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RESETTLEMENT OF REFUGEES AND INTERNALLY DISPLACED PERSONS

OBJECTIVES FOR RESETTLEMENT OF REFUGEES AND INTERNALLY DISPLACED PERSONS

Drafter's Introduction:

The displacement of populations as a consequence of armed conflict is a significant problem. The process requires the cooperation of the countries of origin, the countries of asylum, and the international community. Ensuring sustainable return is first and foremost the responsibility of the countries of origin toward their own people, but implementation requires sustained action and support from the countries of asylum and the international community. Drafters of peace agreements should give careful consideration to including countries of asylum and the international community as parties to the agreement.

Three components are necessary to create and successfully implement an agreement to resettle displaced populations: 1) enshrinement of the right to voluntary return, which is the most fundamental right of all displaced persons; 2) creation of a lasting peace, with a commitment to ensure the security of returnees and to produce conditions under which they can successfully reintegrate in their home country; and 3) establishment of procedures for accomplishing resettlement,

including distribution of property and/or compensation, mechanisms for resolving property disputes, and development of infrastructure in resettled areas. This section provides an overview of the contents of a model section on the return of uprooted populations, addressing each of these three components, as well as comparative language from prior agreements addressing this issue.

Because resettling uprooted populations is challenging and complex, drafters should aim for language that firmly establishes the Parties' commitments to the resettlement process. The principles and implementation mechanisms set forth in the agreement must be specific enough to guide those implementing the resettlement process. The drafters should establish a timeframe for the accomplishment of the steps called for by the agreement, keeping in mind that the timing of the resettlement process will necessarily be affected by the pace of reconstruction.

No return or resettlement process can take place until the cessation of armed conflict. Thus, the displaced persons section of the peace agreement may logically be placed after the Ceasefire section. In some peace agreements, the displaced persons section forms part of the human rights section. Protecting displaced persons as a sub-set of human rights may be sufficient if the situation is not a particularly serious or complicated concern. In many situations, however, the issue of uprooted populations requires separate treatment.

Drafters must also recognize the difference between refugees, internally displaced persons ("IDPs"), and economic migrants. Economic migrants leave a country voluntarily to seek a better life, while refugees and IDPs flee because of a threat. Refugees are those who have crossed an international border seeking sanctuary, while IDPs have fled persecution but have not crossed an international border. Drafters should be aware of which uprooted populations need to be addressed in the agreement. For the purposes of this handbook, the terms "displaced persons" and/or "uprooted populations" will be used to denote both refugees and IDPs.

Finally, drafters should be aware of the legal framework that governs uprooted populations. The major treaty on refugees is the 1951 Convention Relating to the Status of Refugees, along with a 1967 Protocol that expands the geographical and temporal scope of the Convention. Ratified by 143 countries, the Convention outlines the rights of refugees, including a key provision stipulating that refugees may not be forcibly returned, or *refouled*, to a country they have fled because of a "well founded fear of persecution because of [their] race, religion,

nationality, membership in a particular social group or political opinion.” Moreover, under established customary principles of international human rights law, the home state must facilitate the repatriation of refugees who wish to return, once conditions in the home state are suitable (the so-called “right of voluntary return”). Promotion and facilitation of voluntary repatriation is a statutory function of the United Nations High Commission for Refugees (UNHCR), and the 1951 Convention requires states to cooperate with the UNHCR in its mission.

The rights outlined in the 1951 Convention apply specifically only to refugees, but most peace agreements that address uprooted populations guarantee the same treatment to both refugees and IDPs. Moreover, international customary human rights law provides additional standards for the treatment of all uprooted populations. Finally, international humanitarian law, which is enshrined in the Geneva Conventions and has generally acquired the status of customary international law binding on all states, guarantees certain protections to victims of armed conflict. Customarily, then, IDPs are guaranteed the same rights and treatment as refugees.

REFUGEES AND INTERNALLY DISPLACED PERSONS: ELEMENTS FOR A SUCCESSFUL AGREEMENT

Drafter's Note: A comprehensive agreement on uprooted populations should address all of the elements below, but the language may vary depending on the size of the population, the extent of the resettlement that will be necessary and the significance of the problem. The agreement should then describe the mechanisms that will be used to implement the framework on which the Parties have agreed.

1. Preamble

A preamble may be included to set forth the principles that serve as the foundation of the document. The drafters may cite international agreements from which principles are drawn, reference other agreements that prompted the creation of this agreement (such as prior agreements between the Parties, Security Council resolutions, etc.), and briefly summarize the goals the Parties have agreed to achieve together.

2. Definitions

Because of the differences, practical and legal, between refugees and IDPs, the drafters should identify the groups to whom the agreement applies.

3. Guarantees of the Parties to the Agreement

The return of displaced persons is impossible without the Parties' commitment to end the fighting that caused the flight in the first place. The Parties must commit to a lasting peace, providing guarantees of safety and security for the return of displaced persons. The Parties must also commit to assist and cooperate with international groups in facilitating the return and resettlement of displaced persons.

4. Rights of Displaced Persons

Drafters should establish the rights that must be respected. Generally, the four rights of displaced persons are:

- 1) the right to voluntary return;
- 2) the right to citizenship, identity and participation;
- 3) the right to property; and
- 4) the right to have their human rights respected.

INDEX OF AGREEMENTS

Author's Note: The following agreements, listed in order of comprehensiveness, provide precedent language for the elements above.

1. BURUNDI, Arusha Peace and Reconciliation Agreement, Protocol IV: Reconstruction and Development, 28 August 2000 (Burundi Agreement)
2. GUATEMALA, Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, 17 June 1994 (Guatemala Agreement)
3. GEORGIA, Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons, 4 April 1994 (Georgia Agreement)
4. BOSNIA AND HERZEGOVINA, The General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7: Agreement on Refugees and Displaced Persons, 14 December 1995 (Bosnia Agreement)
5. CAMBODIA, Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, Part V: Refugees and Displaced Persons, and Annex 4: Repatriation of Cambodian Refugees and Displaced Persons, 23 October 1991 (Cambodia Agreement)
6. MOZAMBIQUE, General Peace Agreement for Mozambique, Protocol III, 4 October 1992 (Mozambique Agreement)
7. KOSOVO, Interim Agreement for Peace and Self-Government in Kosovo, 23 February 1999 (Kosovo Agreement)
8. MACEDONIA, Framework Agreement, 13 August 2001 (Macedonia Agreement)
9. SIERRA LEONE, Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, 7 July 1999 (Sierra Leone Agreement)
10. LIBERIA, Cotonou Agreement, 25 July 1993 (Liberia Agreement)

I. Treatment of Refugee and IDP Language in Prior Agreements and Model Language

1. Preamble

Drafter’s Note: The preamble may include general language that recognizes the problem of uprooted populations and its consequences and commits the Parties to the solution set forth in the agreement. A discussion of the objectives of the Parties in adopting the agreement will also help guide international and other groups if they assist the Parties with the implementation of the agreement.

Burundi Agreement, Protocol IV, Chapter I, Article 2, Paragraph 1

“The Government of Burundi shall encourage the return of refugees and *sinistrés* and resettle and reintegrate them. It shall seek the support of other countries and international non-governmental organizations in carrying out this responsibility.”

