

The Great Lakes Pact and the rights of displaced people

A guide for civil society



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The Internal Displacement Monitoring Centre

The Internal Displacement Monitoring Centre, established by the Norwegian Refugee Council, was requested by the United Nations Inter-Agency Standing Committee to set up an IDP database in 1998. The Geneva-based Centre has since evolved into the leading international body monitoring internal displacement caused by conflict or violence in some 50 countries worldwide.

The Internal Displacement Monitoring Centre focuses on the following activities:

- monitoring internal displacement and maintaining an online database on IDP-related information;
- advocating for the rights of the displaced and making their voices heard;
- providing training on the protection of IDPs;
- increasing visibility and awareness of internal displacement.

The International Refugee Rights Initiative

The goal of International Refugee Rights Initiative (IRRI) is to enhance the protection of the rights of the displaced worldwide. IRRI grounds its advocacy in the rights accorded in international human rights instruments to those who are forced to flee and strives to make these guarantees effective in the communities where the displaced and their hosts live.

IRRI aims to contribute to the improvement and creation of models of law and practice which best guarantee the rights of the displaced. We engage in legal and field-based research in order to better understand how policy affects refugees and we bring our findings to the attention of policy makers in national, regional and international fora.

IRRI recognizes that it is vital that the voices of displaced and host communities are heard—and heeded. IRRI works with local advocates to identify the key challenges facing those communities and collaborates with them to advance appropriate changes in law, policy and practice. IRRI acts a bridge between these local advocates and the international community, enabling local knowledge to infuse international developments and helping local advocates integrate the implications of global policy in their work at home.

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Message from Ambassador Mulamula

The process that culminated into the signing of the comprehensive Pact on Security, Stability and Development in the Great Lakes Region by the Heads of State and Government of the 11 member states on 15 December 2006, in Nairobi, Kenya ushered in a new era for the region. The Pact reflects the shared vision and determination of the leaders and peoples to transform the region into a space of sustainable peace and security, political and social stability, shared growth and development, and space of cooperation based on convergent strategies and policies driven by common interests.

I am writing this Foreword amidst high expectations and optimism, which is evident among the member states, the partners and many stakeholders, that the vision of the leaders and their peoples as enshrined in the Pact will be delivered. The Great Lakes Region is indeed at a decisive stage since the signing of the Pact. Never before has there been so much enthusiasm, commitment, participation, dialogue and interaction among the people and the leaders of the Region.

The ICGLR process is guided by principles of ownership, partnership and inclusiveness. Member countries have demonstrated ownership as they, among others, continue to commit financial resources and pay up their contributions to the Conference Secretariat and to the Special Fund for Reconstruction and Development (SFRD). Of even more significance is that in a period of less than two years since the signing of the Pact, the required majority of Member countries have ratified it and deposited their instruments of ratification thus paving the way for its entry into force. These countries include Burundi, Central African Republic, Democratic Republic of the Congo, Kenya, Republic of Congo, Rwanda, Uganda and United Republic of Tanzania. There is now a strong legal basis to implement the projects and protocols in earnest under the Pact and ensure compliance by member states.

As the Conference Secretariat we are determined to achieve the set objectives of the ICGLR process through effective coordination, facilitation, promotion and monitoring of the implementation of the Pact and other initiatives to attain sustainable peace, security, stability and development in the Great Lakes Region. We have to work to be recognized as an effective and efficient institution and above all, a focal point to coordinate initiatives of member states and

stakeholders in the Great Lakes region. To achieve this we will do what is possible to maintain the momentum generated by the Pact and enhance participation by all stakeholders, as well as attract voluntary contributions from development partners, the private sector and civil society. For all this to happen, building and maintaining partnerships is an imperative and one of the core tasks of the Secretariat.

In this regard, it is with much pleasure that I associate myself with the valuable contribution of the International Refugee Rights Initiatives (IRRI) and the Internal Displacement Monitoring Centre (IDMC) to provide a guide that simplifies and translates the Pact from theory into action. It is gratifying to note that this Guide, apart from focusing on the Protection of Displaced Populations, provides other useful insights into the working of the Pact in general. Indeed the inextricable nature of all the Programmes of Action, the Projects and Protocols under the Pact calls for equal attention to all the main and important pillars of the Pact. The humanitarian aspects in the Great Lakes Region are linked to issues of peace and security as much as they are linked to economic as well as good governance issues. The Kenyan crisis that emerged after the December 2007 elections illustrated, within two weeks of the crisis, this inextricable linkage. What started as an election issue (democracy and good governance) generated violence and instability with the killing of over 1,200 people and the displacement of over 300,000 people as either IDPs or refugees, thus creating an unprecedented humanitarian crisis in a country renowned for peace and stability. This situation affected the economies of countries that used Kenya/Mombasa as their route to the sea (economic development and regional integration).

The International Refugee Rights Initiative has been a consistent, dependable and reliable partner in the effort to implement the Pact. The promotion of the Protocol and projects related to internal displacement and refugees in particular and other protocols and projects in general has been consistent and forthright. The present Guide is only but one of those initiatives that IRRI, IDMC and other organizations have taken to make the Pact and all its integral parts known to the world in a simple, popular and accessible manner. We salute their contribution and ask for more efforts to make the instrument more useful to the lives of the people in the region.

As we enter into the implementation phase, this Guide is a useful instrument for the implementers of the humanitarian and social pillar of the Pact. The Great Lakes region remains with one of the largest displaced populations in the whole world with about two million refugees and ten million IDPs. Most of these displacements are due to violent conflicts. With an exception of only a few, each country in the Great Lakes region has its own share of displaced people but on the whole there is no country that can claim that the instruments under the humanitarian cluster are of no relevance to them. Countries might avoid wars and conflicts, but they cannot avoid natural disasters. As we take the path of development, development induced displacement is inevitable. It is therefore imperative that this Guide is taken seriously by all in the Great Lakes region

and beyond because there is a lot that other regions and continents can learn from the instruments, specifically the protocols and programmes of action that together with the Dar-es-Salaam Declaration (2004) constitute an integral part of the Pact.

Let us all work together to transform the vision of the leaders and peoples of the Great Lakes region into a reality. With the full support and commitment of all stakeholders within and outside the region this Guide is a significant step towards attaining our shared goals and objectives.

Ambassador Liberata Mulamula

Executive Secretary

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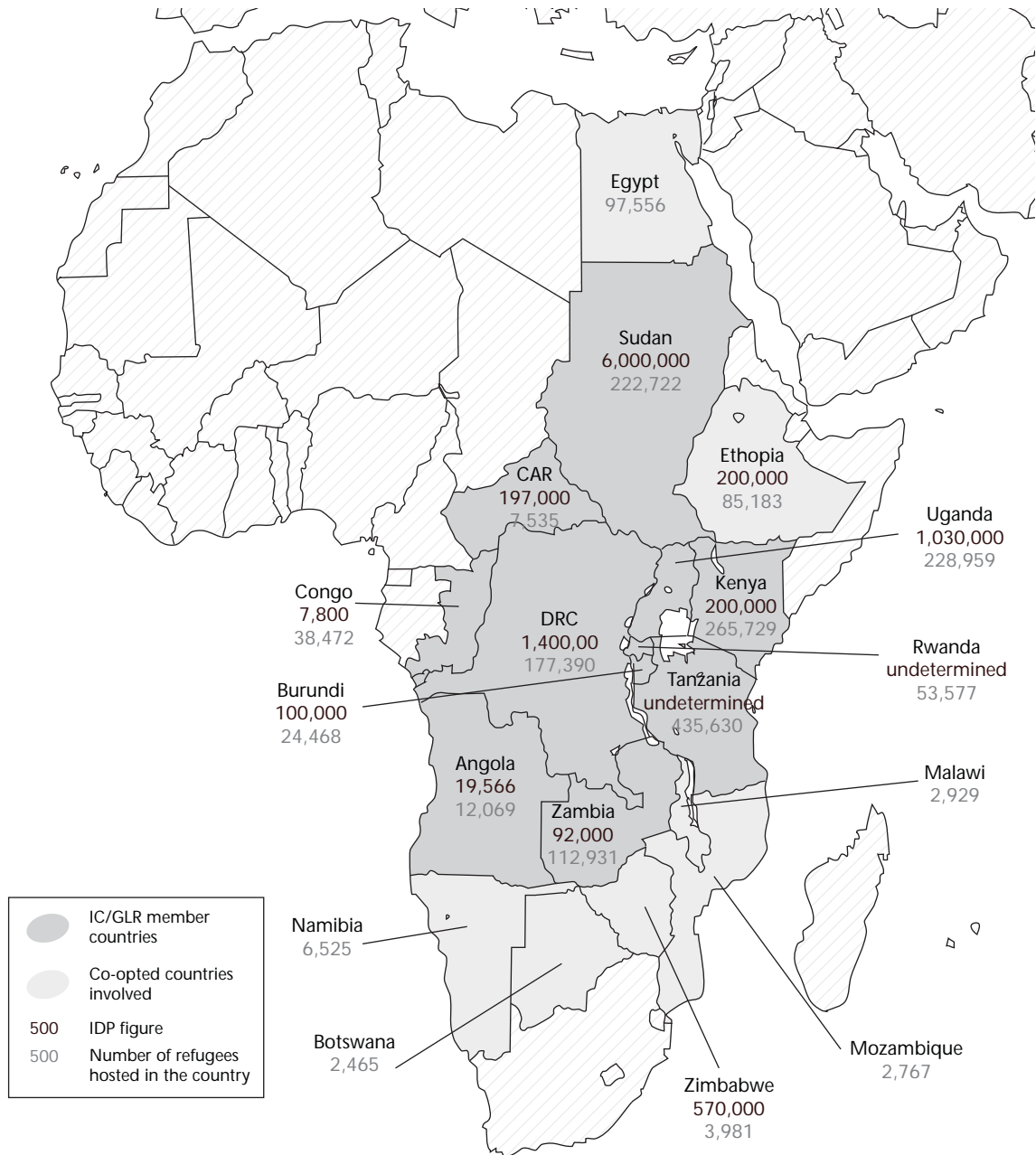
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IDP figures: IDMC, www.internal-displacement.org/statistics, July 2008.
 The IDP numbers show conflict-induced displacement monitored by IDMC;
 the figure for Zambia reflects development-induced displacement (source: IRR).
 Refugee figures: UNHCR, 2007 Global Trends, June 2008.

Preface

The Great Lakes region of central and eastern Africa has been torn apart by conflict for more than a decade. The region's wars have resulted in, and have been further propelled by, massive population movements. For example, one of the largest and fastest population flows in recent history followed the 1994 genocide in Rwanda which claimed nearly a million lives. This unprecedented flow included armed actors and those who had committed serious human rights abuses, amid throngs of genuine refugees. The failure to address this complex situation contributed to the outbreak and continuation of conflict in the Democratic Republic of the Congo.

Today the region is working to set itself on the path to peace and development. Peace agreements have been concluded in Burundi, southern Sudan and the Democratic Republic of the Congo (DRC). Negotiations to end the war in northern Uganda are ongoing with the support of several African states. As a result of these developments large numbers of refugees and internally displaced people (IDPs) have been able to go back to their homes across the region in Angola, Burundi, southern Sudan, and, to a certain extent, in northern Uganda.

The 11 states of the Great Lakes region continue to host more than half of Africa's displaced – more than one million refugees and over nine million IDPs.¹

These numbers include more than two million people who have been forced from their homes by the ongoing conflict in Darfur. Despite progress towards peace in the Democratic Republic of the Congo during 2007 and 2008, ongoing fighting in the Kivu region and other challenges to stability mean that more than a million people are still unable to return home. Tens of thousands of people were displaced following post-election violence in Kenya in January 2008, adding to a pre-existing but little recognised IDP crisis and disrupting regional humanitarian aid operations and trade. Hundreds of thousands of people remain displaced in northern Uganda, where a civil war has raged for more than 20 years. Lesser known IDP situations in Rwanda and the Central African Republic have also displaced thousands.

Conflicts outside the sub-region, notably in Somalia and Chad, are also generating new flows of refugees into Great Lakes states.

The challenges faced by refugees and IDPs are often among the most visible evidence of larger patterns of human rights violations and insecurity. They are a reflection of the struggle of the region as a whole not just to achieve peace, but to build sustainable development, real security, and establish the rule of law.

Moreover, the onset of peace does not always bring with it sustainable solutions to the plight of forcibly displaced people in the region. Even as refugees and IDPs return home many are encountering considerable obstacles to reintegration. These range from conflicts about property and land to a lack of infrastructure and opportunities to create sustainable livelihoods.

It was in response to these linked challenges and the need to tackle them comprehensively and trans-nationally that the United Nations (UN) and African Union (AU) initiated the International Conference on the Great Lakes Region (ICGLR). The objective was to bring all the countries of the region together "to dialogue and agree on a strategy to bring peace and prosperity to the Great Lakes region."² Since the mid-1990s the multi-stage ICGLR process has convened state and non-state actors from across the region, alongside supportive members of the international community, to formulate a plan for the re-generation of the Great Lakes region which recognises the interconnectedness of the region's populations, insecurities and economic instabilities, and the imperative of seeking regional solutions.

More than two years of negotiations in the ICGLR process culminated in December 2006 in the signing of the Pact on Security, Stability and Development in the Great Lakes Region (the Great Lakes Pact), a comprehensive package of new laws, programmes of action and mechanisms. The Pact lays down a framework for the economic and social transformation of the Great Lakes. The challenge now is to translate the potential

of this progressive Pact into real improvements in the lives of the more than ten million refugees and IDPs in the Great Lakes region.

This Guide

This Guide is intended to help readers understand the political, legal and institutional framework of the ICGLR. It focuses on the three protocols in the social and humanitarian pillar which are the most relevant for protecting the rights of displaced people.³ We hope that the Guide will help advocates for the rights of displaced people in the region to use the Great Lakes Pact to shape policies and decisions for the benefit of the displaced.

The Guide was developed as part of a project initiated by the Internal Displacement Monitoring Centre (IDMC) and the International Refugee Rights Initiative (IRRI) in 2007, following consultations with local and international non-governmental organisations (NGOs) and international organisations working in the Great Lakes region. It is informed by the contributions of NGOs and independent experts at a workshop convened by

IDMC and IRRI in Nairobi in April 2007.⁴ IDMC and IRRI are committed to working with the ICGLR process to contribute to the better protection of displaced people in the Great Lakes region. NGOs interested in engaging with the process are invited to contact IRRI to explore possibilities for collaborative action.

Deirdre Clancy, Co-Director of IRRI, drafted an initial version of this Guide and Olivia Bueno, Associate Director at IRRI and Katinka Ridderbos, Country Analyst at IDMC contributed additional drafting and editing. We are grateful for the contributions of numerous reviewers, including Nathan Mwesigye Byamukama, Programme Officer, Cross-Cutting Issues, Executive Secretariat, International Conference on the Great Lakes Region; Jesse Bernstein at the London School of Economics; Joseph Chilengi of Africa IDP Voice; Dr. Khoti Kamanga of the Centre for the Study of Forced Migration in Tanzania; Barbara McCallin and Kim Mancini at IDMC; Judy Wakahiu of the Refugee Consortium of Kenya; and Rhodri C. Williams, a consultant with the Brookings-Bern Project on Internal Displacement.

