thereto shall have legal effect and shall be implemented within, and throughout, the Republic.
- (2) Without prejudice to all existing laws, the Protocol and the Guiding Principles shall apply to the treatment, human rights, protection, and assistance of all internally displaced persons in the Republic.
- (3) Notwithstanding that it is the primary duty and responsibility of the Minister to provide protection and assistance to internally displaced persons under S.4 (1) of this Act, all public officials, bodies or persons, public or private actors concerned with protecting and assisting internally displaced persons in the Republic shall act in accordance with the Protocol and the Guiding Principles.
- (4) The arbitrary displacement of persons is prohibited under this Act. No person or persons shall be displaced by virtue of large- scale development projects which are not justified by compelling and overriding public interests in accordance with the provisions of Article 5 the Draft Protocol, read together with Principles 6 and 7 the Guiding Principles in particular.
- (5) Public and private sectors engaged in large-scale development projects which are justified by compelling and overriding public interests shall bear the costs for relocating and/or compensating persons displaced by such projects.
- (6) A person shall be guilty of a criminal offence under this Act if, with intent, such a person-
- a. Causes the arbitrary displacement of persons, or aids or abets such displacement;

- b. Impedes access to internally displaced persons, or aids or abets impediment to such access;
- c. Causes harm to internally displaced persons, or aids or abets such harm;
- d. Causes harm to humanitarian personnel, or aids or abets such harm;
- e. Impedes the work of humanitarian personnel, or aids or abets such impediment;
- f. Obstructs the provision of humanitarian assistance to internally displaced persons, or aids or abets such obstruction;
- g. Steals, or loots, or destroys humanitarian supplies for internally displaced persons, or aids or abets such theft, or looting, or destruction; and
- h. Misuses or abuses the use of humanitarian assistance for internally displaced persons.

(7) Any person guilty of an offence under this section shall be imprisoned for a minimum term of five years.

#### Powers of the Minister

S.4 The Minister in charge of internally displaced persons shall bear ultimate responsibility for the administrative implementation of this Act. For this purpose, the Minister shall-

- (1) Bear the primary duty and responsibility for the protection and assistance of internally displaced persons throughout the Republic;
- (2) Request international assistance for the protection and assistance of internally displaced persons if the capacity of the Government to provide such protection and assistance is inadequate or lacking;
- (3) Prescribe, by statutory instrument, regulations for the operational implementation of this Act consistent with the Protocol and the Guiding Principles;
- (4) Nominate or appoint, as the case may be, a senior public official as Chairperson of the Committee on the Protection and Assistance of Internally Displaced Persons;
- (5) Invite nominations for the membership of the Committee on the Protection and Assistance of Internally Displaced Persons in accordance with the provisions of S. 6 of this Act, provided that the Minister shall ensure the equal representation of women and men on the Committee;
- (6) Ensure rapid and unimpeded access of humanitarian personnel to all internally displaced persons;
- (7) Ensure the protection of such humanitarian personnel;

- (8) Designate, where necessary, official areas for the settlement of internally displaced persons in the Republic;
- (9) Facilitate the administration of settlement areas for internally displaced persons;
- (10) Ensure adequate provision of basic social and health services in areas inhabited by internally persons; and
- (11) Ensure, where necessary, the maintenance of public order, public security, and public health in areas inhabited by internally displaced persons.

Provided that the powers contained in S. 4(6)-(11) shall be exercised on behalf of the Minister by the Committee on the Protection and Assistance of Internally Displaced Persons.

#### Establishment of the Committee on the Protection and Assistance of Internally Displaced Persons

S.5 There is hereby established an impartial statutory body known as the Committee on the Protection and Assistance of Internally Persons. The Committee shall consist of-

- (1) A Chairperson of the Committee, who shall be nominated or appointed, as the case may be, by the Minister in accordance with Article 4 (4) of this Act;
- (2) A Secretary elected by the Committee and supported by a Secretariat, and who shall maintain an official record of the proceedings of the Committee;
- (3) Representatives nominated by the line ministries in charge of:
  - (a) Armed Forces;
  - (b) Intelligence and Security Services;
  - (c) Police Force;
  - (d) Home Affairs;
  - (e) Social Affairs;
  - (f) Social Rehabilitation, or Disaster Preparedness or Management;
  - (g) Gender and Youth;
  - (h) National Planning;
  - (i) Finance or Economic Development;
  - (j) Land;
  - (k) Health;