Guatemala Agreement, Article 1

“The comprehensive resettlement strategy shall have the following objectives:

1. To ensure that displaced persons fully enjoy all their rights and fundamental freedoms, in particular those rights and freedoms which were affected during the uprooting process;
2. To reintegrate displaced persons, which were socially, economically and politically marginalized, and create the conditions that would allow them to be a dynamic factor in the economic, social, political and cultural development of the country;
3. To give priority to the fight against poverty and extreme poverty, which have had a particularly serious effect on areas where the population has been uprooted, and which largely correspond to the resettlement areas;
4. To develop and strengthen the democratization of State structures, ensuring that the constitutional rights of displaced persons are respected at the individual, community, municipal, departmental, regional and national levels;

5. To promote genuine reconciliation, fostering a culture of peace in the resettlement areas and at the national level based on participation, mutual tolerance, reciprocal respect and commonality of interests.”

Cambodia Agreement, Annex 4, Part I

“As part of the comprehensive political settlement, every assistance will need to be given to Cambodian refugees and displaced persons as well as to countries of temporary refuge and the country of origin in order to facilitate the voluntary return of all Cambodian refugees and displaced persons in a peaceful and orderly manner. It must also be ensured that there would be no residual problems for the countries of temporary refuge. The country of origin with responsibility towards its own people will accept their return as conditions become conducive.”

Mozambique Agreement, Protocol III, Part IV, Paragraph a

“The parties undertake to cooperate in the repatriation and reintegration of Mozambican refugees and displaced persons in the national territory and the social integration of the war-disabled.”

MODEL PREAMBLE LANGUAGE:

Recognizing the essential task of rehabilitation and resettlement of uprooted populations, and having identified the principles that will guide the resettlement process, the comprehensive repatriation strategy shall have the following objectives:

To ensure that the uprooted population groups fully enjoy all their rights and fundamental freedoms;

To reintegrate the uprooted population groups and create the conditions that would allow them to be participate fully in the economic, social, political and cultural development of the country;

To promote genuine reconciliation, fostering a culture of peace in the resettlement areas and at the national and regional level based on

participation, mutual tolerance, reciprocal respect and commonality of interests.

2. Definitions

Drafter's Note: A definition of those persons to whom the agreement applies is necessary to clarify the legal protections and obligations that are due to such persons. Customarily, IDPs are considered equal to returning refugees in the resettlement and relief effort, but this should be specified in the agreement. If the agreement is to apply to both refugees and IDPs, the drafters may wish to choose a term that encompasses both groups. The UNHCR defines "refugees" as "people who have left their own country because of a well-founded fear of persecution, or because their safety is threatened by events seriously disturbing public order." The Organization of African Unity has elaborated on the definition of refugees, including persons who are compelled to leave their homeland on account of "external aggression, occupation, foreign domination, or events seriously disturbing public order." In the 1984 Cartagena Declaration on Refugees, Central American states recommend that the term "refugee" also applies to "persons who have fled their country because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or other circumstances which have seriously disturbed public order." The drafters may draw upon these formulations in defining to whom the language in the current agreement will apply.

Burundi Agreement, Chapter 1, Article 1

"1. For the definition of the term 'refugee,' reference is made to international conventions, including the 1951 Geneva Convention Relative to the Status of Refugees, the 1966 Protocol Relative to the Status of Refugees and the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.

2. The term '*sinistrés*' designates all displaced, regrouped and dispersed persons and returnees."

Guatemala Agreement, Article I

“For the purposes of this Agreement, the term ‘uprooted population’ shall include all persons who have been uprooted for reasons connected with the armed conflict, whether they live within or outside Guatemala, and shall include, in particular, refugees, returnees and internally displaced persons, either dispersed or in groups, including popular resistance groups.

‘Resettlement’ shall mean the legal process of return of uprooted population groups and individuals to their place of origin or another place of their choice in Guatemalan territory, and their relocation and integration therein, in accordance with the Political Constitution of the Republic of Guatemala.”

MODEL DEFINITIONS LANGUAGE:

For the purposes of this agreement, the term “displaced persons” shall include all persons who have left their homes, whether within or outside [country of origin], for reasons connected with the armed conflict. The term “returnees” refers to those displaced persons once they are involved in the legal process of return to their place of origin or another place of their choice in [country of origin].

3. Guarantees of the Parties to the Agreement

Drafter’s Note: The return of displaced persons will be impossible without the Parties’ commitment to end the conflict that caused them to flee. Therefore, a lasting peace is a necessary precondition to any successful resettlement, to create an environment that will allow the displaced persons to return, resettle, and resume their lives. Moreover, the Parties must guarantee their assistance to the UNHCR if it is involved in the resettlement process. Thus, the Parties must commit to: 1) end the violent conflict, thereby ensuring that resettlement is possible and that returnees will be safe and secure during the process; 2) cooperate fully with the international community as it facilitates the return process by making resources and access to all territories within their control available to it.

Guarantees of Safety and Security

Drafter’s Note: A lack of security and safety is increasingly an obstacle to the return of displaced persons to their areas of origin. The danger to displaced persons arises both during the process of return and after resettlement, when the security of returning populations must be maintained. The language of the agreement should establish each party’s affirmative obligation to ensure the safety and security of affected populations during times of both return and rehabilitation. The security of affected populations can be ensured by each country undertaking the protective role, or by an outside party providing a protective and peacekeeping security force. The second option may be more likely to be successful, but the drafters must consider which option is appropriate to the specific circumstances of a conflict. The level of specificity at which the agreement addresses the institutional framework for the security of displaced populations depends upon the scope of the agreement, but detailed language about how security will be provided for displaced persons is generally essential if a sustainable return process is to be realized. For example, the agreement may address issues such as the safety of border crossings, mine removal and the prevention of acts of violence to returnees. Furthermore, the Parties must give special consideration to vulnerable groups such as women and children, orphans, and the mentally and physically disabled.

Guatemala Agreement, Article II, Paragraph 4

“Concerned about the security of those who are being resettled or who live in the zones affected by the conflict, the Parties recognize the urgent need to remove all types of mines or explosive devices buried or abandoned in these areas, and they commit themselves to cooperate fully in these activities.”

Georgia Agreement, Provision 2 and Provision 3, Paragraph f

“2. For the purpose of the present agreement, the parties will guarantee the safety of refugees and displaced persons in the course of the voluntary repatriation and rehabilitation operations to be organized.

3f. The Parties shall ensure that repatriants, upon return, will be protected from harassment, including unauthorized charges or fees and threat to life or property.”

Bosnia Agreement, Annex 7, Article I, Paragraphs 2 and 3

“2. The Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.

3. The Parties shall take all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons. To demonstrate their commitment to securing full respect for the human rights and fundamental freedoms of all persons within their jurisdiction and creating without delay conditions suitable for return of refugees and displaced persons, the Parties shall take immediately the following confidence building measures:

- a. the repeal of domestic legislation and administrative practices with discriminatory intent or effect;
- b. the prevention and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred;
- c. the dissemination, through the media, of warnings against, and the prompt suppression of, acts of retribution by military, paramilitary, and police services, and by other public officials or private individuals;
- d. the protection of ethnic and/or minority populations wherever they are found and the provision of immediate access to these populations by international humanitarian organizations and monitors;
- e. the prosecution, dismissal or transfer, as appropriate, of persons in military, paramilitary, and police forces, and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups.”

