



FEDERAL GOVERNMENT OF SOMALIA

**Interim Protocol on Land Distribution for
Housing to Eligible Refugee-Returnees
and Internally Displaced Persons, 2019**

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PREAMBLE

Considering the provisions of Article 21(1) of the Provisional Constitution of the Federal Republic of Somalia, which guarantees to every person residing lawfully on the territory of the said Republic freedom of movement, the freedom to choose his/her residence and to leave the country;

Reaffirming the provisions of Article 43(1) of the Provisional Constitution to the effect that “Land is Somalia’s primary resources and the basis of the people’s livelihood,” and *reaffirming* the obligation imposed by sub-article (3) thereof on the *Federal Government* to “... develop a national land policy, which shall be subject to constant review;”

Noting that “... the Federal Member States may formulate land policies at their level” pursuant to Article 43(3) (g) of the Provisional Constitution;

Recalling that Article 12(1) provides that “The Fundamental rights and freedoms in this Charter shall always be respected in the making and application of the law” and that “... they must be respected by all individuals and private organisations, as well as by every State institution and State official as they carry out their official function;”

Reaffirming the provisions of Article 26(1), which guarantees the right of every person “... to own, use, enjoy, sell, and transfer property;”

Reaffirming further the fundamental rights to housing and property guaranteed by, among others, the international human rights instruments ratified by the Federal Republic of Somalia, namely –

- (a) the Universal Declaration of Human Rights, Articles 25(1) and 17;
- (b) the International Covenant on Economic, Social and Cultural Rights, Article 11(1);
- (c) the International Covenant on Civil and Political Rights, Article 17;
- (d) the International Convention on the Elimination of All Forms of Racial Discrimination, Articles 5(e) (iii) and 15(d), (v);
- (e) the Convention on the Rights of the Child, Article 27(3);
- (f) the Convention relating to the Status of Refugees, Articles 21 and 13;
- (g) the Guiding Principles on Internal Displacement, Principles 18 and 21;
- (h) the Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), Principle 8;

- (i) the UN Committee on Economic, Social and Cultural Right, which has interpreted the content of the right in its general comments 4 and 7;
- (j) the Convention on the rights of Persons with Disabilities, Articles 28 and 29(1) (a); and
- (k) the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Articles 9(2) (g), 11(4) and (5);

Deeply concerned with the urgent need to find durable solutions for IDPs and refugee- returnees;

Mindful of the decision of the Federal Government of Somalia to enact an interim measure that provides for the tenure security and the housing needs of eligible IDPs and refugee- returnees compatriots;

Recalling the outcome of an extensive consultation with different national and international stakeholders;

Recognising that the concept of Housing, Land and Property include the full spectrum of the fundamental rights to housing, land and property held under statutory or customary law tenure or informally, and including both public and private assets comprised of housing, land and property; and

Considering that Article 99 of the Provisional Constitution empowers the Council of Ministers to, among other things, (a) formulate the overall Government policy and implement it; and (b) approve and implement administrative regulations in accordance with the law-

Now, the Council of Ministers adopts the following Protocol:

ARTICLE 1 – ELIGIBILITY OF REFUGEE-RETURNEES AND INTERNALLY DISPLACED PERSONS

- (1) An eligible “refugee-returnee” refers to a person who –
 - (a) holds a valid document of registration issued by the Federal Government of Somalia pertaining to his or her refugee-returnee status; or
 - (b) holds a duly authenticated Voluntary Repatriation Form (VRF) or other valid documents confirming his or her return to the country or to the area of origin or permanent residence; and
 - (c) does not own land or a house under his or her name, or in the name of a spouse or minor in Somalia.

- (2) The term “ownership” in sub-article (1) (c) refers to possession of a title deed, or the right of claim founded on community-based ownership or other customary land tenure.

- (3) For the purposes of this Protocol, a spontaneous refugee-returnee (i.e., one who has returned on his/her own, without a VRF) shall be recognized as a refugee-returnee if he or she provides a duly authenticated document of registration showing that the person has been a refugee in another country.

