

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

Rev. 2

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

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

ARRANGEMENT OF SECTIONS

Section

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Schedule 1

Schedule 2

Title

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

Definitions

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

- (1) “Committee” means the Committee on the Protection and Assistance of Internally Displaced Persons referred to in S.5 and S.6 of this Act;
- (2) “Humanitarian personnel” shall mean the humanitarian personnel referred to in S. 4(6)(7) of this Act;
- (3) “Internally Displaced Person” shall mean ‘persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border’;
- (4) “Internally Displaced Persons” shall also mean ‘persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of large scale development projects, and who have not crossed an internationally recognized State border’;
- (5) “Minister” shall mean the Minister in charge of internally displaced persons as referred to in S.4 of this Act;
- (6) “Private Sector” shall mean the private sector referred to in S. 3(5), inclusive of private actors referred to in S.3(3) of this Act.
- (7) “Public interests” in S.3(4)(5) of this Act shall be construed, in reference to large-scale development projects, the development interests of, and for the benefit of, the people of the Republic as whole, including persons displaced by such projects;
- (8) “Senior public official” shall mean a Senior public official referred to in S.4(5) of this Act;
- (9) “United Nations Agencies” shall mean the United Nations High Commissioner for Refugees and mandated Agencies, Funds, Offices and Programmes of the United Nations, referred to in S. 6(4)(a)-(b) of this Act;
- (10) “Civil society” shall mean national and international non-governmental organisations referred to in S.6(5) of this Act;

(11) “Protocol” shall mean the Draft Protocol on Protection and Assistance to Internally Displaced Persons referred to in S.3(1) and which shall be applicable in the Republic and which is set out in Schedule 1 to this Act; and

(12) “Guiding Principles” shall mean the Guiding Principles on Internal Displacement referred to in Article 1(3) of the Protocol and which shall be applicable in the Republic and set out in Schedule 2 to this Act.

Legal Effect

S.3 Subject to the provisions of this Act-

(1) The Protocol and the Guiding Principles annexed thereto shall have legal effect and shall be implemented within, and throughout, the Republic.

(2) Without prejudice to all existing laws, the Protocol and the Guiding Principles shall apply to the treatment, human rights, protection, and assistance of all internally displaced persons in the Republic.

(3) Notwithstanding that it is the primary duty and responsibility of the Minister to provide protection and assistance to internally displaced persons under S.4 (1) of this Act, all public officials, bodies or persons, public or private actors concerned with protecting and assisting internally displaced persons in the Republic shall act in accordance with the Protocol and the Guiding Principles.

(4) The arbitrary displacement of persons is prohibited under this Act. No person or persons shall be displaced by virtue of large- scale development projects which are not justified by compelling and overriding public interests in accordance with the provisions of Article 5 of the Draft Protocol, read together with Principles 6 and 7 the Guiding Principles in particular.

(5) Public and private sectors engaged in large-scale development projects which are justified by compelling and overriding public interests shall bear the costs for relocating and/or compensating persons displaced by such projects.

(6) A person shall be guilty of a criminal offence under this Act if, with intent, such a person-

- a. Causes the arbitrary displacement of persons, or aids or abets such displacement;
- b. Impedes access to internally displaced persons, or aids or abets impediment to such access;
- c. Causes harm to internally displaced persons, or aids or abets such harm;
- d. Causes harm to humanitarian personnel, or aids or abets such harm;

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

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

Powers of the Minister

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

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

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

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

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

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

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

- (j) Land;
- (k) Health;
- (l) Education; and
- (m) National Human Rights Commission.

4. A representative nominated by:

- (a) The United Nations High Commissioner for Refugees;
- (b) Each of the Agencies, Funds, Offices and Programmes of the United Nations involved in the Inter-Agency Collaborative Approach to internally displaced persons;
- (c) The African Union Bureau on Humanitarian Affairs;
- (d) National Red Cross Societies;

5. A representative nominated by national and international non-governmental organisations involved in the protection and assistance of internally displaced persons in the Republic; and

6. Representatives nominated by internally displaced persons from amongst such persons with equal representation of women **and men, provided that the maximum number of such representatives may be decided upon by the Minister under S. 4(5) of this Act, in consultation with internally displaced persons.**

Functions of the Committee

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

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

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

Procedures of the Committee

- S.7 (1) The Committee shall be a permanent body, which shall sit in session every month and as frequently as necessary in situations of complex humanitarian emergencies involving internally displaced persons in the Republic;
- (2) The Chairperson shall convene and preside over the meetings of the Committee;
- (3) The Committee shall elaborate and adopt such internal procedures as it may deem fit, provided that such procedures shall be conducive to the protection and assistance of internally displaced persons in accordance with the provisions of the Draft Protocol and the Guiding Principles; and
- (4) The Committee shall establish internal Sub-Committees as well as Sub- Committees at provincial, district, and village levels for the discharge of its functions. To the extent possible, the composition of the provincial, district and village Sub-Committees shall reflect that of the Committee.

Final Provisions

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

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

Schedules

Schedule 1

Draft Protocol on the Protection and Assistance to Internally Displaced Persons.

Schedule 2

Guiding Principles on Internal Displacement.