Cambodia Agreement, Annex 4, Part III, Paragraph 12

“Those responsible for organizing and supervising the repatriation operation will need to ensure that conditions of security are created for the movement of the refugees and displaced persons. In this respect, it is imperative that

appropriate border crossing points and routes be designated and cleared of mines and other hazards.”

Sierra Leone Agreement, Part Five, Article XXIII

“As a reaffirmation of their commitment to the observation of the conventions and principles of human rights and the status of refugees, the Parties shall take effective and appropriate measures to ensure that the right of Sierra Leoneans to asylum is fully respected and that no camps or dwellings of refugees or displaced persons are violated.”

Liberia Agreement, Article 18, Paragraphs 1 and 2

“1. The Parties hereby commit themselves immediately and permanently to bring to an end any further external or internal displacement of Liberians and to create the conditions that will allow all refugees and displaced persons to, respectively, voluntarily repatriate and return to Liberia to their places of origin or habitual residence under conditions of safety and dignity.

2. The Parties further call upon Liberian refugees and displaced persons to return to Liberia and to their places of origin or habitual residence and declare that they shall not be jeopardized in any ethnic, political, religious, regional or geographical considerations.”

MODEL GUARANTEE OF SAFETY AND SECURITY LANGUAGE:

The Parties are committed to achieving peaceful and secure conditions that will allow for the return of displaced persons. They shall guarantee the safety and security of those persons in the course of return and rehabilitation operations. The Parties shall not attack, intimidate, or harass returning populations in any way. At all times, the human rights of the returnees shall be fully respected. Special considerations, protections, and processes will be given to vulnerable groups such as women, children, the elderly, and the disabled.

Cooperation with the International Community

Drafter's Note: The Parties must commit to facilitate the return or resettlement of displaced persons, honoring international laws governing refugees and internally displaced persons, the activities of groups providing repatriation assistance, and trans-border transportations. The Parties must further agree to jointly and individually cooperate in all ways with each other and with international and national organizations that are implementing programs for voluntary repatriation.

Burundi Agreement, Protocol IV, Chapter I, Article 7

“The Government shall allow international organizations and international and local non-governmental organizations unrestricted access to returnees and other *sinistrés* for purposes of the delivery of humanitarian assistance. It must guarantee the safety of the staff of such organizations and must also facilitate the provision of short-term aid for repatriation, appropriately supervised and without discrimination.”

Georgia Agreement, Provision 11, Paragraphs a-d

“a. UNHCR shall have direct and unhindered access to all displaced persons/refugees from Abkhazia in order to undertake activities essential to the discharge of its mandate and operational and monitoring responsibilities;

b. Travel shall be facilitated between and within all areas where refugees and displaced persons are located and areas of return for the personnel of the United Nations and other relevant international and non-governmental agencies cooperating with the United Nations in repatriation, reintegration and rehabilitation programmes. It shall include the free use of airspace and authorized airstrips and airports for relief flights and the exemption from taxes and duties of all goods imported for use in the voluntary repatriation programme of displaced persons/refugees from Abkhazia and for the provision of relief integration and rehabilitation assistance to the Abkhazian region by the United Nations and cooperating agencies, as well as the expeditious clearance and handling of such goods;

c. The Russian Federation will guarantee unimpeded transit of humanitarian supplies through its territory for the purposes of the present Agreement;

d. UNHCR shall establish local offices, as deemed appropriate, at locations to be approved by the Parties concerned, to facilitate voluntary repatriation, reintegration and rehabilitation.”

Bosnia Agreement, Annex 7, Article III, Paragraph 2

“The Parties shall give full and unrestricted access by UNHCR, the International Committee of the Red Cross (“ICRC”), the United Nations Development Programme (“UNDP”) and other relevant international, domestic and nongovernmental organizations to all refugees and displaced persons, with a view to facilitating the work of those organizations in tracing persons, the provision of medical assistance, food distribution, reintegration assistance, the provision of temporary and permanent housing, and other activities vital to the discharge of their mandates and operational responsibilities without administrative impediments. The activities shall include traditional protection functions and the monitoring of basic human rights and humanitarian conditions, as well as the implementation of the provisions of this Chapter.”

Cambodia Agreement, Annex 4, Part III, Paragraph 8

“Consistent with respect for principles of national sovereignty in the countries of temporary refuge and origin, and in close cooperation with the countries of temporary refuge and origin, full access by the Office of the United Nations High Commissioner for Refugees (UNHCR), ICRC and other relevant international agencies should be guaranteed to all Cambodian refugees and displaced persons, with a view to the agencies undertaking the census, tracing, medical assistance, food distribution and other activities vital to the discharge of their mandate and operational responsibilities; such access should also be provided in Cambodia to enable the relevant international organizations to carry out their traditional monitoring as well as operational responsibilities.”

Kosovo Agreement, Article II, Paragraph 4

“The Parties shall cooperate fully with efforts by the United Nations High Commissioner for Refugees (UNHCR) and other international and non-governmental organizations concerning the repatriation and return of persons, including those organizations monitoring [] the treatment of persons following their return.”

Liberia Agreement, Article 18, Paragraph 4, Parts a-c

“The Parties proclaim that they shall, jointly or individually, cooperate in all necessary ways with themselves and with the above-mentioned organizations in order to facilitate the repatriation, return and reintegration of the refugees and displaced persons. Amongst others, they agree to:

- a. Establish all necessary mechanisms or arrangements, such as joint repatriation committees, which would facilitate contacts, communications and work with the relevant organizations for purposes of implementing the repatriation, return and reintegration operation and to enable effective decision-making and implementation of the relevant activities;
- b. Facilitate access by the Office of the United Nations High Commissioner for Refugees and other organizations to the refugees and displaced persons who have returned so as to deliver the

necessary humanitarian assistance and programmes and monitor their situation;

c. Guarantee and provide security to the Office of the United Nations as High Commissioner for Refugees and the other relevant organizations, their staff, vehicles, equipment and resources necessary to carry out their work...”

MODEL COOPERATION WITH INTERNATIONAL COMMUNITY LANGUAGE:

International government organizations and aid organizations shall have full and guaranteed access, by land, air and sea, to all territories and displaced persons to implement resettlement programs. The Parties shall cooperate in all ways necessary to ensure that the resettlement programs can be implemented. The Parties will not tax workers, goods, or services provided by outside governments or international aid organizations. The Parties shall guarantee the safety and security of all outside government and international aid workers, and their equipment.”

4. Rights of Displaced Persons

There are four groups of displaced persons rights that must be respected: (1) the right to voluntary return; (2) the right to citizenship, identity and participation; (3) the right to property; and (4) general human rights.

