



INTERNATIONAL CONFERENCE ON THE GREAT LAKES REGION

REGIONAL PROGRAMME OF ACTION FOR HUMANITARIAN AND SOCIAL ISSUES

SUB-PROGRAMME 1: FRAMEWORK FOR DISASTER PREPAREDNESS, PROTECTION AND ASSISTANCE TO IDPS AND THEIR ENVIRONMENT

PROJECT NO 4.1.3

LEGAL FRAMEWORK ON ISSUES RELATED TO THE RECOVERY OF LAND AND PROPERTIES BY RETURNING REFUGEES AND IDPS

August 2006

1. Introduction

1.1 This project proposal seeks to implement the legal framework elaborated in the Protocol on the property rights of returning internally displaced persons and refugees. The major problem addressed by the project is that the process of the return and reintegration of internally displaced persons and refugees is often hampered by conflicting claims to the property and land previously owned or occupied by them prior to their flight. In addition, the patriarchal system of property ownership in the region disinherits returning women and children whose husbands and fathers died in the process of displacement or while in refuge. Women returnees find that they have no land and property to go back to once they have been displaced as national legislation on inheritance and succession in the countries of the Great Lakes region tend to favour men than they do women.

1.2 The project therefore supports the legal framework for determining ownership of property as a way of resolving property disputes, including by restoration, compensation or restitution. The basis for implementing the legal framework supported by the project is Article 69 of the Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region 2004 under which the Heads of State and Government 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*. The approach to this issue is laid out in the contextual framework of the project.

2. Contextual Framework and the Problem to be solved

2.1 The return and voluntary repatriation of displaced populations and their reintegration is one of the durable solutions to the problem of internally displaced persons and refugees. The extent of the durability of this solution depends on the extent to which returning populations are able to recover their land and other property to facilitate reintegration in their places of origin. Disputes over ownership of land and properties following multiple waves of displacement in the Great Lakes have resulted in hindering return by curtailing access to former homes and properties. Post conflict situations therefore warrant rehabilitation not just of infrastructure and restoration of property and basic services, but of the rehabilitation of modes of livelihood. In the GLR, land is the most important asset, and rigorous efforts must be made to ensure the rightful owners recover their land. Given this state of affairs, voluntary repatriation agreements must address the property rights of returnees as well as issues of safety, including demining. It is in this context that the project proposes to implement a legal framework for the recovery or restoration of property, compensation and restitution by States.

3 Objectives

The overall objective of the project is to restore and rehabilitate property to returning refugees and internally displaced persons as a means of preventing and resolving conflict in the countries of the Great Lakes. The specific objectives of the project are to:

- Implement a regional Protocol on the property rights of returnees;
- Harmonise existing national laws to guarantee property rights of returnees by registration and recognition of title to property under legislative and customary land tenure systems;
- Resolve land disputes involving internally displaced persons and refugees through restitution and if not feasible, through adequate and effective compensation;
- Highlight the risk that some refugees might abuse the asylum regime through the system known as irregular movers;
- Guarantee women's and children's inheritance rights to land and property; and
- Guarantee the collective rights of minorities and indigenous groups.

4. Strategy

- Adopt a regional Protocol on the recovery of properties by IDPs and refugees upon return;
- Provide protection in national law for the rights of returnees in matters of property;
- Put in place a mechanism for compensation and restitution where full recovery of land and property is not possible;
- Put in place a regional registration system whereby States through their respective refugee boards, where they exist, could share information in confidence while preserving the confidentiality of the information transmitted;
- Involve traditional leaders, local authorities, and representatives of all stakeholders in decision-making to assist in the recovery of the property of returnees;
- Raise public awareness for recovery of land and property; and
- Ensure special protection for women, children, and collective rights of indigenous groups to land.

5. Activities

Regional level

- Promote adoption of, and compliance with, the regional Protocol on the recovery of properties of returning internally displaced persons and refugees;
- Establish a regionally coordinated registration system for refugees in order to detect and deter irregular movers;
- Elaborate a framework for the recovery of property by returnees;

- Design training programmes on protection of refugees;
- Institute measures aimed at creating awareness of explicit rights of refugees;
- Establish regional data base on internally displaced persons;
- Preserve communal lands that traverse state borders;
- Establish a regional fund for compensating and restituting returnees when their property is either, lost, damaged, or cannot be recovered; and
- Support de-mining in areas of return to rehabilitate and make land safe.

National Level

- Implement the regional Protocol on the recovery of properties of returning internally displaced persons and refugees;
- Put in place technical and advisory services for the national implementation of the regional Protocol;
- Share confidentially information on the registration of refugees through refugee boards in order to detect and deter irregular movers;
- Enact implementing legislation to register and protect title to land of the existing land owners, including land held under customary land tenure systems;
- Decentralise land registration systems to community level;
- Harmonise existing national laws to accord with the framework of the regional Protocol;
- Establish a National Commission and data base for registering internally displaced persons and refugees;
- Preserve communal lands;
- Establish and ensure special protection for women's rights to property, their inheritance rights, and those of their children, to family property and land in conformity with international and regional instruments;
- Establish equitable rules for the acquisition of customary land and revise land tenure laws or codes to bring about equity between men and women over land ownership, with special measures for the needy and disadvantaged;
- Provide special protection for the collective ownership of land
- Provide special protection for the collective ownership of land of returning by minorities and indigenous groups;
- Establish procedures through which traditional and local authorities can assist returnees to recover their land and property;
- Establish local and national tribunals for resolving property and land disputes involving returnees; and
- Demine areas of return and enable access to such areas.