All documents adopted by the International Conference on the Great Lakes Region are available at www.icglr.org/F_END/docLib.asp and also at www.lse.ac.uk/collections/law/projects/greatlakes/ihl-greatlakes.htm

1 Background to the International Conference on the Great Lakes Region

The social and political balance of the Great Lakes region was profoundly shaken by the the Rwanda genocide of 1994 and its aftermath. The genocide not only ravaged Rwanda but also fuelled other conflicts in the region. Cycles of war and massive displacement engulfed the entire region. The war in the Democratic Republic of the Congo drew in Angola, Burundi, Namibia, Rwanda, Uganda and Zimbabwe in what became known as Africa's "First World War."

1.1 The Origins of the International Conference on the Great Lakes Region

The ICGLR was born of the recognition that a sustainable resolution of the region's conflicts demanded a comprehensive and shared response. There was a need for "the engagement of Africa as a whole, governments and intergovernmental organizations alike, with the wholehearted support of the international community."⁵ At the heart of this assessment was an acknowledgement that the people of the Great Lakes region were "so interlinked ethnically, culturally and linguistically that the instability initially generated by purely internal causes in each country quickly spreads to generate and maintain the dynamic of conflict in the entire region".⁶ From the outset, the ICGLR acknowledged that the complex interaction of actors in the region necessitated an inclusive and participatory approach, both across the region and between governments and non-state actors. Moreover, the process needed to address common challenges across the entire spectrum from economic to political to social and humanitarian challenges.

Designed as a joint United Nations (UN), African Union (AU) and inter-state process to promote peace, security, democracy and development, the ICGLR formally began in 1996 with the then UN Secretary General Kofi Annan assigning special envoys to conduct initial consultations with states and experts in the region.

The process gained momentum when the ICGLR summit of heads of state convened in Dar es Salaam in November 2004. The summit included eleven "member states": Angola, Burundi, Central African Republic, Republic of the Congo, Democratic Republic of the Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia.⁷ At that historic first meeting, regional heads of state showed their commitment by signing the Declaration on Peace, Security, Democracy and Development.⁸ The "Dar es Salaam Declaration" set out a plan of action and the principles which would guide the ICGLR process and ultimately lead to the adoption of the Pact on Security Stability and Development in the Great Lakes Region (the Great Lakes Pact, or simply the Pact).

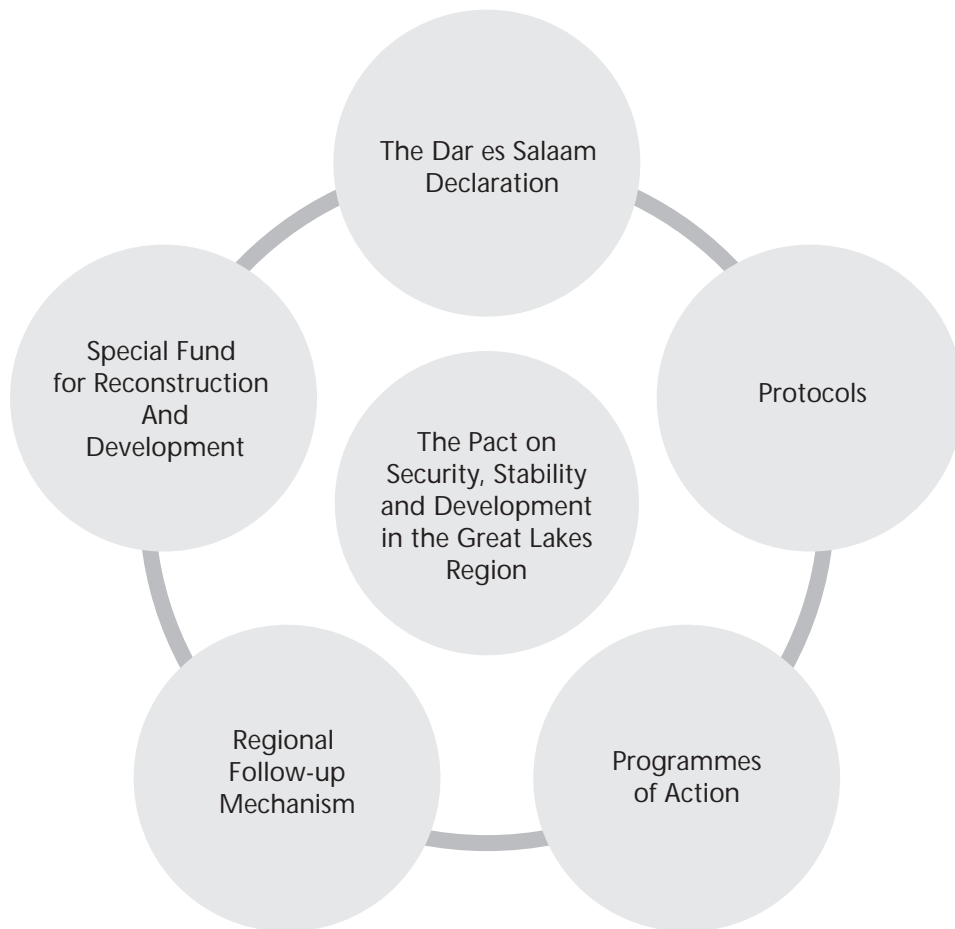
The development of the Great Lakes Pact was a multi-tiered process which included technical experts and civil society input, while Regional Preparatory and Inter-Ministerial Committees provided political endorsement. Members of academia and civil society organisations participated alongside women's and youth organisations and government representatives in National Preparatory Committees; these in turn fed into the work of the Regional Preparatory Committee, which also included civil society engagement. Thus the process of developing the Pact included extensive consultation with both governments and non-state actors throughout the region, aimed at creating a strong sense of ownership.

The process was divided thematically into four pillars: peace and security; democracy and good governance; economic development and regional integration; and humanitarian and social issues.

1.2 The Pact on Security, Stability and Development in the Great Lakes Region

On 15 December 2006 the negotiations culminated in the adoption, at the second summit of heads of state of the ICGLR in Nairobi, of the Great Lakes Pact.⁹ The

Components of the Pact



Pact is a remarkable instrument, expressing on behalf of states in the region:

[an] individual and collective determination [...] to transform the Great Lakes Region [...] into a space of durable peace and security, of political and social stability, and of economic growth and shared development by multi-sector cooperation and integration for the sole benefit of our peoples.¹⁰

The Pact comprises not just the primary instrument of the Pact itself but the Dar es Salaam Declaration, ten protocols, four programmes of action (comprising 33 priority projects¹¹), and a set of implementing mechanisms and institutions (including the Special Fund for

Reconstruction and Development). These instruments reflect an ambitious package of undertakings by signatory states on a host of issues ranging from economic integration to mutual defence, resources development and human rights.

The Dar es Salaam Declaration, the protocols, the programmes of action, the Regional Follow-Up Mechanism and the Special Fund are each intended to be an “integral part” of the Pact, as expressed in the Pact’s primary document.¹² Reinforcing this holistic approach, no reservations are permitted to any part of the Pact.¹³ The Pact therefore was signed, and must be ratified, as a whole.¹⁴ The Pact entered into force on 21 June 2008, following ratification by eight member states.¹⁵

2 The Great Lakes Pact and the Rights of IDPs and Refugees

The Pact and its instruments set out new norms, standards and mechanisms for protecting forcibly displaced people in the countries of the Great Lakes region. It builds on and expands existing frameworks, at both the national and regional levels.

2.1 The Declaration on Peace, Security, Democracy and Development (the Dar es Salaam Declaration)

The Dar es Salaam Declaration enshrines the key priorities and undertakings of states taking part in the ICGLR process and is the foundation upon which the Pact was built. The Declaration contains several important guarantees with respect to the rights of refugees and IDPs. Specifically, it:

- Reaffirms the commitment of states in the region to fulfil the undertakings set out in the OAU and UN refugee conventions and to respect and use the Guiding Principles on Internally Displaced Persons (the Guiding Principles);¹⁶
- Commits states to adhere strictly to the norms and principles of international humanitarian law, “including full and free access to all persons requiring assistance” and a guarantee of safety for humanitarian personnel;¹⁷
- Recognises the need for joint policy to address long-term refugee crises, promoting local integration and peaceful co-existence with resident populations, as well as voluntary repatriation and the creation of conditions conducive to the return of refugees;¹⁸
- Commits states to ensure that “refugees and displaced persons, upon return to their areas of origin, recover their property with the assistance of local traditional and administrative authorities”;¹⁹
- Provides that states will “adopt a common regional approach for the ratification and implementation

of the UN Conventions on Statelessness, harmonize related national laws and standards”;²⁰

- Commits states to provide “refugees and displaced persons with identification documents enabling them to have access to basic services and exercise their rights”;²¹
- Envisages the creation of a “regional mechanism for the identification, disarmament and separation of combatants from civilian refugees and displaced persons, and their confinement in distinct facilities to prevent them from manipulating refugees and displaced persons for political or military purposes”;
- Pledges to protect vulnerable groups, including refugees and internally displaced people, and to involve them in peace efforts;²²
- Encourages the international community to assist host communities in mitigating the adverse effects of protracted refugee presence.²³

2.2 Protocols

Central to the Pact are the ten protocols which lay out more concrete legal frameworks for achieving the goals set out in the four priority areas identified in the Pact: economic development and regional integration; democracy and good governance; humanitarian and social issues; and peace and security. Two of these protocols deal specifically with human rights and the experience of displacement: the Protocol on the Protection and Assistance to Internally Displaced Persons, and the Protocol on the Property Rights of Returning Populations. The adoption of these two protocols was a significant recognition by states of the crucial link between protecting the rights of forcibly displaced people and achieving peace, security and development. These two protocols are grouped together in the humanitarian and social pillar with the

The Ten Protocols of the Pact

Humanitarian and Social Pillar	<ul style="list-style-type: none"> ■ Protocol on the Protection and Assistance to Internally Displaced Persons (IDP Protocol) ■ Protocol on the Property Rights of Returning Persons (Property Protocol) ■ Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children (Sexual Violence Protocol)
Democracy and Good Governance Pillar	<ul style="list-style-type: none"> ■ Protocol on the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes Against Humanity ■ Protocol on Democracy and Good Governance ■ Protocol on Judicial Cooperation
Peace and Security Pillar	<ul style="list-style-type: none"> ■ Protocol on Non-Aggression and Mutual Defence in the Great Lakes Region
Economic Development and Regional Integration Pillar	<ul style="list-style-type: none"> ■ Protocol on Management of Information and Communication ■ Protocol Against the Illegal Exploitation of Natural Resources ■ Protocol on the Specific Reconstruction and Development Zone

Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children. Given the high prevalence of sexual violence in conflict in the region, displaced women and children are likely to become targets either before, during, or after their flight and so this Protocol is of particular relevance to a huge number of displaced people and families.

The other seven protocols of the Pact, while not specifically tailored to protecting the rights of displaced people, also contain provisions addressing refugees and IDPs, in addition to extending the general quality of human rights protection in the region. Article 2 of the Protocol on Democracy and Good Governance, for example, articulates the “prohibition of ethnic, religious, racial, gender or regional discrimination” as a core constitutional principle. Fighting discrimination is a fundamental element of efforts to address the root causes of refugee and IDP flight, foster human security, and create conditions for return.

2.3 The Protocol on the Protection and Assistance to Internally Displaced Persons

The objectives of the Protocol on the Protection and Assistance of Internally Displaced Persons (the IDP Protocol) are threefold, namely to:

- Establish a legal framework for the adoption of the Guiding Principles on Internal Displacement (the Guiding Principles) and a legal basis for their implementation in national law;
- Ensure legal protection of the physical and material needs of IDPs;
- Reinforce member states’ commitment to prevent and eliminate the root causes of displacement.²⁴

The IDP Protocol is the first binding multilateral instrument in the world dedicated to the implementation of the internationally-recognised Guiding Principles on Internal Displacement.²⁵

The Guiding Principles are central to the IDP Protocol and formally annexed to the text.²⁶ The Protocol requires member states to “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

Protocol on the Protection and Assistance to IDPs at a Glance

<p>Definition of IDPs (Article 1)</p>	<ul style="list-style-type: none"> ■ “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” (Article 1(4)); ■ Persons who have been forced from their homes by large scale development projects (Article 1(5))
<p>Responsibility for the Protection of IDPs (Article 3)</p>	<ul style="list-style-type: none"> ■ Primary responsibility for the protection of IDPs rests with the state (Article 3(3)); ■ Governments shall facilitate rapid humanitarian access where needed (Article 3(6)); and ■ Where governments lack capacity they shall accept and respect the obligation of the organs of the international community to provide protection and assistance (Article 3(10)).
<p>Scope of Protection (Article 4)</p>	<p>States commit to:</p> <ul style="list-style-type: none"> ■ Respect international law and the Guiding Principles in particular (Article 4(1)(a)); ■ Provide special support to women, children, pastoralist, families of mixed ethnicity and other vulnerable groups (Article 4(1)(c), (d) and (h)); ■ Ensure conditions of safety and dignity, with water, food and shelter in areas of displacement (Article 4(1)(f)); ■ Ensure freedom of movement (Article 4(1)(g)); ■ Facilitate family reunification (Article 4(1)(h)); ■ Establish a monitoring mechanism (Article 4(1)(j)); ■ Guarantee the right to seek and enjoy asylum (Article 4(1)(k)).
<p>Development Induced Displacement (Article 5)</p>	<p>Governments undertake to:</p> <ul style="list-style-type: none"> ■ Explore feasible alternatives so as to avoid development-induced displacement where possible (Article 5(1)); ■ Obtain, as far as possible, consent of affected populations (Article 5(3)); ■ Provide full information, and where appropriate, compensation and relocation (Article 5(4)); ■ Provide adequate and habitable sites of relocation, provide to the greatest practicable extent proper accommodation, and ensure satisfactory conditions of safety, nutrition, health and hygiene during relocation (Article 5(5)).
<p>Adoption of Guiding Principles (Article 6)</p>	<p>Governments undertake to:</p> <ul style="list-style-type: none"> ■ Adopt and implement the Guiding Principles on Internal Displacement as a regional framework for dealing with IDP issues (Article 6(1)); ■ Enact national legislation to incorporate the Guiding Principles and to provide a framework for their implementation within national legal systems (Article 6(3)); ■ Ensure that such legislation defines IDPs in accordance with the definition in the Protocol (Article 6(4)(a)); ■ Specify organs of government responsible for providing protection and assistance to IDPs (Article 6(4)(c)).

The Guiding Principles

The Guiding Principles on Internal Displacement define IDPs as “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.”

The Guiding Principles were developed by the Representative of the UN Secretary-General on Internally Displaced Persons and presented to the UN Commission on Human Rights in 1998. Although the Guiding Principles draw on existing legal principles and treaties, they are not in themselves legally binding. They have, however, formed the basis for national laws and policies on internal displacement and have been referenced by national and regional courts and tribunals in protection of the internally displaced. In 2005, world leaders adopted the World Summit document, which declared the Guiding Principles “an important international framework for the protection of internally displaced persons”.

The Great Lakes leads the way in developing frameworks for IDP Protection

Angola was the first country in the world to implement elements of the Guiding Principles in national law. The *Norms for Resettlement of Displaced Populations* were drafted in 2001, following an almost 30-year long civil war that caused the internal displacement of approximately 3.8 million people. Also in 2001, Burundi adopted the *Protocol for the Creation of a Permanent Framework for Consultation on the Protection of Displaced Persons* (CPF/PDP), followed by Uganda’s *National Policy for Internally Displaced Persons* in 2004. To date, approximately 15 countries worldwide have adopted laws or policies on internal displacement, many of which are based on the Guiding Principles.²⁸

Principles, in particular.”²⁷ It further obliges states to enact national legislation to implement in national law the standards set out in the Guiding Principles.