The Right to Voluntary Return

Drafter’s Note: The right to voluntary return is the most fundamental right to be guaranteed to all displaced persons. It appears in every agreement that covers displaced persons. Furthermore, states have an international customary legal obligation to respect, allow, and ensure the right to return. All other rights flow from the right to return to the country of origin. Conversely, forced repatriation is illegal as long as the conditions from which the refugee fled still exist. If refugees have fled across a border, the host nation may consider the refugee population to be a large social or economic burden, or refugee camps may pose a security concern for the host nation, so the voluntary nature of the right to return should be stressed by the drafters of the agreement. In addition, the asylum countries should be

involved in the drafting process and made signatories of the agreement where feasible to provide appropriate enforcement mechanisms.

Burundi Agreement, Protocol IV, Chapter I, Article 2, Paragraph 2, Parts a and f

“a. All Burundian refugees must be able to return to their country.
f. All *sinistrés* wishing to do so must be able to return to their homes.”

Georgia Agreement, Provision 3, Paragraphs a-d

- a. “Displaced persons/refugees have the right to return voluntarily to their places of origin or residence irrespective of their ethnic, social or political affiliation under conditions of complete safety, freedom and dignity;
- b. The voluntary character of the repatriation shall be ascertained and respected through appropriate arrangements.
- c. Displaced persons/refugees shall have the right to return peacefully without risk of arrest, detention, imprisonment or legal criminal proceedings . . .
- d. The Parties shall ensure that returnees, upon return, will enjoy freedom of movement and establishment including the right to return to the areas where they lived prior to leaving the conflict zone or to the area of their choice.”

Bosnia Agreement, Annex 7, Article I, Paragraph 1

“All refugees and displaced persons have the right freely to return to their homes of origin.”

Cambodia Agreement, Annex 4, Part II, Paragraph 7

“Repatriation of Cambodian refugees and displaced persons should be voluntary and their decision should be taken in full possession of the facts. Choice of destination within Cambodia should be that of the individual. The unity of the family must be preserved.”

MODEL RIGHT TO VOLUNTARY RETURN LANGUAGE:

All displaced persons have the voluntary right to choose to return to their homes in their country of origin. Their safety and dignity will be guaranteed in the repatriation process.

The Right to Citizenship, Identity and Participation

Drafter’s Note: Displaced persons must not be discriminated against because of their status. Upon their return, they must have their citizenship rights fully restored. Identification and other forms of documentation must be restored to all displaced persons, and they must be allowed to participate in all aspects of civil life, such as voting.

Burundi Agreement, Protocol IV, Chapter I, Article 2, Paragraph 2, Part e

“Returnees must have their rights as citizens and their property restored to them in accordance with the laws and regulations in force in Burundi after the entry into force of the Agreement.”

Guatemala Agreement, Article II, Paragraph 7

“7. The lack of personal documentation for the majority of the uprooted population groups increases their vulnerability and limits their access to basic services and the enjoyment of their civil and political rights. This problem requires urgent solutions. Consequently, the Parties agree that the following steps are necessary:

- 7.1 In order to arrange for the documentation of uprooted persons as soon as possible, the Government, with the cooperation of the international community, shall intensify its efforts to streamline the necessary mechanisms, taking into account, where appropriate, the registers kept by the uprooted communities themselves; . . .
- 7.2 The necessary administrative rules to streamline formalities to ensure that children of uprooted persons born outside the country are registered as native Guatemalans, . . . shall be promulgated;
- 7.3 For the implementation of the documentation programme, the Government shall request the cooperation of the United Nations and the international community.”

Georgia Agreement, Provision 3, Paragraph e

“The Parties shall ensure that refugees and displaced persons, upon return, will get their expired documents (propiska, passport) extended and validated for their previous place of residence or the elected place of return.”

Mozambique Agreement, Protocol III, Article IV, Paragraphs c and d

“Mozambican refugees and displaced persons shall not forfeit any of the rights and freedoms of citizens for having left their original places of residence;

Mozambican refugees and displaced persons shall be registered and included in the electoral rolls together with other citizens in their places of residence.”

Kosovo Agreement, Article II, Paragraph 3

“The Parties recognize that all persons have the right to return to their homes. Appropriate authorities shall take all measures necessary to facilitate the safe return of persons, including issuing necessary documents.”

MODEL RIGHT TO CITIZENSHIP LANGUAGE:

The citizenship and participation rights and privileges of displaced persons shall not be forfeited or affected because of their status as displaced persons. Their rights and privileges shall be fully restored and guaranteed in their country of origin. Displaced persons shall not be discriminated against or prevented from participating in government or electing officials of their choice because of their status.

The Right to Property and Home

Drafter’s Note: Displaced persons should have a right to their property or to compensation for it upon their return. Property restoration and compensation guarantees appear in three-quarters of agreements concerning displaced persons. Property concerns are a significant obstacle to the return of displaced persons, but the right to property and home is guaranteed under international law and must be provided for in the agreement and enforced.

Often, the property has been destroyed, stolen, or is occupied by another. Therefore, it will be necessary to develop mechanisms to resolve property disputes, reassign land, and compensate displaced persons for their losses. The agreement should set forth the Parties' commitment to non-discrimination in providing displaced persons access to property. The Parties may need to establish a national fund to help meet the needs of displaced persons. The Parties may denationalize state owned land and distribute it to displaced persons who cannot return to their original land. Finally, the Parties may need to promulgate new property laws to address problems with land compensation and distribution.

Burundi Agreement, Protocol IV, Chapter I, Article 2, Paragraphs 2, Parts e, f and h

- e. "Returnees must have their rights as citizens and their property restored to them in accordance with the laws and regulations in force in Burundi after the entry into force of the Agreement;
- f. All *sinistrés* wishing to do so must be able to return to their homes;
- h. In the return of the refugees and the resettlement and reintegration of the returnees and displaced and regrouped persons, the principle of equity, including gender equity, must be strictly applied in order to avoid any measure or treatment that discriminates against or favours any one among these categories.

Guatemala Agreement, Part II, Paragraph 9 and Part III, Paragraph 8

"9. In the particular case of abandonment of land as a result of armed conflict, the Government undertakes to revise and promote legal provisions to ensure that such an act is not considered to be voluntary abandonment, and to ratify the inalienable nature of landholding rights. In this context, it shall promote the return of land to the original holders and/or shall seek adequate compensatory solutions.

8. The Government undertakes to eliminate any form of de facto or de jure discrimination against women with regard to access to land, housing, credits and participation in development projects. The gender-based approach shall be incorporated into the policies, programmes and activities of the comprehensive development strategy."

Georgia Agreement, Provision 3, Paragraph g

“Returnees shall, upon return, get back movable and immovable properties they left behind and should be helped to do so, or to receive whenever possible and appropriate compensation for their lost properties if return of property appears not feasible. The Commission . . . will establish a mechanism for such claims. Such compensation should be worked out in the framework of the reconstruction/rehabilitation programmes to be established with financial assistance through the United Nations Voluntary Fund.”

Bosnia Agreement, Annex 7, Article I

“All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.”

Mozambique Agreement, Protocol III, Article IV, Paragraph e

“Mozambican refugees and displaced persons shall be guaranteed restitution of property owned by them which is still in existence and the right to take legal action to secure the return of such property from individuals in possession of it.”

Kosovo Agreement, Article II, Paragraph 3

“All persons shall have the right to reoccupy their real property, assert their occupancy rights in state-owned property, and recover their other property and personal possessions. The Parties shall take all measures necessary to readmit returning persons to Kosovo.”