6. Risks

- Lack of political will;
- Unfavourable legal regime pertaining to land;
- Bureaucratic structures and procedures on land issues;
- Corruption of officials dealing with land issues;
- Persistence of negative and stereotype mentality towards women;

- Presence of anti-personnel mines and unexploded devices in areas of return;
- Eruption of communal violence due to property disputes;
- Inadequate land use, management and administration systems;
- Traditions and customs which constrain women's rights to land and property; and
- Desire to alienate land belonging to orphaned children, minorities and indigenous groups.

7. Opportunities

- Commitment expressed in the Dar Declaration and desire to embrace good governance;
- Recognition of land and property disputes as an obstacle to the durable solution of return and reintegration;
- Regional Protocol on the property rights of returnees;
- Inclusion of property rights of returnees in tripartite agreements;
- Existence of mechanisms to reintegrate returning refugees;
- Support of UN/AU agencies;
- Utilisation of the framework of the Constitutive Act of the African Union; NEPAD Peer Review Mechanism;
- Existence of Constitutions that guarantee rights for all;
- International Conventions ratified by States and which guarantee property rights;
- Use of the African Charter on Human and Peoples' Rights on property rights;
- Sensitisation of refugees and internally displaced persons on their rights;
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8. Beneficiaries

Returning IDPs and Refugees;
 Populations in areas of return;
 Dispossessed persons, particularly women; and
 Minorities and Indigenous groups.

9. Financing

The financing of this project will primarily come from member states of the International Conference with support from bilateral and multilateral partners. Private contributions and donations would also be mobilised together with local community participation.

10. Institutional Arrangements and Partnerships

A Regional Project Co-ordinator (RPC) will be responsible for overall execution, follow-up and co-ordination of the project at regional level. He will be assisted by the National Programme Co-ordinators (NPC) of each member state, who will be in charge of day-to-day activities at the national level as well as ensuring proper involvement by local institutions and authorities and concerted participation of relevant stakeholders.

A sub-committee of experts dealing with land and property issues will serve as Steering Committed for the project. The experts will work under the guidance of the Coordinating Committee on Humanitarian and Social Issues. (See Project 4.1.2) The project will also involve national Refugee Boards with respect to tackling the problem of irregular movers

- Relevant UN Agencies;
- The Commission of the African Union and the regional economic communities;
- Refugee Boards
- Civil society, Government machinery dealing with gender; women's organizations, concerned with human rights, refugees, internally displaced persons, minorities and indigenous groups;
- Media, Youth Organisations;
- Religious and faith based organizations;
- Research organizations on land policy and housing rights;
- Relevant UN agencies;
- Traditional and local mechanisms; and
- National Institutions dealing with human rights.

II RESULTS FRAMEWORK

	Expected Results	Activities	Indicators	Resources
1	Regional Protocol on property rights of returnees	1.1 Implementation of Protocol	1.3 Adoption of Protocol	Government authorities both at the central and local levels; Centre on Democracy, Good Governance, Human Rights and Civic Education
2	Guaranteed recovery of land and properties by all returning IDPs and refugees	2.1 Formulate policy guidelines on land and property ownership	2.3 National law and policies on protection of property rights	Relevant UN agencies
3	Functional legislation and institutional framework for recovery of land and property	3.1 Revamp and strengthen community-based property restitution mechanisms	3.3 More reliance on testimonies in the absence of title deeds, with assistance from local and traditional authorities in verifying title to land held under customary tenure	Relevant ministries and departments
4	Resolution of property disputes; Prohibition of arbitrary eviction from homes; Reconstruction of homes	4.1 Establish an independent regional mechanism to monitor the effective realisation of land and property rights and dispute resolution mechanism	4.3 Number of property disputes resolved	Non-governmental organizations and research organizations

	Expected Results	Activities	Indicators	Resources
5	Promote and enforce laws that ensure the provision of girls and women's inheritance rights	5.1 Engender regional programs on recovery of property; abolition of laws, customs, and practices that undermine women's rights, including access to their property	5.2 Number of women who recover their property	Local and traditional mechanisms; women's organisations

ACTION PLAN

ACTIVITIES		YEAR 1				YEAR 2				YEAR 3			
		QUARTER				QUARTER				QUARTER			
		I	II	III	IV	I	II	III	IV	I	II	III	IV
	Implementation of Protocol												
	Formulate policy guidelines on land and property ownership												
	Revamp and strengthen community-based property restitution mechanisms												
	Establish an independent regional mechanism to monitor the effective realisation of land and property rights and dispute resolution mechanism												
	Engender regional programs on recovery of property; abolition of laws, customs, and practices that undermine women's rights, including access to their property												

Budget

Double click on the icon below to view the budget

Microsoft Office
Excel Worksheet