Assignment of Responsibility

One of the major challenges of creating a coherent policy for IDPs is the fact that responses to IDP assistance and protection needs are often divided between several government ministries and agencies at the national, regional and local levels of government.²⁹ The IDP Protocol commits member states not only to enact national legislation to implement the Guiding Principles in domestic law, but also to create a practical implementation framework.³⁰ Member states must “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.”³¹ Finally, the Protocol provides that “member states shall ensure the effective participation of internally displaced persons in the preparation and design” of IDP legislation.³² NGOs and civil society organisations will have a role to play in holding governments to account for their obligations, and in ensuring that IDP participation is effectively integrated into these institutional frameworks.

Although the IDP Protocol acknowledges that states have the primary responsibility for the protection of IDPs, it does stipulate that “where Governments of member states lack the capacity to protect and assist” IDPs, governments “shall accept and respect the obligation of the organs of the international community to provide protection and assistance to IDPs” (emphasis added).³³ This provision reflects the right to assistance provided for in Principles 18 and 25 of the Guiding Principles, but goes further by strengthening the obligation of states to accept offers of assistance.

The IDP Protocol recognises that, in addition to international humanitarian agencies, national NGOs, including, for example, national Red Cross societies have a role to play in protection and assistance to IDPs. The IDP Protocol calls on member states to “provide for the channels of engagement and cooperation between the organs of Government, organs of the United Nations, the African Union, and civil society.”³⁴

At the same time the Protocol notes that humanitarian actors also have reciprocal duties: “Member States accept the obligation of humanitarian personnel to observe and respect the laws of the country in which they are operating.”³⁵

Development Induced Displacement

The IDP Protocol builds on the Guiding Principles in addressing the particular character of displacement in the region. One of the areas in which this can be seen is in the Protocol’s IDP definition. The first part of the definition (Article 1(4)) follows the definition as set out in the Guiding Principles (see box). The second part (Article 1(5)) extends that definition by including explicitly those people who are forced from their homes by the effects of large-scale development projects. In fact, an entire article of the Protocol is devoted to specifying the obligations of states towards people displaced by development, including regulating the circumstances in which such displacement may be lawfully permitted.³⁶

The IDP Protocol requires that development-induced displacement must be “justified by compelling and overriding interests of national development” and pursued only after “all feasible alternatives” have been explored.³⁷ As with the equivalent provisions in the Guiding Principles, however, there are few specifics in the IDP Protocol as to the particular steps which a state would have to take to fulfil such obligation. There is a role for NGOs and other actors to insist on the formulation of specific guidelines in this area at the national level.³⁸

Where displacement can be justified, however, the IDP Protocol stipulates what a state must do to ensure that its negative effects are minimised. In particular, 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.”³⁹ The language of the IDP Protocol also goes further than the Guiding Principles with respect to the free and informed consent of those to be displaced. While according to the Guiding Principles such consent must simply be “sought,” the IDP Protocol requires states to “obtain” such consent “as far as possible.”⁴⁰

Displacement and the Merowe Dam

Construction of the Merowe Dam in Sudan is projected to cost about 1.8 billion dollars and to displace 50,000 people. Although resettlement sites have been gazetted and assistance has been offered by the state, the affected population has complained that they were inadequately consulted, that the land to which they were resettled was not suitable for cultivation and that assistance packages were inadequate.

Participation of IDPs and Civil Society

The Guiding Principles provide for consultation and participation of civil society and, most importantly, IDP communities themselves, in decisions affecting their interests.⁴¹

The IDP Protocol also requires states to ensure the “effective participation of internally displaced persons in the preparation and design” of the national legislation that states must enact to implement the Guiding Principles into national law.⁴²

In the case of development-induced displacement, states have further undertaken in the IDP Protocol to “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.”⁴³

IDP participation

One distinguishing aspect of the IDP Protocol is its participatory approach. In this regard, the IDP Protocol takes its cue from progressive developments in the region, particularly in Angola and Uganda. Both the Angolan legislation and the Ugandan policy on IDPs are examples of IDP frameworks with clear requirements for consultation with, and participation of, IDPs and their communities in processes and decisions affecting their interests.⁴⁴

Support and Assistance to Host Communities

Another progressive element of the IDP Protocol is its recognition of the need to extend support and assistance to host communities, a subject not addressed

by the Guiding Principles. Such communities often bear a considerable burden of supporting displaced people, which too often goes unrecognised. The IDP Protocol includes an obligation to “extend protection and assistance, according to need, to communities residing in areas hosting internally displaced persons.”⁴⁵

Security of IDPs and IDP Settlements

One of the major challenges to the protection of IDPs and refugees in the Great Lakes region has been the presence of armed groups and violent criminal groups which threaten the security of displaced people. The IDP Protocol recognises that states have an obligation to “safeguard and maintain the civilian and humanitarian character of protection and location of internally displaced persons in accordance with international guidelines on the separation of armed elements”.⁴⁶ States undertake to guarantee the “safe location of IDPs” in conditions of dignity and “away from areas of armed conflict and danger”.⁴⁷ However, as the flow of refugees from Rwanda following the genocide showed, ensuring safety and security for refugees is in practice a formidable challenge. How can states, particularly those with limited institutional capacity, identify armed elements and other potential threats in a refugee population, particularly if there is a sudden influx of hundreds of thousands, or even millions of refugees? How can states balance the need to provide security for the majority of refugees with the need to protect the rights of individuals suspected of posing these threats? The IDP Protocol provides no specific guidelines as to how states might achieve the separation of civilians and “armed elements” in such contexts.⁴⁸

In this context, international cooperation can be of critical importance. Although separation is clearly primarily a matter of national responsibility, elsewhere in the Pact, in the Dar es Salaam Declaration, Great Lakes states have undertaken to create a “regional mechanism for the identification, disarmament and separation of combatants from civilian refugees and displaced persons, and their confinement in distinct facilities to prevent them from manipulating refugees and displaced persons for political or military purposes.”⁴⁹ Although no further details about this mechanism have been provided in a protocol or project, the commitment in the Dar es Salaam Declaration remains an integral part of the Pact.

Registration

Registration of IDPs and refugees can serve several useful purposes including identifying and locating them, determining their needs, and identifying particularly vulnerable groups. However, registration can also carry risks. If, for example, government authorities are complicit in the events causing displacement, or if IDPs fear being targeted by other groups for accepting government assistance, IDPs may be afraid to register. In other situations, procedures may be manipulated in such a way that not all IDPs are given the opportunity to register. In an armed conflict, for example, the government may only recognise those displaced by certain armed groups. Women may also not have an equal opportunity to register. In situations where men are away from their families, entire families may be excluded from assistance. In other cases, IDPs may elect not to register because the process is too bureaucratic, because they are simply located too far from registration centres or because they are not in need of the type of assistance initially being offered.

Reliance on registration to determine the distribution of assistance should not limit the rights of IDPs to access necessary services and exercise their rights.⁵⁰ Ensuring that registration only takes place when the situation requires it and then only in a fair and impartial manner is as important as ensuring an overall effective legislative framework for the internally displaced. If the law bases distribution of benefits for IDPs on registration, but that registration is not comprehensive and fair, then the law may in practice create barriers to displaced people exercising their rights.

In recognition of this fact, the Guiding Principles do not require that states institute an IDP registration system, and emphasise instead that the rights of internally displaced people derive from their status as citizens and human beings: the definition is a tool to highlight special needs, but does not confer a distinct legal status.⁵¹ In the IDP Protocol, member states have agreed that they are responsible for assessing the needs of IDPs and that this may include, “to the extent necessary” assisting IDPs with registration. In such cases – where necessary to assess the needs of IDPs – the IDP Protocol provides that states “shall maintain a national data base for the registration of internally displaced persons.”⁵²

Documentation

Access to personal documentation is critical for IDPs, not just in order to access assistance and protection but also to register for schooling, to vote or to access property rights. Article 68 of the Dar Es Salaam Declaration commits states to “adopt a common regional approach to provide refugees and displaced persons with identification documents enabling them to have access to basic services and exercise their rights.” Although the issue is not specifically addressed in the IDP Protocol, the Guiding Principles, which are incorporated in the IDP Protocol, provide that states must issue to IDPs “all documents necessary for the enjoyment and exercise of their legal rights.” Unreasonable conditions restricting the issue of such documents, such as, for example, a requirement that IDPs return to their areas of origin, shall not be imposed.⁵³

Freedom of Movement of IDPs

One area where the IDP Protocol, unless carefully interpreted, may to some extent undermine obligations which states in the region have already assumed relates to the question of freedom of movement of IDPs. IDPs are, in most cases,⁵⁴ citizens of the country where they are displaced and thus enjoy all the rights of freedom of movement and residence of citizens – any restrictions which are imposed by the state on these rights must meet the very strict tests set out by international human rights law. The Guiding Principles provide that “every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.”⁵⁵ Article 4(1)(g) of the IDP Protocol, however, guarantees only “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” (emphasis added).

The vague and undefined restriction of the right to freedom of movement to “designated areas of location” risks imposing unwarranted limitations on IDPs’ right to freedom of movement as set out in Principle 14 of the Guiding Principles, which itself reflects obligations which states in the region have already assumed under the African Charter on Human and Peoples’ Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR).⁵⁶ Although many African states have lim-

ited freedom of movement for refugees, they have not generally entered reservations to the right to freedom of movement of citizens under the ICCPR or the ACHPR.⁵⁷ The negative impact of existing restrictions on the movements of refugees have been well documented, and advocates must guard against the extension of these restrictions to IDPs. Restrictions on the freedom of movement of citizens, including IDPs, are only permitted in the narrowly defined circumstances provided for under international law.

Families of Mixed Ethnicity

An additional element in the IDP Protocol, which is not specifically treated in the Guiding Principles, and which reflects the particular regional context in the Great Lakes, is the recognition that states may need to extend “special protection for families of mixed ethnic identity.”⁵⁸ In situations of ethnically motivated violence, such families might find it harder to find a place where all their members are safe.

Resettlement

Although the IDP Protocol recognises the need to protect families of mixed ethnicity, it does not offer specific guidance as to how this could be achieved. In the refugee context, some western countries have prioritised resettlement of mixed Hutu/Tutsi refugee families from Rwanda and Burundi. In the context of the ICGLR, regional resettlement of internally displaced families of mixed ethnicity could be explored.

Mechanisms

The IDP Protocol provides for the creation of a regional mechanism to monitor the protection of IDPs, reflecting the new recognition that the protection of IDPs is a collective duty of states.⁵⁹ This mechanism will be unique in that it will be the first to monitor the situation of IDPs against a dedicated and legally-binding set of standards. However, it will be important to ensure that the mechanism coordinates effectively with, and learns from the experience of the African Commission on Human and Peoples’ Rights’ Special Rapporteur on Refugees and Internally Displaced Persons and the future AU High Commissioner for IDPs, proposed in the

AU's draft convention for the protection and assistance of IDPs currently before member states.⁶⁰ Similarly, means must be found to ensure coordination and complementarity with the role of the UN Secretary-General's Special Representative on the Human Rights of Internally Displaced Persons.

Model Legislation

During deliberations on the IDP Protocol, the text of model legislation to aid implementation at the national level was also drafted, but was ultimately not adopted as part of the Pact. This model legislation is discussed in further detail below in Section 6.3.1.

2.4 The Protocol on the Property Rights of Returning Persons

The Protocol on the Property Rights of Returning Persons (the Property Protocol) addresses one of the most pressing obstacles to successful return and reintegration of forcibly displaced people in the Great Lakes region – access to land and property lost, confiscated or expropriated through the process of displacement and exile.⁶¹ With neither the UN nor the African Union's refugee conventions treating the issue,⁶² the Protocol is a first: a multilateral instrument creating a unique regional framework for addressing conflicts over property and land in situations where the original owner or community has been long absent, as well as situations where dispossession may have been the primary motivation for displacement.⁶³

The Property Protocol represents a commendable effort to assert the property rights of displaced people. It recalls the legal instruments already in force at the international level and emphasises the need to take into account the needs of vulnerable categories such as women, children and communities with special attachment to their land. Moreover, it is the first time that an international instrument provides that property disputes affecting displaced populations should be addressed by both administrative and traditional authorities. This is a positive development and corresponds to the characteristics of property in Africa where many property and land rights are granted and regulated by the traditional or customary systems, and where state institutions are rarely present or accessible at the local level.

However, despite its progressive elements and helpful application of many international principles to the Great Lakes region, the Protocol lacks specific guidance on some contentious issues, such as the regulation of relations and interaction between traditional systems and statutory law, criteria to decide between compensation and restitution, and secondary occupancy. There is a role here for civil society to develop policy guidelines for tackling these issues in each country.

The Pinheiro Principles

Although the Property Protocol is the first legally binding instrument dealing specifically with the property rights of returnees, the United Nations has begun to elaborate standards in the form of the United Nations Principles on Housing and Property Restitution of Refugees and IDPs (the Pinheiro Principles). The explanatory notes to the Pinheiro Principles are attached to the model legislation which was drafted as part of the ICGLR process, but which was ultimately not endorsed as part of the Pact.

Prepared by the UN's Special Rapporteur on Housing and Property Restitution, Paulo Sergio Pinheiro, the Pinheiro Principles are the first consolidated global standard exclusively focused on the housing, land and property rights of the displaced. The adoption of the Principles by the UN's Sub-Commission on the Promotion and Protection of Human Rights in August 2005 gave added force to the right to return as encompassing the right not merely to return to one's country, but also the right to return to one's original home. The Principles articulate current standards regarding protection from displacement, and strengthen restitution procedures, institutions, mechanisms and legislation drawing on the existing human rights and humanitarian law framework. The Principles contain detailed guidelines on best practices such as, for example, dealing with the question of secondary residents (those who have taken possession of the land of those who fled through whatever means).

Objectives

The Property Protocol acknowledges that disputes over land and property in the context of displacement are a source of recurrent conflict in the region and hinder

the attainment of durable solutions for the displaced. Its four core objectives, set out in Article 2, are:

- Establishment of the legal principles which govern the recovery of property by displaced people;
- Creation of a legal basis for resolving disputes relating to property including the identification of both judicial and local traditional mechanisms;
- Guaranteeing special protection for returning women, children and “communities with special attachment to land in the Great Lakes Region”; and
- Assuring legal remedies for loss or destruction of property of the forcibly displaced.

Property Rights of Displaced People Who Do Not Return: The Scope of the Protocol

In negotiating the Property Protocol, member states' primary concern was to address the obstacles to return posed by impediments to the recovery of returnees' property. In particular, they were eager to create mechanisms for addressing competing claims to property in the context of large-scale returns. This preoccupation is reflected in the Property Protocol's title, which refers to “the property rights of returning populations”; and in the preamble, which refers to states' commitment 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.” Moreover, Article 2, which sets out the Property Protocol's objectives, provides that one such objective is to “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.” Some civil society actors have, therefore, expressed concerns that the Property Protocol may limit the protection of property rights only to those displaced people who return to their places of origin, and not to displaced people who, for whatever reason, opt for local integration or resettlement as a durable solution.