MODEL RIGHT TO PROPERTY LANGUAGE

All displaced persons have the right to return to their homes, land, and property. If return to their homes, land, and property proves impossible,

they shall be justly compensated for their losses. A property commission will be established to adjudicate property disputes and assist in returning property to its rightful owners. Distribution of aid resources and property will take place without regard to the proposed recipient's gender, language, ethnic identity, racial identity, religion, party affiliation, geographical location, status as a displaced or formerly displaced person, or any other discriminatory basis. The Parties shall establish a national fund to ensure that the resettlement and redistribution programs can be financed and implemented.

Respect for Human Rights

Drafter's Note: Respect for human rights is necessary in all phases of the resettlement process. Parties to a peace agreement should cooperate with the countries to which refugees have fled to ensure that those countries respect the human rights of refugees, and allow the refugees to leave in a safe and dignified manner. The Parties should also help refugees settle any property claims that refugees have in their asylum country. Furthermore, the return process must recognize that some classes of displaced persons, such as women and children, are more vulnerable than others, and therefore, establish special protections for these classes. Drafters should make specific reference to international human rights treaties to incorporate their protections into the peace agreement. Furthermore, if the Parties to the agreement are not signatories to international and regional human rights instruments, the peace agreement process is an opportune time for them to become signatories to those agreements and to adopt existing enforcement mechanisms.

Burundi Agreement, Protocol IV, Chapter I, Article 10

“The Government shall ensure, through special assistance, the protection, rehabilitation and advancement of vulnerable groups, namely child heads of families, orphans, street children, unaccompanied minors, traumatized children, widows, women heads of families, juvenile delinquents, the physically and mentally disabled, etc.”

Guatemala Agreement, Part II, Article I, Paragraphs 1 and 2

“Full respect for human rights and fundamental freedoms is essential for the security and dignity of resettlement processes. The Parties reiterate their decision to comply fully with the Comprehensive Agreement on Human Rights, which took effect on 29 March 1994, promoting respect for the human rights of uprooted populations, one of the vulnerable sectors which deserve particular attention, with special vigilance.”

Cambodia Agreement, Annex 4, Part II, Paragraph 4

“There must be full respect for the human rights and fundamental freedoms of all Cambodians, including those of the repatriated refugees and displaced persons, in recognition of their entitlement to live in peace and security, free from intimidation and coercion of any kind. These rights would include, *inter alia*, freedom of movement within Cambodia, the choice of domicile and employment, and the right to property.”

MODEL RESPECT FOR HUMAN RIGHTS LANGUAGE (BROAD VERSION)

The human rights of displaced persons shall be fully respected and guaranteed under international law and national law, both during the resettlement process and thereafter.

II. Implementation Mechanisms

Drafter’s Note: Although the international legal basis for the return of displaced persons is well-developed, such provisions are among the least implemented. Two major problems that prevent implementation are: 1) lack of funding for repatriation and 2) lack of monitoring and enforcement mechanisms. Therefore, drafters of displaced persons provisions should pay special attention to this section on implementation mechanisms to develop language that establishes international funding assistance and creates monitoring and enforcement mechanisms. The drafters should define the institutional framework, usually a commission, which will oversee the process, and establish who shall be the members of the commission. Then the drafters should define the functions of the commission, provide it with a

clear mandate to guide the implementation of the resettlement process, and provide specific milestones for the initial stages of the return process. Finally, the drafters should seek and invite the assistance of the UNHCR and the international community in funding and facilitating the resettlement process.

Formation of Commission and its Composition

Drafter's Note: Most agreements, following the UNHCR approach, create a commission or task force that will develop the mechanism for return of displaced persons. The members of the commission vary depending on the Parties involved. For example, if persons have fled to a neutral, third country, it should also participate in drafting the agreement and provide a representative for the commission.

Burundi Agreement, Protocol IV, Chapter I, Article 3, Paragraph a-c

“The Government shall undertake the following preparatory activities:

- a. Establishing and constituting a National Commission for the Rehabilitation of Sinistrés (CNRS), which shall have the mandate of organizing and coordinating, together with international organizations and countries of asylum, the return of refugees and sinistrés, assisting in their resettlement and reintegration, and dealing with all the other issues listed in the report of Committee IV. To this end, it shall draw up a plan of priorities. The members of the CNRS shall be drawn *inter alia* from the participating parties and the Government of Burundi, and shall elect the Commission's chairperson;
- b. Establishing and constituting a Sub-Commission of the CNRS with the specific mandate of dealing with issues related to land as set out in article 8 (j) of the present Protocol;
- c. Convening, in collaboration with the countries of asylum and the Office of the United Nations High Commissioner for Refugees, the Tripartite commissioner, involving in it representatives of the refugees and international observers.”

Guatemala Agreement, Article V, Paragraph 2

“[T]he Parties agree to establish a Technical Committee for the implementation of the resettlement agreement, to be composed of two representatives designated by the Government, two representatives designated by the uprooted population groups and two representatives of donors, cooperating bodies and international cooperating agencies. The latter representatives shall have consultative status. The Committee shall draw up its own rules of procedure.”

Georgia Agreement, Provision 6

“The Commission shall be composed of four members, one being designated by each of the Parties and two representing the Russian Federation and the United National High Commissioner for Refugees. In addition, the Conference on Security and Cooperation in Europe (CSCE) will designate a representative to attend the Commission’s meeting in an observer capacity. If circumstances do not allow the designated CSCE representative to attend such meetings, the Commission will keep the CSCE mission in Georgia informed on a regular basis on the progress of the Commission’s work.”

Bosnia Agreement, Annex 7, Article VII and Article IX

“The Parties hereby establish an independent Commission for Displaced Persons and Refugees (the "Commission"). The Commission shall have its headquarters in Sarajevo and may have offices at other locations as it deems appropriate.

1. The Commission shall be composed of nine members. Within 90 days after this Agreement enters into force, the Federation of Bosnia and Herzegovina shall appoint four members, two for a term of three years and the others for a term of four years, and the Republika Srpska shall appoint two members, one for a term of three years and the other for a term of four years. The President of the European Court of Human Rights shall appoint the remaining members, each for a term of five years, and shall designate one such member as the Chairman. The members of the Commission may be reappointed.
2. Members of the Commission must be of recognized high moral standing.

3. The Commission may sit in panels, as provided in its rules and regulations. References in this Annex to the Commission shall include, as appropriate, such panels, except that the power to promulgate rules and regulations is vested only in the Commission as a whole.”

Cambodia Agreement, Annex 4, Part III, Paragraph 10

“The SNC (Supreme National Council), the Governments of the countries in which the Cambodian refugees and displaced persons have sought temporary refuge, and the countries which contribute to the repatriation and integration effort will wish to monitor closely and facilitate the repatriation of the returnees. An ad hoc consultative body should be established for a limited term for these purposes. The UNHCR, the ICRC (International Committee of the Red Cross), and other international agencies as appropriate, as well as UNTAC (United Nations Transitional Authority in Cambodia), would be invited to join as full participants.”