- (4) For the purposes of this Protocol, any eligible returnee who owns a plot of land or a house, but is unable to return to such land or house due to compelling reasons relating to the circumstances that resulted in his or her displacement in the first instance, shall be considered as an eligible returnee.

- (5) An eligible “Internally Displaced Person” is a person who –
 - (a) holds a valid document from the Federal Government of Somalia in proof of their IDP status:

Provided that if an IDP does not have any legal documentation regarding his or her status, a statement made on oath by, or statutory declaration of, other members of that person's community may be admitted in lieu of documentary evidence of their status in appropriate cases; and

(b) does not own land or a house under his/her name or the name of a spouse or minor child in Somalia.

(6) The term "ownership" in sub-article 5(b) refers to possession of a title deed, or the right of claim founded on community-based ownership or other customary land tenure.

(7) For the purposes of this Protocol, any eligible IDP who owns a plot of land or a house, but is unable to return to their land or house due to compelling reasons relating to the circumstances that resulted in his or her displacement in the first instance, shall be considered as an eligible IDP.

ARTICLE 2 – AVAILABILITY OF LAND FOR DISTRIBUTION

Where public land is not available for distribution in any particular district, eligible IDPs and refugee-returnees may be referred for resettlement in neighbouring regions in close consultation with competent authorities, and alternative settlements (having the capacity for absorption) shall be secured with the approval of the host municipality.

ARTICLE 3 – REFUGEE-RETURNEE AND IDP REPRESENTATION

(1) Each refugee-returnee or IDP can only represent oneself or their family, but cannot represent others.

(2) A child-headed refugee-returnee or IDP household, individuals with mental disability, or minors without a family, may be represented by a member of their extended family, or by a member of their community with the consent of such minor or person with mental disability.

(3) Without prejudice to the generality of sub-article (2), it is the responsibility of the relevant government authority to represent IDPs and refugee-returnees with mental disability in cases where such IDPs or returnees do not have a family member to represent them.

ARTICLE 4 – PRIORITY IN LAND ALLOCATION

When allocating land, priority shall be given to vulnerable groups, including but not limited to, refugee- returnees and IDPs with disabilities, the widowed, the elderly, or chronically ill persons.

ARTICLE 5 – DETERMINATION OF BENEFICIARIES

In determination of the beneficiaries with a view of ensuring fairness in land allocation, the relevant institutions in the Federal Member State Administrations and the Benadir Regional Administration, as well as district councils and municipalities, have the primary responsibility in their territory to reach a determination in consultation with representatives from the National Commission for Refugees and IDPs (NCRI)

ARTICLE 6 - DECISIONS ON LAND ALLOCATION

The Federal Member States and the Benadir Regional Administration are responsible for –

- (a) determining the beneficiaries;
- (b) in coordination with the National Commission for Refugees and IDPs, making appropriate decisions with regard to land allocation and the establishment of settlements for refugee- returnees and IDPs and host communities;
- (c) providing safeguards, access to legal remedies and compensation; and
- (d) preventing and addressing disputes arising in the process of land allocation.

ARTICLE 7 – DECISIONS ON THE SIZE AND PURPOSE OF THE LAND TO BE ALLOCATED

(1) The Federal Member State institutions and the Benadir Regional Administration are responsible for identifying the appropriate size, and the purpose of the land to be placed at the disposal of each eligible beneficiary in accordance with the regulations for the time being in force.

(2) Government departments at federal, state and municipal levels responsible for urban development and housing are obligated to provide maps relating to the sites and plans of the land referred to in sub-article (1) to facilitate the development of the requisite social amenities and services.

ARTICLE 8 – ASSESSMENT OF POTENTIAL FOR FUTURE DEVELOPMENT OF APPROVED PROJECTS

- (1) The relevant FMS institutions or the Benadir Regional Administration, in consultation with the National Commission for Refugees and IDPs, is responsible –
- (a) for the verification of beneficiaries in line with the National Policy on Refugee-returnees and IDPs; and
 - (b) in cooperation with the NCRI and the Ministry of Planning, to assess the potential for future development and expansion of the approved projects.
- (2) The NCRI shall, on behalf of the Federal Government –
- (a) promote partnerships with national and international organisations to secure support for the development of housing projects for IDPs and refugee-returnees, and the provision of other social services; and
 - (b) establish systems and standard procedures for housing development.