However, although returning populations are the primary focus of the Property Protocol, nothing in it is intended to limit the rights of displaced people who

choose not to return. Most of its operational provisions offer broad protection of the property rights of all displaced people. For example, Article 4 provides that 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.” Such assistance is not predicated on the return of internally displaced people or refugees. Moreover, nothing in the Protocol prevents refugees and internally displaced people who have not returned from lodging claims with the mechanisms that it creates.

The Property Protocol explicitly places itself within a broader framework of international law, including protections of universal property rights, by recalling the range of mechanisms available to returning people, providing that “[n]othing 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.”⁶⁴

It will be important, however, to monitor the implementation of the Protocol in order to ensure that the property rights of all displaced people are protected, despite the Protocol's focus on returning populations. Limiting the property rights of displaced people to those who return to their places of origin would be in conflict with the Guiding Principles, which provide for the protection of property rights for “returned and/or resettled internally displaced people”⁶⁵ and could put undue pressure on displaced people to return.

Recovery

Article 4 is the heart of the Property Protocol, providing for the establishment of legislative and judicial procedures for the recovery of property owned or occupied by the displaced and the lodging of claims for compensation where restitution is not possible.

Recognising the limited presence and capacity of state institutions to address large numbers of claims and the fact that a large share of all land in the Pact's member states is owned under customary tenure, the Protocol requires states to 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

The Protocol on the Property Rights of Returning Persons at a Glance

Article	Provision
Article 2 (Objectives)	<p>The objectives of the Protocol include:</p> <ul style="list-style-type: none"> ▪ Establishing legal principles for the protection and return of the property of IDPs and refugees in the region (Article 2(2)); and ▪ Ensuring legal remedies for the loss or destruction of property (Article 2(5)).
Article 3 (General Principles of Protection)	<p>Recognises the following basic principles:</p> <ul style="list-style-type: none"> ▪ The right of everyone to own property (Article 3(1)(a)); ▪ The right to equal protection under the law and the principle of non-discrimination (Article 3(1)(b)); ▪ The obligation of states to protect IDPs from war crimes directed against property (Article 3(2)).
Article 4 (Recovery and Restoration of the Property of Internally Displaced Persons and Refugees and Resettled Persons)	<p>Member states commit to:</p> <ul style="list-style-type: none"> ▪ Assist IDPs, refugees, and resettled IDPs to recover property (Article 4(1)); ▪ Where recovery is not possible, offer compensation (Article 4(2)). <p>To do this states will:</p> <ul style="list-style-type: none"> ▪ Elaborate procedures allowing local traditional and administrative authorities to assist in the recovery of the property of returning refugees and displaced persons (Article 4(3)(a)); ▪ Create simplified procedures to enable IDPs and refugees to make claims relating to the loss or recovery of their property (Article 4(3)(b)); ▪ Establish alternative and informal community-based mechanisms and processes for resolving property disputes (Article 4(3)(c)); ▪ Establish an affordable property registration scheme under which title to property, including land, held under both customary and statutory land tenure systems is recognised (Article 4(3)(d)). <p>Property abandoned by refugees and IDPs cannot be appropriated by the government except in compelling and overwhelming circumstances and after consideration of the need for compensation and to ensure that other rights are not violated.</p>
Article 5 (Property Rights of Returning Spouses)	<p>States commit to:</p> <ul style="list-style-type: none"> ▪ Undertake to ensure that returnees are able to recover property belonging to a deceased spouse (Article 5(1)); and ▪ Ensure that women are able to own property and are not discriminated against in these matters (Article 5(3)).
Article 6 (Property Rights of Returning Children)	<p>States commit to protect the right of returning children to inherit the property of their parents in conformity with the provisions of the Convention on the Rights of the Child.</p>
Article 7 (Property Rights of Returning Communities)	<p>States commit to recognise the special property rights of pastoralists and other communities whose livelihood is dependant on the land that they occupy.</p>
Article 8 (Compensation)	<p>States commit to:</p> <ul style="list-style-type: none"> ▪ Compensate refugees and IDPs for property loss for which the government is directly responsible (Article 8(1)); ▪ Set up a framework for enabling the payment of compensation where the government is not directly responsible (Article 8(2)).

testimony”.⁶⁶ This provision acknowledges two of the biggest challenges to property return – the loss of records (written or oral) as a result of displacement, and the fact that ownership and title to land may never have been formally documented in the first place.

The Interaction of Customary and National Law Systems

The Property Protocol attempts to regulate the complex web of customary and national law provisions which governs land distribution in the region, including grant of land by presidential decree, distribution through customary arrangements, and state ownership of original land title.

Recognising and reconciling customary and statutory land tenure systems is a particularly difficult challenge in the realm of property law, as the two systems are often in conflict. In many areas in the region, for example, local custom provides that if land is left abandoned for even short periods of time, other people can lawfully take possession – a provision which is rarely, if ever, found in statutory law and which clearly negatively impacts displaced people. The Property Protocol provides that general principles of non-discrimination form the basis of the legal protection of property rights of displaced people (Article 3). Thus, as a baseline, the Protocol requires that recognition of customary land title and other types of possession and use must not violate the basic principles of non-discrimination.

Land Registration

In order to prevent loss and ease the process of recovery, the Property Protocol requires that states establish “an affordable property registration scheme under which title to property, including land, held under both customary and statutory land tenure systems is recognized.”⁶⁷ This provision has the potential not only to improve the prospects of protecting the property rights of those who may be displaced in future, but also to better protect access to land by marginalised groups more generally. Women, for example, often have difficulty in accessing title even in the absence of displacement, a problem which may be addressed by registration schemes.

It is important to note, however, that registering land which was previously administered under customary systems carries certain risks. If not managed carefully, these registration systems may, by forcing complex re-

lationships within communities into a simplified model of individual ownership, institutionalise inequities. For example, traditional leaders may administer land, but may do so according to rules understood and accepted by the community. If a registration scheme lists these administrators as owners, might they sell communal land for personal profit? Care must be taken to ensure that registration does not act as a disincentive to respect obligations towards other community members, or exclude others such as pastoralists with traditional access rights. In this regard, it may be useful to apply Article 4(3)(d) in conjunction with Principle 15.2 of the Pinheiro Principles which recommends, but does not require, registration insofar as it is “necessary to ensure legal security of tenure.” In addition, members of civil society may wish to contribute to the formulation of registration schemes that more accurately reflect the multi-layered nature of customary systems (for example, by registering communities, rather than individuals as owners).

Prevention of Loss

Article 3(2) requires states “in all possible circumstances” to protect the property of the displaced against a range of abuses, from its use as a shield for military operations to its destruction as a form of collective punishment.

Article 4 of the Property Protocol addresses the question of state acquisition or expropriation of the property of IDPs and refugees. Under the Protocol, states may only expropriate property “in compelling and overwhelming circumstances which are justified in the general interest of the public or community” and “carried out under procedures prescribed by law”.⁶⁸ While it usefully restates general principles on the protection of property, there are no specific provisions in the Protocol regarding the checks and balances which must be part of such procedures. States are instructed only in general terms to ensure a “fair balance” between the right to own property and the state’s right to acquire or expropriate it by ensuring that on the one hand “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,” and on the other hand that “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.”⁶⁹

Compensation

Where states are “directly responsible” for property loss, they are required by the Protocol to compensate property which is not recoverable.⁷⁰ Where the state is not directly responsible, the Property Protocol obliges it to establish a framework to enable compensation “by those responsible.”⁷¹ The Protocol stipulates that the terms of the compensation packages are to be determined on the basis of national legislation (Article 8(3)).⁷²

While the Protocol creates a progressive framework for addressing compensation, a number of complex issues will need to be addressed in practice. First, the Protocol frames compensation as a secondary solution, to be pursued where recovery is “not possible.” How will this term be interpreted in practice? Will it be considered only to apply where property has been destroyed? Or might it apply where, for example, secondary occupants have established long tenure in a given property? Once the need for compensation has been established, how will states deal with the fact that it may be extremely difficult to identify those responsible for the loss of property, particularly in situations of conflict? How will the value of property that has been lost be assessed? The circumstances of conflict and displacement can radically alter the value of property and there may be disputes over this issue. An additional layer of complexity arises from the fact that compensation can be provided either in cash or in kind (for example through the provision of other land). The best solutions to these complex questions may be arrived at on a case-by-case basis through a careful consideration of contextual issues, and civil society can play a critical role in contributing to this discussion.

The Rights of Women

Women refugees and IDPs face many obstacles in reclaiming their property upon return. In many respects these challenges are simply an extension of the discrimination faced by women in non-displacement situations. In some areas in the region, for example, women are not permitted to own land. This is the case, for example, in Angola, where according to customary law land is to be left in the control of men, and a widow risks losing the land to her husband’s family.⁷³ Such arrangements create additional obstacles to the return of displaced women, and often encourage exploitation and destitution.

The Property Protocol recalls, and recommits states to, progressive principles already recognised in inter-

national law. Article 3(1)(e) of the Protocol provides that, as a starting point, states must ratify and comply with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

Article 5 is devoted to protecting “the property rights of returning spouses.” 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.”⁷⁴ Although the Protocol provides that “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”, it does not specify how this should be achieved.⁷⁵ The Property Protocol does provide, however, that the national property registration schemes envisaged by the Protocol in Article 4 (see discussion above) are designed in particular to “accord women the legal capacity to register title to land or property owned by them under both customary and statutory land tenure systems”.⁷⁶

Returning Children

Children are especially vulnerable during the process of displacement, particularly when they are orphaned or separated from their families. The Property Protocol provides that all member states must ratify and comply with the African Charter on the Rights and Welfare of the Child and the Convention on the Rights of the Child.⁷⁷ Article 6 provides that “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 must establish legal arrangements for holding property in trust for returning children and orphans, for harmonising laws on inheritance and succession, and for ensuring rapid and unimpeded access by children to their deceased parents’ property.

The Protocol also provides that member states must adhere 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.”⁷⁸

Communities whose Mode of Livelihood Depends on the Land

The Property Protocol recognises the need for special protection of communities whose “mode of livelihood depends on special attachment to land” (Article 7). In this respect the Protocol builds on the recognition in the Guiding Principles of the particular obligation of states to “indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands”.⁷⁹ This special protection includes a requirement to ensure that in the wake of displacement such people are “reintegrated in areas previously occupied by them”.⁸⁰ Where reintegration is not possible “lands at least equal in value to those previously occupied” or an appropriate compensation package must be provided.⁸¹

Model Legislation

The model legislation drafted to give effect to the Property Protocol does not form part of the text of the Protocol. Nevertheless, the model legislation offers a guide to some of the possible administrative and institutional steps which could be taken in order to implement the Protocol into national law. In addition to covering the core rights set out in the Property

Protocol, the model legislation envisages the establishment of local recovery panels and a property claims commission. Some of the key elements of the new mechanisms envisaged at the national level by the model legislation include:

- **Traditional Property Recovery Panels (Local Panels):** The Local Panel is conceived as a community-based mechanism for recovering traditionally held property of returnees “on the basis of simple requirements of proof of ownership or possession or occupation, based upon reliable and verifiable testimony”. Panel decisions must be communicated to local administrative authorities. People who are not satisfied with a decision of the Panel can lodge a claim with the Property Claims Commission.⁸²
- **Property Claims Commission for Returnees:** The Property Claims Commission is a full-time, inquisitorial and quasi-judicial body charged with examining and deciding disputes, and advising the relevant 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.”⁸³

2.5 Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children

Sexual violence against women and children, ranging from harmful traditional practices to rape and trafficking, is a cause of immeasurable suffering and displacement in the Great Lakes region. There are many examples in the region of sexual violence being used as a tool of war. Sexual violence is not only a cause of displacement, but displacement in turn heightens women and children's vulnerability to sexual violence.

The Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children (the Sexual Violence Protocol) aims to provide a comprehensive set of measures to address the problem of sexual violence in the region.⁸⁴ The Protocol significantly expands the range of acts of sexual

violence which member states must criminalise. At the same time, it aims to prevent sexual violence, and to support and compensate survivors and treat offenders.

The Sexual Violence Protocol takes its cue from recent developments in international law which have led to the progressive criminalisation of acts of sexual violence, and leaves no room for attempts to diminish the seriousness of sexual violence on cultural or other grounds. The Protocol states that "the principles for dealing with sexual violence shall derive from contemporary developments relating to the criminalisation of sexual violence and the punishment of the perpetrators of sexual violence under international criminal law".⁸⁵ Moreover, under the Protocol "Member States guarantee that sexual violence shall be punishable in times of peace and in situations of armed conflict."⁸⁶

The Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children at a Glance

Article 1: Definitions	Sexual violence is defined to include rape, sexual assault, grievous bodily harm, assault or mutilation of female reproductive organs, sexual slavery, enforced pregnancy, enforced sterilisation, harmful practices, sexual exploitation or coercion, trafficking in or smuggling of women and children for sexual slavery, enslavement, forced abortions or forced pregnancies, infection of women and children with sexually transmitted diseases, or any other act of comparable gravity.
Article 2: Objectives	The objectives of the Protocol are: to provide protection to women and children from sexual violence; to strengthen the legal framework for prosecuting and punishing perpetrators; and to provide for the establishment of a regional mechanism for providing legal, medical and social assistance to survivors.
Article 4: Categories and Constituent Elements of Sexual Violence Crimes	Commits states to prosecuting crimes of sexual violence, including sexual violence committed in relation to genocide, crimes against humanity, and war crimes, as well as trafficking in women and children.
Article 6: Regional Responses to Sexual Violence	Provides for: <ul style="list-style-type: none"> ■ Obligations on all member states to cooperate with requests by other member states for the arrest and surrender of people accused of sexual violence; ■ Simplified procedures for lodging complaints of sexual violence; ■ Abolition of statutes of limitation for crimes of sexual violence; ■ Establishment of legal and medical procedures for assisting victims of sexual violence; ■ Establishment of a regional facility for training police, judicial officers and others who handle cases of sexual violence.

The Protocol has three core objectives (Article 2):

- To provide protection to women and children from sexual violence;
- To end impunity for sexual violence by establishing a legal framework for prosecuting and punishing perpetrators of crimes of sexual violence in the Great Lakes region; and
- To provide for the establishment of a regional mechanism for providing legal, medical, material and social assistance, including counselling and compensation, to women and children who are victims and survivors of sexual violence in the region.

The Definition of Sexual Violence: An Expansive Approach

The Sexual Violence Protocol includes an expansive definition of sexual violence. Article 1(5) of the Protocol defines sexual violence as “any act which violates the sexual autonomy and bodily integrity of women and children under international criminal law, including, but not limited to:

- a) Rape;
- b) Sexual assault;
- c) Grievous bodily harm;
- d) Assault or mutilation of female reproductive organs;
- e) Sexual slavery;
- f) Enforced prostitution;
- g) Forced pregnancy;
- h) Enforced sterilisation;
- i) Harmful practices, inclusive of all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and children, such as their right to life, health, dignity, education and physical integrity, as defined in the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa;

Prosecuting sexual violence crimes v. grants of amnesty

One issue which the Sexual Violence Protocol does not address is the interaction between the Protocol’s insistence on the prosecution of all crimes of sexual violence in the region, and grants of amnesty, which are a common element in peace agreements in the region, or immunities granted under national law.