**MODEL FORMATION OF THE COMMISSION AND ITS
COMPOSITION LANGUAGE**

With the assistance of the international community and UNHCR, the Parties shall establish a Displaced Persons Commission, within [time period] of signature of this agreement, to oversee, administer, and facilitate the resettlement process. The DPC will be comprised of [two representatives from each Party, two representatives designated by the displaced persons population, one representative from [a strategic country] and two representatives of donors, cooperating bodies and international agencies OR as determined by the Parties]. Members of the DPC must be recognized as having high moral standing. The DPC shall meet as often as required, [but no less frequently than once a month]. Meetings of the DPC may be convened at the request of any of the members and shall be held [as determined by the Parties], except as the members of the DPC may otherwise agree. The Parties agree to guarantee the personal security of the members of the Commission and personnel involved in the activities agreed. The DPC shall have its headquarters in ----- and may have offices at other locations as it deems appropriate. The first meeting of the DPC shall be scheduled [as determined by the Parties]. The DPC shall have appropriate

facilities and professionally competent staff, experienced in administrative, financial, banking and legal matters, to assist in carrying out its functions. The staff shall be headed by an Executive Officer, who shall be appointed by the DPC.

Functions of the Commission: Planning for Resettlement

Drafter’s Note: The commission is intended to create and implement a program for the sustainable reintegration of displaced persons. Thus, the language concerning the commission must set forth a clear mandate with specific tasks that the commission will undertake, and time frames within which tasks will be accomplished. In some cases, Parties may be unwilling or not serious about implementing the return process, and a lack of such language in the agreement will result in a failure to commence the return of displaced persons. Therefore, language that provides for implementation of the resettlement process by establishing concrete steps and goals to be accomplished is an integral part of a successful agreement. Setting forth the functions and mandate of the commission in the Agreement will also enable all participants to understand their roles and obligations. To ensure the sustainable return of displaced persons, a resettlement plan must encompass a multitude of humanitarian, economic, and security concerns. The tasks that are included in the commission’s mandate will vary depending on the situation, and may include surveying the uprooted population and assessing its needs, creating and monitoring entry points, establishing transit and reception centers to assist returnees, providing documentation, and providing special consideration to the needs of vulnerable groups of displaced persons. A key function of the commission will be deciding disputes and claims involving real property, and the agreement may establish the manner in which such proceedings will be conducted. The pace of organized return and the time frame of the process should reflect the absorption capacity of the country.

Burundi Agreement, Protocol IV, Chapter I, Article 4

“The CNRS shall decide on the activities for the resettlement and integration of refugees and *sinistrés* in accordance with the priority plan taking into account the availability of resources, in order to achieve the following aims and objectives:

- a. To ensure the socio-economic and administrative reintegration of the *sinistrés*;
- b. To give all returning families, including female- and child-headed families, food aid, material support and assistance with health, education, agriculture and reconstruction until they become self-sufficient;
- c. To provide communes, villages and *collines* with assistance in the reconstruction of community infrastructures and with support for income-generating activities, paying special attention to women and enhancing their roles in building and sustaining families and communities;
- d. To settle all those who believe that they cannot yet return on sites close to home, in order to enable them to go and till their fields initially and return to their land later on;
- e. To encourage, to the extent possible, grouped housing in the reconstruction policy in order to free cultivable land;
- f. To ensure equity in the distribution of resources between the ethnic groups on the one hand and the provinces on the other, and to avoid overlap between the various parties involved;
- g. To promote the participation of the population in the resettlement activities;
- h. To help returnees to recover the property and bank accounts left in Burundi before their exile and whose existence has been duly proven;
- i. To offer intensive language courses for returnees to mitigate the language problems;
- j. To assist returnees in other areas such as medical services, psychosocial support, social security and retirement, education of children and the equivalency of diplomas awarded outside Burundi.”

Burundi Agreement, Protocol IV, Chapter I, Article 8, Sections i-k

- i. Burundi's Land Act must be revised in order to adjust it to the current problems with respect to land management;
- j. The Sub-Commission on Land established in accordance with article 3(b) of the present Protocol shall have the specific mandate of:
 - i. Examining all cases of land owned by old caseload refugees and state-owned land;

- ii. Examining disputed issues and allegations of abuse in the (re)distribution of land and ruling on each case in accordance with the above principles;
- k. The Sub-Commission on Land must, in the performance of its functions, ensure the equity, transparency and good sense of all its decisions. It must always remain aware of the fact that the objective is not only restoration of their property to returnees, but also reconciliation between the groups as well as peace in the country.”

Guatemala Agreement, Article III, Paragraphs 2 and 3

“2. For the identification of land that could be used for resettling uprooted persons who do not own land but wish to acquire it, the Government undertakes to:

- 2.1 Carry out a review and updating of official land and real estate registers;
 - 2.2 Conduct studies to identify and individualize all State-owned, municipally owned and private land, offering an option to purchase it. These studies shall include information on the location, legal regime, acquisition, size, boundaries and agricultural suitability of the land in question;
 - 2.3 Complete these studies by the date of entry into force of the present agreement, at the latest.
3. The criteria for selecting land for settlements shall include the agro-ecological potential of the soil, its price, the sustainability of natural resources and existing services.”

Guatemala Agreement, Article V, Paragraphs 4 and 5

“4. The Committee shall, from the time it is established until the entry into force of this Agreement, conduct the necessary evaluations and studies in order to identify and analyse the needs and demands of the uprooted population and to formulate projects corresponding to the various undertakings contained in the strategy determined in this Agreement. In carrying out said studies and analyses and formulating projects the Committee shall have the technical support of the corresponding specialized personnel.

5. Once the study phase is completed and as soon as this Agreement enters into force, the Committee shall be responsible for prioritizing and approving

projects and supervising their execution, allocating the funds required in each case and securing technical and financial resources. The Parties agree that implementation of the strategy shall meet the criteria of priority to the struggle against poverty, efficient management, participation of the recipient populations and transparency concerning expenditures.”

Georgia Agreement, Provisions 5 and 9

“5. The principal tasks of the Commission shall be to formulate, discuss and approve plans to implement programmes for the safe, orderly and voluntary repatriation of the refugees and displaced persons to Abkhazia from Georgia, the Russian Federation and within Abkhazia and for their successful reintegration. Such plans should include registration, transport, basic material assistance for a period of up to six months and rehabilitation assistance. In order to create the conditions for the return of refugees and displaced persons, the Commission will establish a working group of experts to undertake an assessment of the level of damage to the economic and social infrastructure in Abkhazia, the availability of housing and the extent of damage to houses in the areas of return as well as the projected needs in rehabilitation/reconstruction, with financial implications. This survey should be undertaken region by region according to the plan of return to be worked out and accepted by the Parties.”

9. During its first meeting, the Commission will set out the modalities of the assessment mentioned in paragraph 5 above and will establish a plan concerning:

- a. The areas where repatriation will be primarily conducted according to the level of guaranteed security and preparedness;
- b. The implementation of an information campaign among the displaced person/refugee population to encourage voluntary return;
- c. The registration process of persons expressing their willingness to return;
- d. The activities needed to safeguard the safety of returnees based on the principles set out in paragraph 3 (a) to (j) above;
- e. The needs for financial, transport and basic material assistance to displaced persons/refugees as well as projected needs for rehabilitation/reconstruction of the areas of return as mentioned in paragraph 5 above.”