ARTICLE 9 – RESPONSIBILITIES OF FEDERAL MEMBER STATES AND THE BENADIR REGIONAL ADMINISTRATION

- (1) The relevant institutions of the Federal Member States, and of the Benadir Regional Administration shall, in consultation with NCRI, be responsible for –
- (a) the allocation of land to eligible beneficiaries;
 - (b) negotiating access to land with private owners and host communities, and providing adequate compensation to the owners; and
 - (c) setting-up an appropriate pricing regime for government-owned individual plots of land.

(2) The revenue realised through the distribution of the plots shall be managed by the Ministry of Finance at the level of government where the plot is situated (i.e. on national or FMS ground) and will be applied to finance social amenities and services in the settlements.

ARTICLE 10 – OBLIGATIONS OF BENEFICIARIES

- (1) The persons or groups of persons to whom land is allocated have the following obligations:
- (a) to construct suitable shelter on the plot of land in accordance with the provisions of the regulations or conditions for the time being in force;
 - (b) where the beneficiary is unable to construct suitable shelter on the allocated land, to seek assistance from the Somali authorities or local or international organisations, but their inability to build on the land shall not of itself defeat or limit the beneficiary's right to use the land; and
 - (c) not to sell or rent the plot of land so allocated for a period of not less than 10 (Ten) years.
- (2) Where it is shown to the satisfaction of the administrative or other competent authorities that a beneficiary to whom land has been allocated under this Protocol procured the allocation in contravention of the provisions hereof with regard to their eligibility, the plot of land shall be repossessed and reallocated to another beneficiary.
- (3) The Municipality is responsible for providing appropriate housing plans which correspond to the economic conditions of the plot owners, and for the landscaping of the new settlements.
- (4) The Municipality, in coordination with the NCRI, is responsible for the management and oversight in respect to the land on which IDPs are settled for the duration of the settlement before the beneficiaries are issued with documents of title.

ARTICLE 11 – TEMPORARY AND PERMANENT OWNERSHIP

(1) The beneficiaries receiving land under this Protocol shall, in the first instance, be issued temporary ownership deeds by the local authorities, and which shall be registered in property records.

(2) Thereafter, permanent ownership deeds will be issued by the respective municipalities after five (5) years.

ARTICLE 12 – LAND NOT ELIGIBLE FOR DISTRIBUTION

Uncultivated land used for forestry, land used for farming or other public infrastructure projects does not qualify for distribution.

ARTICLE 13 – PRE-EXISTING APPROVED ALLOCATIONS

Where sites have been earmarked for allocation before the enactment of this Protocol and have gone through the necessary legal procedures, land distribution shall be upheld.

ARTICLE 14 – IMPLEMENTATION OF THE INTERIM PROTOCOL

The implementation of this Protocol is the responsibility of the relevant institutions of the FMS and the BRA in coordination with the NCRI.

ARTICLE 15 – IMPLEMENTATION GUIDELINE

Upon approval of this Protocol, the relevant Federal and FMS level institutions and the Benadir Regional Administration shall cooperate and develop implementation guidelines on the manner in which this Protocol shall be operationalized pending the formulation of the requisite procedures to give effect to the Protocol.

ARTICLE 16 – COMMENCEMENT OF THE PROTOCOL

This Protocol comes into force immediately upon approval by the Council of Ministers of the Federal Government of Somalia.

ARTICLE 17 – REVIEW AND AMENDMENT

This Protocol may be reviewed, amended or modified from time to time by the Council of Ministers of the Federal Government of Somalia if and as need arises.

DATED this day of _____ 2019

SIGNED: _____

The Prime Minister of the Federal Government of Somalia