- j) Sexual exploitation or the coercion of women and children to perform domestic chores or to provide sexual comfort;
- k) Trafficking in, and smuggling of, women and children for sexual slavery or exploitation;
- l) Enslavement by the exercise of any or all of the powers attaching to the right of ownership over women and includes the exercise of such power in the course of trafficking in women and children;
- m) Forced abortions or forced pregnancies of women and girl children arising from the unlawful confinement of a woman or girl child forcibly made pregnant, with the intent of affecting the composition of the identity [of] any population or carrying out other grave violations of international law, and as a syndrome of physical, social, and psychological humiliation, pain and suffering and subjugation of women and girls;
- n) Infection of women and children with sexually transmitted diseases, including HIV/AIDS; and
- o) Any other act or form of sexual violence of comparable gravity.”

Article 1(5) of the Protocol provides furthermore that “[s]exual violence also includes gender-based violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, as defined by the United Nations Committee on the Elimination of All Forms of Discrimination Against Women, in General Recommendation 19.”

The Sexual Violence Protocol follows the Rome Statute of the International Criminal Court in providing that “[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” are crimes against humanity “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.⁸⁷

Combating Impunity

Reflecting the Preamble’s emphasis on the need to combat impunity for sexual violence, the Sexual Violence Protocol provides that crimes of sexual violence shall not be subject to statutory limitations,⁸⁸ and encourages the imposition of a maximum sentence of imprisonment as provided by national legislation for any person convicted of a crime of sexual violence against any woman or child.⁸⁹

The Sexual Violence Protocol also creates a framework to ensure that perpetrators do not evade arrest and trial by obliging all member states to cooperate with requests by other member states for the arrest and surrender of people accused of crimes of sexual violence.⁹⁰

Supporting and Compensating Victims

Recognising the particular vulnerability of victims of crimes of sexual violence and the cultural barriers to pursuing remedies, the Sexual Violence Protocol provides for the simplification of procedures for victims of sexual violence including “women, children and other interested parties” to seek justice.⁹¹

The Protocol emphasises the need during the conduct of trials to take into consideration “the emotional state of the victims and survivors of such crimes”.⁹² In such procedures states have agreed, for example, that “victims and survivors shall give evidence in camera, or by video links, and they shall neither be compelled nor required to give evidence in open criminal proceedings, nor shall the casting of aspersions on their character and integrity be permitted as part of the defence of any person charged with a crime of sexual violence”. To ensure the implementation of these provisions in practice, states have agreed to create a special regional facility for training and sensitising judicial officers, police units, social workers, and media officers, among others, who deal with cases of sexual violence.⁹³

The Sexual Violence Protocol provides that “member states shall establish legal and medical procedures for assisting the victims and survivors of sexual violence.”⁹⁴ Under Article 6(6) of the Protocol, member states also “assume responsibility for ensuring that the victims and survivors of sexual violence are compensated, by the perpetrators.”⁹⁵

Ensuring that victims are compensated

The Sexual Violence Protocol does not specify how the payment of compensation is to be ensured in practice. In situations of conflict and displacement, it may be almost impossible to identify those responsible for crimes of sexual violence. Even where perpetrators can be identified, they may not be in a financial position to pay compensation to their victims.

The Sexual Violence Protocol does, however, suggest that the responsibility of states to compensate victims “may entail the creation of a special facility under the fund for reconstruction and development, the purpose of which shall be to provide social and legal assistance, medical treatment, counselling, training, rehabilitation and reintegration of the survivors and victims of sexual violence, including those who may not be able to identify the perpetrators of sexual violence”.⁹⁶

The model legislation which was developed to aid the implementation of the Protocol envisages the creation in each member state of a Committee for the Protection of Women and Children from Sexual Violence, and a Commission for Compensation of Victims of Sexual Violence. One of the Committee’s functions is to present, on behalf of victims of sexual violence, claims of compensation to the Commission. The Commission is charged with determining the amount of compensation to be paid to each victim, and with determining “the person or organ responsible for paying such compensation.”⁹⁷

3 Implementing the New Norms: The Programmes of Action and Related Projects

An integral part of the Pact is the Programme of Action consisting of clusters of interlinked projects designed to ensure that the new legal standards and undertakings by states in the Pact are put into practice.

The Programme of Action contains hundreds of pages describing hundreds of activities. There are 33 priority projects grouped under the four thematic pillars: humanitarian and social issues, democracy and good governance, economic development and regional integration, and peace and security.⁹⁸ The Programme of Action includes frameworks for each of the projects setting out objectives, activities, appropriate partners and results indicators, as well as the resources needed to achieve the project's objectives.

Most of the projects which directly target refugees and IDPs are found under the humanitarian and social pillar. Projects under other pillars, however, may also have a significant impact on displaced people.

Implementation of each of these projects generally follows the same model. A Regional Project Coordinator (RPC) at the Conference Secretariat is in charge of activities at the regional level, assisted by National Programme Coordinators (NPC) and National Coordination Mechanisms in each member state.⁹⁹ The National Coordination Mechanisms include representatives of government, UN agencies, civil society and donors and are responsible for national level implementation. Civil society organisations in the region should share experiences of best practice and monitor the functioning of these mechanisms in order to ensure that they are as efficient and as effective as possible.

3.1 Programme of Action on Humanitarian and Social Issues

This section provides a summary overview of the key elements of the Programme of Action on Humanitarian and Social Issues, with a special focus on projects which are particularly relevant to IDPs and refugees – and which could be incorporated by NGOs into their activities and advocacy goals.¹⁰⁰

3.1.1 Mechanisms to Implement the Programme of Action on Humanitarian and Social Issues

The Programme of Action on Humanitarian and Social Issues is to be implemented under the overall supervision and guidance of a Committee for Coordination of Humanitarian, Social and Environmental Issues, to be set up by the Conference Secretariat. The Committee's role is to coordinate and implement activities in the pillar, harmonise protection and assistance policies, mobilise resources, support advocacy for compliance with international instruments including the domestic implementation of the Pacts' protocols (particularly the three core protocols in the humanitarian sphere); facilitate dialogue on matters related to humanitarian and social issues in the region; and provide institutional support to national structures dealing with humanitarian and social issues.

Expert sub-committees are to be set up as needed. For example, an expert sub-committee is to be appointed to act as a steering committee on issues related to the protection and assistance to IDPs. The Property Protocol also creates an expert sub-committee to ensure implementation in member states.¹⁰¹ More broadly, a Consultative Committee on Vulnerable Groups made up of technical experts designated by member states is also to be appointed to assist with implementing and monitoring the various projects as appropriate.

<p>Humanitarian and Social Pillar</p>	<p>Sub-Programme 1: Framework for Disaster Preparedness, Protection and Assistance to IDPs and their Environment</p> <ul style="list-style-type: none"> ■ Compliance with International and Regional Instruments on Human Rights, International Humanitarian Law, Issuance of Identity Documents to Internally Displaced Persons, Refugees and Stateless Persons ■ Protection, Assistance and the Search for Durable Solution for Displaced Populations and the Communities that Host Them ■ Legal Framework on Issues Related to the Recovery of Land and Properties by Returning Refugees and IDPs ■ Environmental Assessment and Restoration and Rehabilitation of Human Settlements, Particularly in and around Refugee and IDP Camps and Settlements <p>Sub-Programme 2: Resumption of Basic Social Services, Provision of Health Care and Psychosocial Support to Groups with Special Needs</p> <ul style="list-style-type: none"> ■ Resource Mobilisation for the Restoration of Basic Services ■ The Fight against HIV/AIDS, Sexually Transmitted Infections, Tuberculosis and Malaria in the Great Lakes Region ■ Prevention and Fight Against Sexual Exploitation, Abuse and Gender-based Violence and Assistance to Victims ■ Promotion and Use of Kiswahili as a Working Language in the Great Lakes Region
<p>Peace and Security Pillar</p>	<p>Sub-Programme of Action for Joint Security Management of Common Borders</p> <ul style="list-style-type: none"> ■ Joint Security Management of Common Borders ■ Disarmament and Repatriation of all Armed Groups in Eastern DRC ■ Disarmament of Armed Nomadic Pastoralists and the Promotion of Sustainable Development in Zone 3 ■ Development of Border Zones and Promotion of Human Security ■ Demining and Mine Action in the Great Lakes Region <p>Sub-Programme of Action for Promotion of Inter-State Cooperation on Peace and Security</p> <ul style="list-style-type: none"> ■ Coordination of Activities and Reinforcement of Capacities in the Sub-Region to Fight the Illicit Proliferation of Small Arms and Light Weapons ■ Fighting Transnational Crime and Terrorism
<p>Democracy and Good Governance Pillar</p>	<ul style="list-style-type: none"> ■ Regional Centre on Democracy, Good Governance and Human Rights ■ Regional Initiative for the Prevention and Curbing of War Crimes, Crimes Against Humanity and Genocide, and for the Fight against Impunity in the Great Lakes Region ■ Regional Initiative against Illegal Exploitation of Natural Resources ■ Establishment of a Regional Information and Communication Council
<p>Economic Development and Regional Integration Pillar</p>	<ul style="list-style-type: none"> ■ Establishment of a Regional Microfinance Support Facility ■ Transborder Development Basins ■ Regional Project on Food and Security ■ Revival of the Economic Community of Great Lakes Countries ■ Regional Mechanism for Certification of Natural Resources ■ Northern Corridor: Programme for Improving Transport Infrastructure and Facilities ■ Trans-African Highway: Mombassa-Lagos ■ Lobito Corridor Project (Pre-feasibility study) ■ Southern Corridor Project (Pre-feasibility study) ■ Feasibility Study on the Rehabilitation and Navigability of the Congo River Basin ■ Rehabilitation and Connectivity of the INGA Dam ■ Feasibility Study on the Regional Oil Pipeline ■ Methane Gas Project Feasibility Study ■ East African Submarine Cable System Project

3.2 Ideas for Engaging with Projects for the Benefit of Refugees and IDPs

Projects in the humanitarian and social pillar are divided into two sub-programmes. One focuses on the resumption of basic services, and the other on responding to man-made or natural disasters and protecting displaced people.

The sub-programme which focuses on disaster preparedness and the protection of displaced people includes four projects:

- 1) Compliance with international and regional instruments on human rights, international humanitarian law, issuance of identity documents to internally displaced people and refugees, and statelessness;
- 2) Protection, assistance and search for durable solutions for displaced populations (refugees and IDPs) and communities that host them;
- 3) Legal framework on issues related to the recovery of land and properties by returning refugees and IDPs; and
- 4) Environmental assessment, restoration and rehabilitation of human settlements particularly in and around refugee/IDP camps and settlements.

Although states have the primary responsibility for implementing the Programme of Action, non-governmental groups can play a vital role by adjusting their work plans and integrating the activities identified in the Pact into their own work. Three projects are discussed here as examples of the possibilities for engagement by civil society organisations in general, and refugee and IDP organisations in particular.

Project 1: Compliance with international and regional instruments on human rights, international humanitarian law, and issuance of identity documents to internally displaced persons and refugees, and statelessness.

The activities set out in this project include:

- Examination of the status of ratifications and reservations and incorporation into national law of relevant legal instruments in all member states;
- Dissemination of information and training material;
- Periodic oversight meetings of national human rights commissions;¹⁰²

- Establishment of reciprocal regional standards by which educational qualifications obtained by refugees are recognised in all member states, as well as birth and marriage certificates;
- Creation of a regional oversight mechanism or holding of joint meetings on issuing and harmonising identity documents; and
- Strengthening national capacities for monitoring compliance with international obligations through the work of national human rights commissions or ombudsmen.

Civil society organisations could take on leadership roles in some of these activities, such as carrying out a law and policy review of ratifications of and reservations to international and regional human rights conventions throughout the region, and the extent to which these instruments have been implemented in national legislation. Moreover, NGOs and civil society organisations working directly with refugees and IDPs are uniquely placed to advocate for the need to respect and promote the rights of displaced people as guaranteed by international and regional human rights instruments, and the need for such instruments to be incorporated into national law.

NGOs and civil society organisations might also contribute to the dissemination of information and training material on the rights of refugees and IDPs under international, regional, and national law; engage with the Committee for Coordination of Humanitarian, Social and Environmental Issues and its expert sub-committees to ensure that human rights commissions across the region pay due attention to the rights of displaced people; and provide input to regional mechanisms for the issuing of identity documents and the recognition by all member states of educational and professional qualifications.

Project 2: Protection, assistance and search for durable solutions for displaced populations (refugees and IDPs) and communities that host them

This project relies on a range of activities at national and regional levels to achieve these goals including, for example:

- Appointment of government and non-governmental focal points to facilitate communication nationally and regionally on issues of IDPs and refugees;

- Establishment of a regional database on IDPs and refugees;
- Contribution to capacity building and training programmes for personnel in government departments and other actors dealing with humanitarian issues;
- Design of co-existence programmes benefiting refugees, IDPs and host communities;
- Identification and strengthening of IDP groups; and
- Establishment of national forums for IDPs in which lead ministries should participate.

Activities in this project might provide opportunities for NGOs and civil society organisations to offer expert advice and information for the construction of the regional IDP database. NGOs and civil society organisations may also wish to support the training programmes and strategic advocacy partnerships of IDP groups. Campaigns to ensure that civil society representatives are included in national coordination efforts on issues relating to refugees and IDPs might also be considered. Finally, civil society organisations and NGOs, including humanitarian organisations, are well-placed to contribute to the debate on durable solutions for refugees and IDPs, and the inclusion of the needs of host communities in the design of aid and recovery programmes.

Project 3: Legal framework on issues related to the recovery of land and properties by returning refugees and IDPs

The activities envisaged under this project include:

- Promotion of, and compliance with, the Property Protocol;
- Establishment of a regional fund for compensating returnees when their property is either lost, damaged, or cannot be recovered;

- Decentralisation of land registration systems;
- Establishment of a National Commission and database for registering internally displaced people and refugees;
- Establishment of equitable rules for the acquisition of customary land and revising land tenure laws or codes to bring about an equitable situation for men and women in terms of land ownership, with special measures for needy and disadvantaged people;
- Provision of special protection for arrangements of collective ownership of land, including by minorities and indigenous groups;
- Establishment of local and national tribunals for resolving property and land disputes involving returnees.

NGOs and civil society organisations might consider targeted advocacy to ensure that national policies comply with the standards set out in the Property Protocol. Others may be in a position to conduct studies on the impact of land legislation and the potential benefits and disadvantages of land registration schemes. Yet others might provide advice and assistance to displaced people on making claims for restitution and/or compensation. Civil society could play a useful role in generating detailed information on the nature of property disputes in the region. Organisations based in the region may also be particularly well-placed to shed light on the interaction between customary and statutory law in such disputes. In carrying out each of these activities, national and regional organisations have an opportunity to give voice to the concerns of affected populations themselves by consulting directly with refugees and IDPs on these issues.

4 Institution Building: The Regional Follow-Up Mechanism

The Pact provides for a new institutional structure or “regional follow-up mechanism” to both ensure implementation of the Pact and allow the ICGLR process to make the transition from the auspices of the AU and UN to ownership by the member states.