Bosnia Agreement, Annex 7, Article I, Paragraph 5 and Article XI

“The Parties call upon the United Nations High Commissioner for Refugees (“UNHCR”) to develop in close consultation with asylum countries and the Parties a repatriation plan that will allow for an early, peaceful, orderly and phased return of refugees and displaced persons, which may include priorities for certain areas and certain categories of returnees. The Parties agree to implement such a plan and to conform their international agreements and internal laws to it. They accordingly call upon States that have accepted refugees to promote the early return of refugees consistent with international law.”

The Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return.”

MODEL FUNCTIONS OF THE COMMISSION LANGUAGE OPTION

I:

A comprehensive strategy for the return of displaced persons will be possible only within the framework of a sustained, sustainable and equitable development of the resettlement areas for the benefit of all population groups. The strategy shall promote the reconciliation of the interests of the resettled population groups and the population groups already living in the resettlement areas. In order to accomplish successful reintegration, there must be access to reasonable resources, opportunities and basic services to establish a self-sustained livelihood in conditions of equal rights with other residents and citizens.

MODEL FUNCTIONS OF THE COMMISSION LANGUAGE OPTION

II:

The DPC shall work in coordination and cooperation with international organizations, particularly the UNHCR, in the formation and implementation of a strategy to ensure the sustainable return of displaced persons and development of the region.

The DPC shall promulgate such rules and regulations, consistent with this Agreement, as may be necessary to carry out its functions [within the time period as determined by the Parties].

The DPC shall establish a working group of experts to collect data concerning the caseload of displaced persons wanting to return; areas of origin; distance from the border; availability of housing, economic and social infrastructure in the region; and projected needs for rehabilitation/reconstruction to ascertain the most effective means to return displaced persons.

The DPC shall establish a plan to institute an information campaign among the displaced persons to help them understand their rights, settlement options, and conditions in their home region, which will aid them in making an informed decision whether to return.

The DPC shall create and monitor entry points, transit and reception centers.

The DPC shall design mechanisms to monitor human rights conditions in areas of return.

The DPC shall put in place special programs to address the special needs of vulnerable groups within the uprooted populations, with emphasis placed on protecting female-headed families and widows and orphans.

The DPC shall establish programs to reconstruct and repair homes destroyed, damaged or in decay. Programs shall also be implemented to rebuild public utilities and other infrastructure necessary for the durable rehabilitation of communities.

MODEL FUNCTIONS OF THE COMMISSION LANGUAGE OPTION **III:**

The framework of the strategy for reintegration of displaced persons should:

- a) Consider the needs of residents and displaced persons to prevent stigmatization and resentment.
- b) Set up an initial support system to allow displaced persons to successfully return to the region.
- c) Encourage participation and management of return by the displaced persons themselves to ensure successful reintegration.
- d) Phase the process of return in approximately [time period], to build the foundation for a lasting and durable peace and ensure that local resources are not overwhelmed, which will reduce the likelihood of renewed tensions.

- e) Make the first stage of return a [amount of months] preliminary stage, with completion of this phase by [date as determined by the Parties]. The following shall be accomplished within such time:
- (1) Collection of data to ascertain the most effective return of displaced persons and which returnees satisfy the criteria for priority of return;
 - (2) Creation of a comprehensive report on the mechanism of return, which will include time frames and logistical information;
 - (3) Establishment of an information campaign;
 - (4) Formation of entry points, with a plan for monitoring them, upon initiation of the first phase of return;
 - (5) Creation of Reception Centers within the communities of return;
 - (6) Institution of programs to enable the rebuilding and repair of homes, public utilities, and infrastructure in communities affected by the return of displaced persons.

Support and Assistance from the International Community

Drafter's Note: The Parties should seek assistance from the international community to fund and implement the resettlement programs. The agreement should be shared with all UNHCR and government core staff involved in the operation, including field staff. The agreement will provide them with guidance as to underlying principles and policies and serve as a tool in negotiations concerning specific problems (e.g., export of displaced persons' personal belongings, border procedures). If significant assistance is sought from the UNHCR, it should be included as a signatory to the agreement.

Burundi Agreement, Protocol IV, Chapter I, Articles 7 and 9

7. "The Government shall allow international organizations and international and local non-governmental organizations unrestricted access to returnees and other *sinistrés* for purposes of the delivery of humanitarian assistance. It must guarantee the safety of the staff of such organizations and must also facilitate the provision of short-term aid for repatriation, appropriately supervised and without discrimination.

9. A National Fund for *Sinistrés* shall be established, and shall derive its funding from the national budget and from grants by bilateral and multilateral aid agencies or assistance from non-governmental organizations.”

Guatemala Agreement, Part V, Paragraphs 3 and 6

“3. The Parties recognize that the series of tasks relating to the resettlement of the uprooted population is of such breadth and complexity that the strong support of the international community is needed in order to complement the domestic efforts of the Government and of the various sectors of civil society. Otherwise, the Government's commitment would be limited by financial constraints.

6. For the purpose of ensuring implementation of the resettlement strategy, the Parties agree to establish a fund to implement the agreement on resettlement of population groups uprooted by armed conflict essentially with contributions from the international community. The United Nations Development Programme (UNDP) shall be asked to administer the funds of each of the projects to be executed.”

Cambodia Agreement, Part V, Article 20

“2) The Signatories request the Secretary-General of the United Nations to facilitate the repatriation in safety and dignity of Cambodian refugees and displaced persons, as an integral part of the comprehensive political settlement and under the overall authority of the Special Representative of the Secretary-General, in accordance with the guidelines and principles on the repatriation of refugees and displaced persons as set forth in Annex 4.”

Mozambique Agreement, Protocol III, Article IV, Paragraph b

“Without prejudice to the liberty of movement of citizens, the Government shall draw up a draft agreement with RENAMO to organize the necessary assistance to refugees and displaced persons, preferably in their original places of residence. The parties agree to seek the involvement of the competent United Nations agencies in the drawing up and implementation of

this plan. The International Red Cross and other organizations to be agreed upon shall be invited to participate in the implementation of the plan.”

Macedonia Agreement, Annex C, Paragraph 3.2-3.3.

“3.2. The Government with the participation of the parties will complete an action plan within 30 days after the signature of the Framework Agreement for rehabilitation of and reconstruction in areas affected by the hostilities. The parties invite the international community to assist in the formulation and implementation of this plan.

3.3. The parties invite the European Commission and the World Bank to rapidly convene a meeting of international donors after adoption in the Assembly of the Constitutional amendments in Annex A and the revised Law on Local Self-Government to support the financing of measures to be undertaken for the purpose of implementing the Framework Agreement and its Annexes, including measures to strengthen local self-government and reform the police services, to address macro-financial assistance to the Republic of Macedonia, and to support the rehabilitation and reconstruction measures identified in the action plan identified in paragraph 3.2.”

Sierra Leone Agreement, Part Five, Article XXII

“The Parties through the National Commission for Resettlement, Rehabilitation and Reconstruction agree to seek funding from and the involvement of the UN and other agencies, including friendly countries, in order to design and implement a plan for voluntary repatriation and reintegration of Sierra Leonean refugees and internally displaced persons, including non-combatants, in conformity with international conventions, norms and practices.”