- (l) Education; and
  - (m) National Human Rights Commission.
4. A representative nominated by:
- (a) The United Nations High Commissioner for Refugees;
  - (b) Each of the Agencies, Funds, Offices and Programmes of the United Nations involved in the Inter-Agency Collaborative Approach to internally displaced persons;
  - (c) The African Union Bureau on Humanitarian Affairs;
  - (d) National Red Cross Societies;
5. A representative nominated by national and international non-governmental organisations involved in the protection and assistance of internally displaced persons in the Republic; and
6. Representatives nominated by internally displaced persons from amongst such persons with equal representation of women and men, provided that the maximum number of such representatives may be decided upon by the Minister under S. 4(5) of this Act, in consultation with internally displaced persons.

### Functions of the Committee

S.6 The Committee shall function under the Ministry in charge of internally displaced persons. The functions of the Committee shall be to-

- (1) Exercise the functions of the Minister as provided for in S.5 of this Act;
- (2) Coordinate protection, relief and assistance to internally displaced persons, and to host communities as needed, in accordance with the Draft Protocol and the Guiding Principles;
- (3) Coordinate the protection and promotion of the human rights of internally displaced persons as well as coordinate relief and assistance to internally displaced persons among the relevant Ministries of Government, the United Nations High Commissioner for Refugees and the United Nations Inter-Agency Collaborative Approach on Internally Displaced Persons, the African Union, and national and international non-governmental organisations, throughout the Republic;
- (4) Serve as the official impartial and humanitarian focal body liaising between the Ministries of Government, the United Nations High Commissioner for Refugees and the United Nations Inter-Agency Collaborative Approach on Internally Displaced Persons, the African Union, and national and international non-governmental organisations. Furthermore, the Committee shall have the power to provide protection and assistance to internally displaced persons, coordinate

disaster preparedness, and to implement and operationalize the Draft Protocol and Guiding Principles;

- (5) Determine and establish procedures and channels of engagement and cooperation between the Ministries of Government, the United Nations High Commissioner for Refugees and the United Nations Inter-Agency Collaborative Approach on Internally Displaced Persons, the African Union, and national and international non-governmental organisations for the purpose of enhancing effectiveness of the protection and assistance accorded to internally displaced persons;
  - (6) Ensure the protection of internally displaced persons throughout the whole cycle of displacement, including facilitating their durable return and reintegration, or resettlement within the Republic;
  - (7) Assess and formulate strategies on the protection and assistance needs of internally displaced persons and mobilise resources necessary for their protection and assistance during all phases of displacement, including assistance to host communities, as may be needed by such communities;
  - (8) Ensure the registration of all internally displaced persons in order to maintain a national database of such persons, provided that such registration shall be for reasons of ascertaining the identification, profile, conditions, and numbers of internally displaced persons for the sole purpose of protection and assistance;
  - (9) Ensure the civilian and humanitarian character of the settlements for internally displaced persons where such settlements exist;
  - (10) Raise national awareness of the situation of internally displaced persons;
  - (11) Facilitate training on the human rights of internally displaced persons;
  - (12) Prepare an Annual Report on the situation of internally displaced persons; and
- (13) Monitor and supervise the operational implementation of the Draft Protocol and Guiding Principles by virtue of this Act.

#### Procedures of the Committee

- S.7
- (1) The Committee shall be a permanent body, which shall sit in session every month and as frequently as necessary in situations of complex humanitarian emergencies involving internally displaced persons in the Republic;
  - (2) The Chairperson shall convene and preside over the meetings of Committee;
  - (3) The Committee shall elaborate and adopt such internal procedures as it may deem fit, provided that such procedures shall be conducive to the protection and assistance of internally

displaced persons in accordance with the provisions of the Draft Protocol and the Guiding Principles; and

(4) The Committee shall establish internal Sub-Committees as well as Sub- Committees at provincial, district, and village levels for the discharge of its functions. To the extent possible, the composition of the provincial, district and village Sub-Committees shall reflect that of the Committee.

#### Final Provisions

S.8 Nothing contained in this Act shall affect the right of internally displaced persons to seek asylum in other States in keeping with the Republic's international obligations towards refugees under the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa 1969, the African Charter on Human and Peoples Rights 1981, the United Nations Convention Relating to the Status of Refugees 1951, and the Universal Declaration of Human Rights 1948.

S.9 This Act shall come into effect as soon after being promulgated.