The key organs of the follow-up mechanism are:

- **The Summit of Heads of State and Government:** The Summit is the highest decision-making organ of the ICGLR, charged with overseeing the implementation of the Pact. It meets once every two years, and approves the budget for the Pact process.¹⁰³ The Summit is also charged with determining the consequences of any failures by states to honour their obligations under the Pact.
- **The Troika:** The Troika is responsible for ensuring both respect for, and implementation of, the Pact between summits. The Troika is made up of the Chairperson of the Conference (a head of state or government of a member state, rotating every two years), and his or her predecessor and successor.
- **The Regional Inter-Ministerial Committee:** This Committee is the Conference’s executive organ. It meets twice a year, with the possibility of adding extraordinary sessions. Its tasks include preparing regular reports on the implementation of the Pact and preparing budgets. The Committee is chaired on a rotational basis by a minister of a member state.
- **The Ad-Hoc Group of Experts:** This group of no more than six independent experts can be tasked by the Summit to prepare reports and studies as required. The membership of the ad-hoc group must include equal numbers of men and women.
- **The Conference Secretariat:** This is the technical and coordinating arm of the ICGLR (see information box on p.33).
- **The National Coordination Mechanisms:** Building on the national preparatory committees for the process in each member state, the National Coordination Mechanisms have been formed to facilitate the implementation of the Pact at the national level (see discussion below on engaging with the follow-up mechanism).
- **Collaborative Mechanisms:** These are to be established by the Regional Inter-Ministerial Committee to coordinate the implementation of the Pact regionally, in cooperation with the member states, the regional economic communities and the relevant regional institutions (see discussion below on engaging with the follow-up mechanism).

4.1 Engagement with the Follow-Up Mechanism

The inclusive nature of the process of preparing and drafting the Pact ensured that the voices of not just states, but also civil society and professional experts were heard. Civil society played a lead role in the development of the Pact itself, particularly in the national preparatory processes (in most countries representatives of civil society were present in all of the discussions).

The follow-up mechanisms and process designed by the Pact continue this model of participation. Civil society is an essential partner in mobilising state and public engagement in the Great Lakes process. There are a variety of opportunities for civil society and other actors to engage in the process of the Pact’s implementation and development.

4.1.1 The National Coordination Mechanism

The core approach of the Pact is the achievement of change across the region through action at the national level. The National Coordination Mechanisms (NCMs) in each country are therefore the central engines of the process.

***Engagement in the ICGLR process at the national level:
A checklist of questions for civil society***

How does the ICGLR National Coordination Mechanism function?

- When does the NCM meet? Does it produce reports?
- Has the NCM engaged in any projects/activities?
- Who is the focal point/national coordinator?
- Who is the civil society representative?
- How do national authorities support engagement in, or contribution to the work of the NCM by local and national NGOs/civil society?
- If the NCM does not function, what can civil society do to change this?
- Does the NCM address issues related to displacement, using the relevant ICGLR protocols and projects? If not, what is needed to change this?

How has civil society organised around the ICGLR process?

- What is the extent of civil society knowledge of the process?

- Do the official ICGLR civil society representatives participate actively in the NCM and give feedback to civil society?
- Are there any NGO networks which need to be better engaged with ICGLR mechanisms?

How have UN agencies engaged with the ICGLR on a national level?

- Are UN agencies informed of the ICGLR process?
- Is there a clear ICGLR focal point within the UN Country Team?
- To what extent do the UN Country Team and UN agencies participate in the NCM?
- To what extent do UN policies/strategies/projects use the ICGLR to address IDP/refugee issues in the country?
- Does the UN plan to support NGOs/civil society in relation to the ICGLR?

How do donor countries engage with the ICGLR?

- Is there a potential for donor policies to more effectively include ICGLR mechanisms?

The job of the NCM in each member state is to facilitate the implementation of the Pact and mainstream its objectives in existing institutions and programmes. The NCMs do not have a uniform structure in all member states, but in all countries they are chaired by a National Coordinator. In some countries the National Coordinator is also the national Special Envoy for the Great Lakes Region – an ambassador-level representative. Each NCM also includes the Deputy Special Envoy, alongside four thematic chairs from relevant ministries and a representative of the ministry of foreign affairs. There are also representatives of parliament, civil society, women's and youth groups, media and the private sector. International organisations also take part, in particular the United Nations Development Programme (UNDP) Great Lakes focal points. The NCM structure in each of the member states is largely informed by the Pact's four thematic areas (economic development and regional integration; democracy and

good governance; humanitarian and social issues; and peace and security), as well as the fifth area of cross-cutting issues (human rights, gender, environment, human settlement and HIV/AIDS).

Each NCM generally meets twice a month. At those sessions decisions are made on implementation activities, including allocation of the NCM budget for national level promotion and implementation efforts. Monthly reports on activities are compiled and submitted to the head of state, and key ministries such as foreign affairs. At the same time, each member state must advise its NCM of all interventions or engagements by the state with the Pact. It should be noted that not all member states have made equal progress in establishing NCMs.

In terms of civil society, active and consistent involvement with the NCMs is key to engaging with the Pact.

The NCMs represent a new opening of the state to civil society actors, both through civil society representation on the NCMs and more broadly. Through active participation in the NCMs, civil society can contribute significantly to the implementation of, and respect for, the Pact.

In particular, for NGOs and civil society organisations working on behalf of displaced people in the region, engagement with the NCM in each member state is essential if they are to hold member states to their commitments under the Pact to address the plight of refugees and IDPs.

4.1.2 Regional Collaborative Mechanisms

The Pact's various regional committees and collaboration mechanisms are coordinated by the Conference Secretariat. There generally is scope for engagement by civil society with each of these mechanisms – the Conference Secretariat can provide more information.

One of the most important bodies in the Conference process is the Forum of National Coordination Mechanisms. This Forum meets every three months; each NCM is represented at these meetings by the NCM Chairperson, the four thematic chairs, and the civil society representative. The Forum considers, among other things, matters relating to the progress in the Pact's implementation, and the Conference Secretariat's programme of work. The Forum can also make recommendations to the Regional Inter-Ministerial Committee. The NCM Forum meetings usually precede and inform the Regional Inter-Ministerial Committee meetings.

4.1.3 Civil Society Forum

Under the Programme of Action on Democracy and Good Governance, there is a sub-programme focused on the consolidation of the democratisation process which seeks to ensure broader engagement from outside government ministries. One project under this sub-programme seeks to ensure the participation of NGOs and the achievement of the objectives of the Pact through the establishment of a regional civil society forum (expected to be headquartered in DRC or Burundi). At the Second Summit of the Heads of State and Government in Nairobi in December 2006, representatives of NGOs from the eleven member states created the Regional Coordinating Committee,

The Conference Secretariat

The Conference Secretariat is headed by an Executive Secretary. The inaugural Secretary is Ambassador Liberata Mulamula, who is based with her staff in Bujumbura, Burundi. The Executive Secretary, appointed for a four-year term, is responsible for implementing the decisions of the governing bodies in the ICGLR structure, promoting the Pact and its instruments and organising the Conference follow-up process, including meetings of the Summit, the Inter-Ministerial Committee and other Conference structures and forums.

The role of the Conference Secretariat is to:

- ensure the implementation of Programme of Action, Projects and Protocols;
- coordinate and ensure the functioning of the Regional Follow-Up Mechanism;
- mobilise resources at the level of member states, development partners, the private sector and civil society;
- build and maintain partnerships (including with civil society);
- reinforce institutional capacities including staff development at regional and national levels and development of systems and procedures for effective implementation of the Pact; and
- ensure the visibility of the ICGLR among the population at national and international levels.

supported by the Regional Bureau of six countries, to begin the process of making the forum a reality. This regional civil society forum is intended to be replicated at the national level, through the creation of national civil society forums and the appointment of thematic chairs and coordinators charged with mobilising national civil society to engage with the Pact. This process will build on and expand current participation by NGOs and civil society organisations through the NCMs.

In addition to the Civil Society Forum, the Pact envisages similar forums for other non-state actors in the Pact process, including women's and youth groups and parliamentarians.

Building the Civil Society Forum

In order to advance the process, members of the Regional Coordinating Committee of the Civil Society Forum are seeking to register NGOs at the national level and are developing a plan of action. Civil society representatives who would like to be part of this development should contact their local member of the Coordinating Committee.

4.1.4 Other Regional Forums

The Programme of Action on Democracy and Good Governance foresees the creation of other regional forums, including the Regional Centre on Democracy, Good Governance and Human Rights (the Centre), which may be of particular assistance to groups advocating for respect and promotion of the rights of displaced people. The mission of the Centre, to be hosted by Zambia, is threefold:

- To strengthen capacities in various domains for democratic governance, through research and training;
- To facilitate political dialogue, through support for the organisation of consultative forums; and
- To create observatories. Initially four observatories are planned, on democracy and good governance, on the media, on gender and on civil society.

The Regional NGO Observatory will be tasked with the monitoring and observing of NGO activities in order to assist them with the promotion of democracy, good governance, human rights and civic education. It will also create NGO networks, provide training, monitor standards and compile an electronic NGO directory.

4.2 Achieving Observer Status with the Conference Process

NGOs and civil society organisations can gain observer status to the process; however, no guidelines for application had been put in place at the time of writing. Organisations are invited to send applications to the Conference Secretariat, or directly to the relevant National Coordination Mechanisms or the Regional Inter-Ministerial Committee.

4.3 The International Community

Since its formal endorsement by the UN Security Council in 2000,¹⁰⁴ the ICGLR has received strong support from the international community and the UN, both politically¹⁰⁵ and through the specialised agencies. As one of the two joint initiators of the IGCLR process, the AU shares responsibility for the implementation of the Pact and has nominated a special representative to the process. In December 2003 the broader international community also came together, at the invitation of the Government of Canada, to create the Group of Friends of the Great Lakes Region,¹⁰⁶ a body bringing together 28 countries and ten international organisations and specialised agencies with the objective of providing political, diplomatic, technical and financial assistance to the process.¹⁰⁷

5 Resources and the Special Fund for Reconstruction and Development

A vital element of the Conference process is the mobilisation of resources for the implementation of the policies and programmes agreed in the Pact. It is estimated, for example, that the priority projects alone require one billion dollars in funding. However, one of the Pact's underlying assumptions is that support for projects should be mobilised through a reprioritisation of existing funding streams and a more coordinated approach towards development in the region. Thus the resources for the bulk of the activities under the Pact should become available through a redirection of current funds rather than the creation of new funds. Each member state for example is expected to call a donor meeting and to indicate how the ICGLR priorities should be, or have already been, integrated in bilateral or multilateral programmes. At the same time, donors are encouraged to take into account both the

Pact's priorities and the need for a coordinated regional approach. Thus if funding is secured in one country to implement the IDP Protocol, other member states should be encouraged, and enabled, to implement similar projects.

Against this background the Pact has also created a fund to support its implementation, the Special Fund for Reconstruction and Development (the SFRD) of the Great Lakes Region. The SFRD embodies the Pact's political aim of harnessing resources for collective development, with the ultimate objective of enhancing regional security and stability. It is designed to be accessed by all the Pact's partners including civil society. Member states have already started to contribute to this Fund, which will be hosted by the African Development Bank.

6 The Way Forward – Challenges, Opportunities and Ideas for Action

The Pact, its protocols, programmes and institutions are unprecedented in their potential to secure peace and security in the Great Lakes region. The Pact is an important tool for the protection of the rights of refugees and IDPs, and should help prevent new displacement in the region. However, it is a complex instrument, and a wide range of regional actors will need to collaborate for it to be effective.

6.1 Ideas for Action

The Pact, its principles and norms, and the vast amount of research and analysis reflected in its Programmes of Action, together form a rich source of ideas for action for organisations in the region, including civil society. In particular, there is significant scope for civil society to monitor commitments made by the Pact's member states, and advocate to ensure that these obligations are translated into national law and policy.

The Pact process itself is also a basis for regional collaboration. The regional bodies established under the Pact will present opportunities to build ties across the region and work towards common goals and platform for English-, French- and Portuguese-speaking activists in the region to share experiences.

Ideas for action by civil society include:

- Public awareness raising;
- Legislative advocacy around ratification of the Pact and adoption of implementing legislation;
- Contributing to implementing and monitoring projects within the Programme of Action; and
- Applying the Pact in ongoing efforts to resolve refugee and IDP crises.

6.2 Public Awareness Raising

Raising public awareness of the Pact is a challenge. It is difficult to communicate the Pact's vast scope and potential. This is particularly true for some of the marginalised groups who stand to benefit most from the Pact, including displaced people, who often lack access to information. Civil society organisations can contribute to a wider understanding of the Pact's significance for refugees and IDPs by:

- Publishing leaflets in appropriate languages with basic information on the elements of the Pact that are most relevant to displaced people, including the IDP Protocol and the Property Protocol;
- Convening workshops for key stakeholders;
- Lobbying in diplomatic circles, and with relevant international NGOs, to ensure that they use their influence for the implementation of the Pact's provisions on displaced people;
- Hosting debates for journalists, and working with the media to generate discussion on the Pact;
- Writing letters to the editor and commentaries in newspapers; and
- Assisting members of parliament in formulating questions to be debated in parliament on the Pact's provisions on displaced people.

6.3 Advocacy for the Adoption of Implementing Legislation

One of the first steps in making the promise of the Great Lakes Pact a reality is ensuring that, where necessary, national parliaments enact legislation to implement its various elements. In most countries in the region national legislation will be required, for example, to implement the IDP Protocol.

At the national level, NGOs and civil society organisations could, as a starting point, conduct an analysis of existing legislation to identify which obligations to protect refugee and IDP rights under the Pact are not addressed by existing laws and thus require new legislation. Civil society legal advisory groups could draft country-specific model legislation, drawing on the models developed during the negotiation of the Protocols in the Pact’s humanitarian and social pillar. In the course of this process, civil society organisations could play a role by, for example, organising workshops for parliamentarians, drafting briefing papers to inform legislators, and proposing amendments to bills under consideration by parliament.

At the regional level, there is significant scope for civil society organisations to collaborate. Where one or more member states have already adopted implementing legislation, it may become easier to push for change in the remaining member states, and civil society organisations can learn from legislative campaigns in other member states to generate momentum in their own country. Comparative analysis of the strengths and weaknesses of legislation adopted by other countries in the region may help to shape more effective legislation in the remaining member states. Civil society organisations can also work with regional mechanisms independent of the ICGLR process, such as the AMANI Great Lakes Forum (a regional network of parliamentarians committed to peace).

6.3.1 Example: Implementation of the IDP Protocol

The IDP Protocol provides that “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.”¹⁰⁸ To date, countries in Africa have followed a variety of models for reinforcing IDP rights:

- Laws incorporating an international instrument in its entirety. Liberia’s Instrument of Adoption (2004), for example, incorporates the UN Guiding Principles on Internal Displacement into national law;
- Comprehensive IDP policies. The Ugandan IDP Policy (2004), for example, is a comprehensive policy addressing all stages of internal displacement;

- A law addressing a specific stage of displacement. Angola’s Norms for Resettlement of Displaced Populations is an example of such a mechanism.

Under the Pact, member states must give legal effect to the Guiding Principles; non-binding IDP policy documents do not suffice to discharge member states’ obligations under the Pact’s IDP Protocol. The model legislation was developed alongside the Protocol and can be used to guide implementation of the Protocol into national legislation in each of the member states, with appropriate adaptations for each country-specific context.

In general terms, some of the key issues for consideration in developing IDP legislation are:

- The definition of “internally displaced persons”;
- How to identify IDPs for the purposes of providing benefits and registration;
- Institutional responsibilities for implementing and monitoring the law; and
- Inclusion of consultation and participation mechanisms for IDPs.¹⁰⁹

In addition to the legislation to incorporate the Guiding Principles into national law, existing laws may need to be revised in order to guarantee IDPs’ rights. Guaranteeing IDPs’ right to vote, for example, may require amendment of legislation regarding voter registration.

Civil society organisations have a role to play in ensuring that, in each member state, institutional responsibilities for implementing and monitoring IDP legislation are clearly identified. Member states could be encouraged to designate an IDP focal point within government, or to ensure that all IDP issues are coordinated by one ministry. It will also be important for NGOs to monitor how the IDP participation rights enshrined in Article 6 of the IDP Protocol are integrated into these institutional frameworks.

Further issues which might be considered, but which are often missing from laws and policies on internally displacement, are measures for addressing the long-term sustainability of return and resettlement

programmes; provisions for supporting host communities and families, who often bear a large burden in assisting IDPs; and means for combating discrimination against IDPs.

6.3.2 Example: Implementation of the Property Protocol

Due to the sensitive nature of issues relating to land and property, the Property Protocol was one of the most difficult documents to negotiate during discussions on the Pact. As a result, the Protocol provides little guidance in relation to a range of complex issues, which will nevertheless need to be addressed in the process of implementing its provisions in national law. These include:

- **Forms of tenure:** In the Great Lakes region a substantial amount of land is administered through traditional authorities or customary land tenure systems. In DRC, for example, land is owned formally by the state and, outside towns and cities, is managed by means of customary law. While the Property Protocol provides for the recognition of customary land rights, it does not provide specific guidance on how to manage the relationship between customary and statutory law. How might the extension of formal recognition to customary tenure afforded by the Property Protocol transform traditional arrangements?
- **Dispute resolution mechanisms:** In relation to resolving property disputes, the Property Protocol recognises the roles of both local authorities and traditional authorities who typically play a part in resolving conflicts involving land under customary tenure. The Protocol thus gives welcome recognition to alternative and more locally relevant dispute resolution mechanisms for those in mainly rural areas who may have limited access to formal courts. However, the relationship of these authorities to formal courts and the standards which they must apply will need to be clarified in each national context.
- **Statutes of limitation:** How long do displaced people have to make claims for restitution or compensation for their land or property? The Protocol provides that statutes of limitation “shall, where applicable, be without prejudice to the provisions of this Protocol.”¹¹⁰ Thus the Protocol aims to protect displaced people

from being arbitrarily denied the right to restitution or compensation, in line with the Pinheiro Principles (discussed in Section 2.4). The Pinheiro Principles suggest that statutes of limitation should not be arbitrary or discriminatory.¹¹¹ Moreover, failure to return may not prejudice restitution.¹¹² In member states where displaced people would ordinarily be time-barred from submitting claims for restitution or compensation, special provision may need to be made to take account of their displacement.

- **Secondary possession:** Related to the long absence of many displaced people is the complex question of how to reconcile the rights of displaced people with those of people who have taken possession of their land or property. What basic principles should guide the resolution of disputes between displaced claimants and subsequent occupants? Whose rights have priority and under what circumstances?¹¹³ In the process of implementing the Property Protocol, criteria for making these determinations need to be defined.

The Property Protocol provides that “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.”¹¹⁴ NGOs and civil society organisations could contribute to addressing these and other challenges by working with the sub-committee of experts and the relevant authorities in each member state. Moreover, in many return situations, displaced people will have limited information about mechanisms for seeking restitution or compensation, which may in itself form an additional barrier to return. Concerted outreach and information programmes, as well as the provision of legal aid, may help to fill this gap.

6.4 Monitoring Projects within the Programme of Action

The Pact’s member states have the primary responsibility for the implementation of the Programme of Action. However, civil society has an important role to play in monitoring the implementation of the Programme of Action for its direct and indirect impact on displaced

populations in the region. In particular, a number of projects in the Peace and Security Pillar have the potential to disproportionately impact refugee and IDP communities (both negatively and positively, depending on the manner of their implementation) through activities from disarmament and repatriation efforts to joint management and strengthening of border security along shared borders.

6.5 Using the Pact to Resolve Refugee and IDP Crises

The gatherings of regional government representatives which occur as part of the ICGLR follow-up mechanism, from Inter-Ministerial Meetings to the Summit, represent important opportunities for civil society organisations to highlight new and ongoing crisis situations in the Great Lakes region. The extraordinary summit and inter-ministerial meeting mechanisms offer particular opportunities to encourage timely regional responses to displacement situations.

NGOs and civil society organisations could aid this process by conducting assessments of emerging or ongoing crises, as suggested in the Programme of Action, either in coalition with other NGOs and civil

society organisations from across the region, or jointly with the mechanisms of the ICGLR.

Similarly, NGOs and civil society organisations have an important role to play in ensuring that the Pact's national and regional bodies, such as the Regional Centre on Human Rights and Good Governance and the Conference Secretariat itself, have accurate and up-to-date information on ongoing refugee and IDP crises and violations of the provisions of the Pact. To this end, civil society organisations could set up programmes to monitor and document violations of the rights of displaced people which are directly addressed by the Pact and its Protocols, for example in relation to the property rights of returning IDPs and refugees, or the rights of people who are displaced by large-scale development projects.

NGOs and civil society organisations could also develop a programme of strategic litigation using national, regional and international human rights mechanisms.¹¹⁵ For example, documenting the experience of returnees with regard to property restitution might feed into national litigation with reference to the Property Protocol. If avenues for redress have been exhausted at the national level and no remedy has been obtained, a case could for example be brought before the African Commission on Human and Peoples' Rights.¹¹⁶

Appendices

All documents adopted by the International Conference on the Great Lakes Region are available at www.icglr.org/F_END/docLib.asp and at www.lse.ac.uk/collections/law/projects/greatlakes/ihl-greatlakes.htm

Appendix 1: Core ICGLR Documents

The Dar-es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region

The Pact on Security, Stability and Development in the Great Lakes Region

Peace and Security Pillar

- I. Regional Programme of Action for Peace and Security
 - a. Sub-Programme of Action for Joint Security Management of Common Borders
 - i. Joint Security Management of Common Borders (General Project Concept)
 - ii. Disarmament and Repatriation of All Armed Groups in Eastern DRC
 - iii. Disarmament of Armed Nomadic Pastoralists and the Promotion of Sustainable Development in Zone 3
 - iv. Development of Border Zones and Promotion of Human Security
 - v. Demining and Mine Action in the Great Lakes Region
 - b. Sub-Programme of Action for Promotion of Inter-State Cooperation on Peace and Security
 - i. Coordination of Activities and Reinforcement of Capacities in the Sub-Region to Fight the Illicit Proliferation of Small Arms and Light Weapons
 - ii. Fighting Transnational Crime and Terrorism
- II. Protocol on Non-Aggression and Mutual Defence in the Great Lakes Region

Democracy and Good Governance Pillar

- I. Regional Programme of Action for the promotion of Democracy and Good Governance.
 - a. Regional Centre on Democracy, Good Governance, Human Rights and Civic Education
 - b. Regional Initiative for the Prevention and the Curbing of War Crimes, Crimes Against Humanity, Crime Against Genocide, and for the Fight Against Impunity in the Great Lakes Region
 - c. Regional Initiative Against Illegal Exploitation of Natural Resources
 - d. Establishment of a Regional Information and Communication Council
- II. Protocols
 - a. Protocol Against the Illegal Exploitation of Natural Resources
 - b. Protocol on Democracy and Good Governance
 - c. Protocol on Judicial Cooperation
 - d. Protocol on Management of Information and Communication
 - e. Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes Against Humanity and all forms of Discrimination

Economic Development and Regional Integration Pillar

- I. Regional Programme of Action: Economic Development and Regional Integration
 - a. Sub-Programme of Action on Cooperation in Poverty Reduction
 - i. Establishment of a Regional Micro-Finance Support Facility

- ii. Transborder Development Basins (TDBs)
 - iii. Regional Project on Food Security
 - b. Sub-Programme of Action on Harmonisation and Strengthening of Regional Cooperation Policies
 - i. Revival of the Economic Community of the Great Lakes Countries and its Specialized Institutions (GLE1, SINELAC2, IRAZ 3ET BDGLE4)
 - ii. Regional Mechanism for Certification of Natural Resources Proposal
 - c. Sub-Programme of Action on Infrastructure Development
 - i. Northern Corridor: Programme for Improving Transport Infrastructure and Facilities
 - ii. Trans-African Highway: Mombasa – Lagos
 - iii. Lobito Corridor Project (Prefeasibility Study)
 - iv. Southern Corridor (Great Lakes Region Railway) Project Prefeasibility Study – Terms of Reference
 - v. Pre-feasibility Study on the Northern Corridor Railway Extension
 - vi. Feasibility Study on the Rehabilitation and Navigability of the Congo River Basin
 - vii. Rehabilitation and Connectivity of INGA Dam
 - viii. Feasibility Study on the Regional Oil Pipeline
 - ix. Methane Gas Project (Kivu Regional Pipeline Project) Feasibility Study
 - x. East African Submarine Cable System Project (EASSy)
- II. Protocol on the Specific Reconstruction and Development Zone (SRDZ)

Humanitarian and Social Issues Pillar

- I. Programme of Action on Humanitarian and Social Issues: Framework for Durable Solutions to the Humanitarian, Social and Environmental Issues in the Great Lakes Region
- a. Sub-Programme of Action on a Framework for Disaster Preparedness, Protection and Assistance to IDPS and their Environment
 - i. Compliance with International and Regional Instruments on Human Rights, International Humanitarian Law, Issuance of Identity Documents to Internally Displaced Persons and Refugees, and Stateless Persons
 - ii. Protection, Assistance and Search for Durable Solutions for Displaced Populations (Refugees and IDPS) and Communities that Host Them
 - iii. Legal Framework on Issues Related to the Recovery of Land and Properties by Returning Refugees and IDPS
 - iv. Environmental Assessment and Restoration and Rehabilitation of Human Settlements, Particularly in and around Refugee/IDP Camps and Settlements
 - b. Sub-Programme of Action on the Resumption of Basic Social Services, Provision of Health Care and Psychosocial Support to Groups with Special Needs
 - i. Fight against HIV/AIDS, Sexually Transmitted Infections (STIS), Tuberculosis and Malaria in the Great Lakes Region
 - ii. Prevention and Fight against Sexual Exploitation, Abuse and Gender-Based Violence and Assistance to the Victims
 - iii. Promotion of the Use of Kiswahili as a Working Language in the Great Lakes Region
- II. Protocols:
- a. Protocol on the Protection and Assistance to Internally Displaced Persons
 - b. Protocol on the Property Rights of Returning Persons
 - c. Protocol on the Prevention and Suppression of Sexual Violence against Women and Children

Appendix 2: Workshop Participants

“Enhancing Protection Of Displaced Populations: Translating The Great Lakes Peace Pact Into Action”

Nairobi, Kenya

23 – 25 April 2007

ANGOLA

- Cooperação de Familias Para o Desenvolvimento (COFAD)
- Norwegian Refugee Council (NRC), www.nrc.no

BURUNDI

- Collectif des Associations Féminines et O.N.G du Burundi (CAFOB)
- Great Lakes Secretariat, www.icglr.org
- Ligue Burundaise des Droits de l’Homme (ITEKA)
- Norwegian Refugee Council (NRC), www.nrc.no
- Observatoire de l’Action Gouvernementale (OAG)

CENTRAL AFRICAN REPUBLIC

- Ligue Centrafricaine des Droits de l’Homme (LCDH)
- Observatoire Centrafricain des Droits de l’Homme (OCDH)

COLOMBIA

- Colombian Commission of Jurists / Comisión Colombiana de Juristas, www.coljuristas.org

DEMOCRATIC REPUBLIC OF THE CONGO

- Aide et Action Pour la Paix
- Centre de Recherche sur l’Environnement, la Démocratie et les Droits de l’Homme (CREDDHO)/ Research Centre on Environment, Democracy and Human Rights
- Norwegian Refugee Council (NRC), www.nrc.no

KENYA

- Amani Forum, www.amaniforum.org
- CARE, www.care.org
- Centre for Human Rights, www.centreforhumanrights.org
- Centre for Refugee Studies, Moi University, www.mu.ac.ke
- IDPs Network Kenya
- Fellowship of Christian Councils and Churches in the Great Lakes and the Horn of Africa (FECCLAHA)
- Kenya Human Rights Commission (KHRC), www.khrc.or.ke
- Kenya National Commission on Human Rights (KNCHR), www.knchr.org
- OCHA Kenya
- OCHA, Regional Support Office for Central and East Africa
- Refugee Consortium of Kenya, www.rckkenya.org

- Refugee Consortium of Kenya (RCK), www.rckkenya.org
- UNFPA, www.unfpa.org
- UNHCR Kenya
- UNICEF Kenya

NORWAY

- Norwegian Refugee Council, www.nrc.no

REPUBLIC OF THE CONGO

- Observatoire Congolais des Droits de l'Homme (OCDH)

RWANDA

- Jesuit Refugee Service (JRS), www.jrs.net

SUDAN

- Norwegian Refugee Council (NRC)
- South Sudan Law Society (SSLS)
- Sudan Social Development Organisation (SUDO)

SWITZERLAND

- Internal Displacement Monitoring Centre, Norwegian Refugee Council, www.internal-displacement.org

TANZANIA

- Centre for the Study of Forced Migration (CSFM), University of Dar es Salaam
- Commissioner Bahame Tom Nyanduga, Special Rapporteur on Refugees and Displaced Persons in Africa
- African Commission on Human and Peoples' Rights (ACHPR), www.achpr.org

UGANDA

- Gulu District NGO Forum, www.humanrightsuganda.org
- Human Rights Focus (HURIFO), www.hurifo.org
- International Refugee Rights Initiative (IRRI), www.refugee-rights.org
- Norwegian Refugee Council, www.nrc.no
- Refugee Law Project, www.refugeelawproject.org

UNITED STATES

- Brookings-Bern Project on Internal Displacement, www.brookings.edu/idp

ZAMBIA

- Africa Internally Displaced Persons Voice and Great Lakes Region CSO Forum, www.africaidp.org

Endnotes

- 1 Refugee figures based on UNHCR's most recent Global Report for 2007, available at www.unhcr.org/gr07/index.html. IDP figures are based on the most recent estimates available to the IDMC, as of June 2008.
- 2 See International Conference on the Great Lakes website, at www.icglr.org/F_END/about.asp.
- 3 The protocols developed under the other pillars of the Pact may also have an impact on the displaced, and will be addressed in a more detailed analysis of the instruments of the Pact forthcoming from the International Refugee Rights Initiative.
- 4 Representatives of more than 20 civil society organisations and international organisations from across the region attended the workshop to discuss ways to utilise the International Conference on the Great Lakes Region to enhance the protection of refugees and IDPs. A list of participating organisations in the workshop can be found in Appendix II. For further information on the workshop, including a full list of all workshop participants, see www.internal-displacement.org/greatlakes.
- 5 International Panel of Eminent Personalities, Rwanda: The Preventable Genocide, Paragraph 20.80, available at www.africa-union.org/Official_documents/reports/Report_rowanda_genocide.pdf.
- 6 International Conference on Peace, Security, Democracy and Development in the Great Lakes Region: A Concept Paper (available from the Secretariat of the International Conference on the Great Lakes Region).
- 7 Botswana, Egypt, Malawi, Mozambique, Namibia and Zimbabwe are also part of the process as co-opted countries.
- 8 Available at www.icglr.org/common/docs/docs_repository/declarationdar-es-salaam.pdf.
- 9 The full text of the Pact, and all the Protocols are available at www.lse.ac.uk/collections/law/projects/greatlakes/ihl-greatlakes.htm or www.icglr.org/F_END/about.asp.
- 10 Preamble, Pact on Security, Stability and Development in the Great Lakes Region.
- 11 Additional projects were formulated, but implementation has been postponed in order to focus resources on priority projects.
- 12 Pact on Security, Stability and Development in the Great Lakes Region, Article 3(1).
- 13 Ibid, Article 31.
- 14 The integrated approach is underscored by the high threshold set for both the entry into force (which required the ratification of the Pact by eight out of 11 member states) and the agreement of future amendments to the Pact (which again requires the assent of eight of the 11), emphasising the need for a high degree of cooperation amongst regional actors. See Pact on Security, Stability and Development in the Great Lakes Region, Article 33 and 34.
- 15 As of June 2008, the Pact had been ratified by Burundi, the Central African Republic, the Democratic Republic of Congo, Kenya, Republic of Congo, Rwanda, Tanzania and Uganda.
- 16 Dar es Salaam Declaration at paras 57 and 58.
- 17 Ibid, at paras. 59 and 60.
- 18 Ibid, at para 61.
- 19 Ibid, at para 69.
- 20 Ibid, at para 68.
- 21 Ibid.
- 22 Ibid, at para 27.
- 23 Ibid, at para 62.
- 24 See IDP Protocol, Article 2. The Protocol is part of a broader effort to develop legal frameworks on displacement in Africa as a whole, notably through the development of an African Union Convention on the Internally Displaced. See Chaloka Beyani, "The Elaboration of a Legal Framework for the Protection of Internally Displacement in Africa," *Journal of African Law*, 50, 2 (2006), 187-197.
- 25 Available at www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html.
- 26 The Protocol specifically stipulates that states accept the use of the Annotations on the Guiding Principles on Internal Displacement as "an authoritative source for interpreting the application of the Guiding Principles" (Article 6(2)). The Annotations, published by the Brookings-Bern Project on Internal Displacement and the American Society of International Law (June 2000), were prepared to clarify and explain the key legal aspects of the Guiding Principles and set forth in detail the regional and international instruments upon which each Principle is based. The Annotations are available at: www.brookings.edu/projects/idp_gp_page.aspx#Annotations.
- 27 IDP Protocol, Article 4(1)(a).

- 28 The Brookings-Bern Project on Internal Displacement maintains a database of these laws and policies, available at: www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx.
- 29 The Guiding Principles must be respected by “all authorities, groups and persons irrespective of their legal status,” (Principle 2(1)), which means that non-state actors, for example rebel groups in de facto control of a certain area, are called upon to respect the Guiding Principles on the same basis as states and state actors.
- 30 Ibid, art. 6(3).
- 31 Article 6(4)(c). The development of an effective framework for implementation depends on a complex web of institutions which are each responsible for aspects of the protection of, and assistance to IDPs. This will differ from country to country but will generally include authorities at the district, regional and central levels, specialist ministries dealing with rehabilitation and reconstruction, as well as ministries dealing with issues such as health, housing, elections, and education. National human rights institutions also have an important role in the implementation and monitoring of IDP laws and policies. See the Brookings-Bern Project on Internal Displacement, “A National Responsibility for Situations of Internal Displacement”, May 2005, available at www.brookings.edu/projects/idp/20050401_nrfamework.aspx, for additional information on elaborating national frameworks.
- 32 IDP Protocol, art. 6(5).
- 33 Ibid, art. 3(10). Principle 25 of the Guiding Principles refers to “the right” of international humanitarian organisations and other appropriate actors to “offer their services in support of the internally displaced”.
- 34 IDP Protocol, art. 6(4)(d).
- 35 Ibid, art. 3(8).
- 36 Ibid, art. 5.
- 37 Ibid, art. 5(1).
- 38 Additional sources of guidance with regard to the obligations of states in such circumstances can be found in the World Bank’s Operational Manual in the section on involuntary resettlement, available at wbi0018.worldbank.org/Institutional/Manuals/OpManual.nsf/toc2/CA2D01A4D1BDF58085256B19008197F6?OpenDocument and “Basic Principles and Guidelines on Development-based Evictions and Displacement”, developed by Special Rapporteur Miloon Kothari, August 2007, available at campaign.hic-net.org/eng_newsdetail.asp?PID=378.
- 39 IDP Protocol, art. 5(5).
- 40 Ibid, art. 5(3).
- 41 Guiding Principles 18(3) (on an adequate standard of living) and 25(3) (referring to education) call on authorities to make special efforts to involve women in the planning of basic services. Principle 28(2) calls for involvement of the internally displaced in return and resettlement.
- 42 IDP Protocol, art. 6(5).
- 43 Ibid, art. 5(6).
- 44 For a more detailed discussion of the Ugandan IDP Policy, see the Internal Displacement Monitoring Centre and the Refugee Law Project, “Only Peace Can Restore the Confidence of the Displaced”, March 2006. On Angola, see Human Rights Watch, “The War is Over: The Crisis of Angola’s Internally Displaced Continues”, 2002.
- 45 IDP Protocol, art. 4(1)(e).
- 46 Ibid, art. 3(9).
- 47 Ibid, art. 4(1)(f).
- 48 Ensuring security in situations of displacement raises complex legal and practical questions. Human Rights First has conducted an extensive study on law and policy on this issue in Africa. See Human Rights First, “Refugees, Rebels and the Quest for Justice”, 2002.
- 49 Dar es Salaam Declaration, at para 63.
- 50 Brookings-Bern Project on Internal Displacement and the American Society of International Law, “Annotations on the Guiding Principles on Internal Displacement”, 2nd revised edition, 2008 p.5, available at www.asil.org/pdfs/stlp.pdf; and Jessica Wyndham, “Translating the Great Lakes Protocol on internal displacement into domestic law: challenges and opportunities”, April 2007, presentation made at the IDMC/IRRI workshop (see footnote 4).
- 51 This approach is based on the argument that the IDP definition is contained in the Introduction to the Guiding Principles, rather than the operative paragraphs. See Brookings-Bern Project on Internal Displacement and the American Society of International Law, “Annotations on the Guiding Principles on Internal Displacement”, 2nd revised edition, 2008, pp.4-5, available at www.asil.org/pdfs/stlp.pdf.
- 52 IDP Protocol, art. 3(4). See the Inter-Agency Standing Committee’s Guidance on “Profiling Internally Displaced Persons” (available at www.internal-displacement.org/profiling). The Guidance gives the following caution, “IDPs

- are citizens or residents of the country and need not “apply” for any special status to be entitled to fundamental rights and protections. As such, the reasons why there needs to be a registration must be clearly defined before any registration exercise” (p. 24).
- 53 Guiding Principles, Principle 20.
- 54 IDPs can also be foreign national residents; such persons may of course be subject to greater restrictions on their freedom of movement than IDPs who are citizens.
- 55 Guiding Principles, Principle 14(1).
- 56 See Article 12 of the International Covenant on Civil and Political Rights, and Article 12 of the African Charter on Human Rights.
- 57 With respect to refugees, many African states have expressly reserved the right to designate places of residence, either generally, or on grounds of national security, public order, or the public interest. In terms of restrictions on the right to freedom of movement for citizens, it is only Botswana which has made a reservation to Article 12 of the ICCPR, to the extent that “the provisions are compatible with Section 14 of the Constitution of the Republic of Botswana relating to the imposition of restrictions reasonably required in certain exceptional instances”.
- 58 IDP Protocol, art. 4(1)(h).
- 59 Ibid, art. 4(1)(j).
- 60 See Chaloka Beyani, “The Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa”, *Journal of African Law*, 50, 2 (2006), pp. 187-197.
- 61 This has, for example, been a particularly relevant issue in the context of Burundi, where access to land forms a significant barrier to return, particularly for 1972 refugees. See International Crisis Group, “Réfugiés et Déplacés au Burundi: Désamorcer la Bombe Foncière”, 7 October 2003.
- 62 Principle 21 of the Guiding Principles on Internal Displacement provides for the protection of property rights of IDPs, specifying that IDPs have the right to be protected from arbitrary deprivation of their property and possessions. In addition, the Guiding Principles provide that the property left behind by the displaced should be protected against arbitrary or illegal appropriation, occupation or use.
- 63 It is important to note that although property rights in situations of displacement have not previously been addressed specifically, property rights generally are well established in international and regional law, for example through the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All forms of Discrimination Against Women, the Convention on the Rights of the Child, the African Charter on Human and Peoples’ Rights, the Protocol to the African Charter on the Rights of Women in Africa, and the African Charter on the Rights and Welfare of the Child. In addition, the African Commission on Human and Peoples Rights has applied the rights under the Charter to refugees in *Malawi African Association and Others v. Mauritania*, African Commission on Human and Peoples’ Rights, Comm. Nos. 54/91, 61/91, 98/93, 164/97 to 196/97 and 210/98 (2000), available at www1.umn.edu/humanrts/africa/comcases/54-91.html.
- 64 Property Protocol, Article 3(4).
- 65 Guiding Principles, Principle 29 (2). The Guiding Principles use the phrase “resettlement” for both local integration and resettlement in a new area.
- 66 Article 4(3)(c).
- 67 Property Protocol, art. 4(3)(d).
- 68 Ibid, art. 4(5).
- 69 Ibid, art. 4(6).
- 70 Ibid, art. 8(1).
- 71 Ibid, art. 8(2).
- 72 Ibid, art 8(3).
- 73 See Jeanette Lee Clover, “Framing Issues of Environmental Land Security in Angola and Mozambique”, www.oxfam.org.uk/resources/learning/landrights/downloads/land_livelihoods_postconflict_ang_and_moz.pdf. It is important to note, however, that custom is not always discriminatory. In the traditional land tenure system of the Fur and other groups in Darfur, for example, women have tenure of land in their own right.
- 74 Property Protocol, art. 5(1).
- 75 Ibid, art. 5(3). It is worth noting that this provision, although focussed on addressing the protection of the rights of forcibly displaced women, has the potential to enhance the protection available to all women with respect to the registration and recognition of land title. Elsewhere the Property Protocol also reinforces the general principles

relating to the protection of property rights, guaranteeing such rights to “all persons” and “everyone”, including the principles of equal protection and non-discrimination (Article 3(1)).

- 76 Property Protocol, art. 5(4).
- 77 Ibid, article 3(1)(e) and (f). The Pinheiro Principles do not contain a separate section on the rights of children, but they do acknowledge that children should have access to restitution mechanisms and that any decisions taken regarding them should be in conformity with the “best interests of the child” principle.
- 78 Property Protocol, art. 6(1)(f).
- 79 Guiding Principles, Principle 9.
- 80 Property Protocol, art. 7(2).
- 81 Ibid, art. 7(3).
- 82 Model legislation, s. 6.
- 83 Ibid, s.8(i).
- 84 The Protocol makes no reference to sexual violence against adult males, despite the fact that men too can be vulnerable to sexual violence in the region. Acts of sexual violence against male children does, however, come under the remit of the Protocol.
- 85 Sexual Violence Protocol, art. 3(1).
- 86 Ibid, art. 3(2).
- 87 Ibid, art 1(2)(g) and Rome Statute of the International Criminal Court, art 7(1)(g).
- 88 Sexual Violence Protocol, art. 6(6).
- 89 Ibid, art. 5(1).
- 90 Ibid, art. 6(1)-(3).
- 91 Ibid, art. 6(4).
- 92 Ibid, art 6(5).
- 93 Ibid, art 6(9).
- 94 Ibid, art. 6(7).
- 95 Ibid, art. 6(6); emphasis added.
- 96 Ibid, art. 6(8); emphasis added. The reference in this provision is to the Special Fund for Reconstruction and Development which has been set up under the Pact (see Chapter 5 below). While the creation of such a function for the SFRD is to be encouraged, it must be acknowledged that the SFRD is expected to support a wide range of activities under the Pact, including large-scale development projects. There is therefore real doubt as to the feasibility of relying on the SFRD for this purpose.
- 97 Model Legislation on the Prevention and Suppression of Sexual Violence against Women and Children, ss. 5-7.
- 98 These 33 projects were selected during the negotiations on the Pact from a total of 86 projects. As the Conference unfolds additional projects within the scope of the Pact’s objectives may be undertaken.
- 99 The Conference Secretariat is the technical and coordination arm of the International Conference on the Great Lakes Region and is based in Bujumbura. See the text box in Section 4.1 for more information.
- 100 The full details of each of the projects and programmes are available online at www.lse.ac.uk/collections/law/projects/greatlakes/ihl-greatlakes.htm.
- 101 Property Protocol, art. 9.
- 102 Within the Great Lakes region national human rights commission have been formed in Angola, the Democratic Republic of Congo, Kenya, Rwanda, Tanzania, Uganda, and Zambia. For contact details, see the website of the National Human Rights Institutions Forum: www.nhri.net.
- 103 Extraordinary sessions of the Summit may be convened at the request of one Member State with the consent of the qualified majority of eight of the majority of the ratifying Member States present and voting (Pact, art. 23(2)).
- 104 See, inter alia, UN Security Council Resolution 1291, 24 February 2000, and UN Security Council Resolution 1304, 16 June 2004.
- 105 In UN Security Council Resolution 1653, for example, the Council recognised the continued ownership of the ICGLR process by Great Lakes states and encouraged other states, supported by the UN, AU and the Group of Friends, to continue their collective efforts to ensure peace and security in the region. UNSC Resolution 1653, 27 January 2006.
- 106 The Group of Friends include: Austria, Belgium, Canada, China, Denmark, the European Union, Finland, France, Gabon, Germany, Greece, the Holy See, Ireland, Italy, Japan, Kuwait, Luxembourg, the Netherlands, Nigeria,

Norway, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, the United Kingdom, the United States of America. The body is co-chaired by Canada and the Netherlands.

- 107 See Report of the Co-Chairs, 1st meeting of the Group of Friends of the Great Lakes, 4 December 2003, at www.icglr.org/common/docs/docs_repository/gofreport_dec2003.pdf.
- 108 IDP Protocol, art. 6(3).
- 109 See Jessica Wyndham, "Translating the Great Lakes Protocol on internal displacement into domestic law: challenges and opportunities", April 2007 (see footnote 4); and Wyndham, "A Developing Trend: Laws and Policies on Internal Displacement", in Human Rights Brief (Winter 2006), available at www.brookings.edu.
- 110 Property Protocol, Article 3(5).
- 111 Pinheiro Principles, Principle 19.
- 112 Ibid, Principle 2.2.
- 113 One source of additional guidance on addressing these issues is: FAO, IDMC, OCHA, OHCHR, UN-Habitat, UNHCR, "Housing and Property Restitution for Refugees and Displaced Persons: Implementing the Pinheiro Principles", March 2007, p. 27, available at www.internal-displacement.org.
- 114 Property Protocol, art. 9(1).
- 115 Some of the Protocols explicitly refer to rights under other instruments. For example the Property Protocol provides that the basis for the legal protection of displaced people's property rights shall be, inter alia, the guarantee of the right to property under the African Charter on Human and Peoples' Rights (Property Protocol, art. 3(1)(a)).
- 116 For more information about bringing cases before the African Commission on Human and Peoples' Rights, see Chaloka Beyani, "A Guide to the Use of the African Human Rights System in the Protection of Refugees", 2006, available from the International Refugee Rights Initiative.