Liberia Agreement, Article 18, Paragraph 3

“The Parties also call upon the relevant organizations of the United Nations system, particularly the Office of the United Nations High Commissioner for Refugees and the United Nations Development Programme, other intergovernmental and non-governmental organizations, to implement

programmes for the voluntary repatriation, return and reintegration of the Liberian refugees and internally displaced persons.”

MODEL SUPPORT AND ASSISTANCE LANGUAGE

The Parties to this agreement request and invite the international community to provide financial, technical, and material support and resources to ensure that the resettlement process takes place fully, efficiently, and with full dignity and safety for the returnees. The Parties recognize that, without such assistance, any resettlement programs will be very difficult to implement. The Parties are committed to cooperating in all necessary ways to ensure that the resources are used for the benefit of the uprooted population.

III. Summaries of Agreements Regarding Refugees and IDPs

The following summaries briefly describe the conflicts that uprooted population groups and the various types of language used in peace agreements that dealt with those issues. Of the peace agreements signed since 1989, ten contain provisions addressing the resettlement of displaced persons. The agreements are summarized according to their thoroughness, beginning with the most comprehensive: Burundi, Guatemala, Georgia, Bosnia, Cambodia, Mozambique, Kosovo, Macedonia, Sierra Leone, and Liberia.

Burundi Agreement:

Since 1993, fighting between the Hutu and Tutsi factions in Burundi has created mass destruction, death and displacement of populations. The Arusha Peace and Reconciliation Agreement, signed 28 August 2000, attempted to establish peace within the country between these two groups. The agreement provides one of the most detailed treatments of the problem of displaced persons. It presents principles that the government will respect with regard to the right of voluntary return and the right to property, provides that the government will establish a National Commission for the Rehabilitation of *Sinistrés* (CNRS) to organize the resettlement process, and provides the CNRS with a list of objectives to accomplish. The agreement also sets forth principles and mechanisms to be applied to resolve issues relating to land and property, and provides for extra protection to vulnerable groups. Because not all rebel groups were involved in the negotiations, however, a ceasefire agreement was not achieved. The security situation has worsened since the agreement was signed, and the continued fighting has prevented implementation of the agreement and displaced thousands more people.

Guatemala Agreement:

In the early 1990s, the Guatemalan government and rebel guerrillas signed a series of peace agreements, ending a 36-year-old conflict that killed over 100,000 people and created over one million displaced persons. The Guatemala Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, signed 17 June 1994, has a separate agreement addressing the resettlement of persons displaced by the conflict. The agreement provides guarantees to returning populations, especially on the issue of land rights. It creates a Technical Committee for the implementation of the resettlement agreement and directs it to analyze the needs of the uprooted populations and to formulate development

projects corresponding with the strategy set forth in the agreement. The agreement calls for a fund, with contributions from the international community, to implement the resettlement strategy. Many displaced persons have benefited from the land and reintegration programs, but the success of the operation is constrained by a shortage of fertile land. Many displaced persons have also been excluded from the resettlement process because they were dispersed, not targeted as displaced, and/or were unaware of the process.

Georgia Agreement:

Fighting over the secession of South Ossetia from Georgia broke out in 1989, causing the flight of 50,000 South Ossetians to North Ossetia and 23,000 Georgians to Georgia proper. Although a ceasefire was reached in May 1992, secessionist fighting broke out in Abkhazia in mid-1992 when the republic declared its independence from Georgia, and 250,000 Georgians fled that conflict. In 1994, in an attempt to reverse what constituted the expulsion of an entire ethnic group, UNHCR negotiated the Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons, signed 4 April 1994. The agreement established specific principles for the voluntary return and safety of displaced persons and established a Commission to implement programmes for the resettlement process. The agreement further assigned the Commission a list of tasks for its first meeting and gave authority to UNHCR to oversee the process. The implementation of the agreement, however, had to be suspended when the Abkhazians insisted that Abkhazia's political status be settled before repatriation occurred. Only a minority of the Georgian population displaced from Abkhazia has been able to return, leaving 249,000 still displaced as of January 2003. An additional 12,000 persons remain displaced as a result of the conflict in South Ossetia.

Bosnia Agreement:

Annex 7 of the Dayton Accords is an Agreement on Refugees and Displaced Persons, signed 14 December 1995. Chapter One sets forth the rights of refugees and IDPs, including the right of voluntary return and guarantees of safety and security, and requires cooperation with international organizations. Chapter Two establishes a Commission for Displaced Persons and Refugees, and sets forth the process by which the Commission will decide disputes over property. The agreement also provides for a strong international presence. Constant pressure from the international community has led to a relatively successful resettlement process, with 500,000 IDPs and 420,000 refugees returning to their pre-war homes. The restitution of property to displaced persons is also going ahead, although

additional property repossession legislation had to be adopted to overcome political obstruction by nationalist forces, and more than 80,000 property claimants are still unable to recover their property.

Cambodia Agreement:

After twenty-two years of war, Cambodia's infrastructure was severely damaged. The Agreement on a Comprehensive Political Settlement of the Cambodia Conflict was signed on 23 October 1991. Part V: Refugees and Displaced Persons, provides the right to voluntary return and requests that the United Nations facilitate the repatriation. Annex 4: Repatriation of Cambodian Refugees and Displaced Persons, sets forth the commitment to create the conditions necessary for return. It also establishes an ad hoc consultative body for a limited term, with the Parties and international groups serving as participants, and invites the generous financial contributions of the international community. The repatriation process happened more quickly than expected, and the UNHCR's presence in the country before the peace accords allowed it to play an important role in establishing repatriation routes and reception centers during the initial period. Although the repatriation was virtually accomplished by the time elections took place in May 1993, the military disarming and demobilization of military factions did not. The Khmer Rouge remained armed, and sporadic fighting caused the displacement of several thousand more people over the next several years.

Mozambique Agreement:

Three decades of armed conflict concluded with the 1992 General Peace Agreement for Mozambique, signed on 4 October 1992, between the Mozambique Liberation Front and the opposition forces of the Mozambique National Resistance. The conflict caused more than 1.7 million people to flee to other countries, and more than twice that many were internally displaced. In Protocol III, the agreement addresses freedom of the press, freedom of association, liberty of movement, return of refugees and IDPs and electoral procedures. In five paragraphs, the Parties undertake to cooperate in the repatriation process, agree to seek the involvement of the United Nations agencies in drawing up a plan, provide that displaced persons forfeit no rights or freedoms, provide that displaced persons be registered and included in the electoral rolls and guarantee the restitution of property to displaced persons. Spontaneous repatriation began even before the peace agreement was signed, and the vast majority of displaced persons returned before elections were held in October 1994. UNHCR played a key role in reintegration, providing transportation for vulnerable groups and protecting the

returnees. Because almost all fighting ended with the signing of the peace accords and the cooperation of all Parties was eventually secured, there were few security problems. The repatriation operation officially ended in July 1996, and its success was attributed to the strong will of the Mozambican people to build peace and the international community's immediate commitment of substantial resources.

Kosovo Agreement:

Kosovo is an international protectorate under United Nations administration. The Interim Agreement for Peace and Self-Government in Kosovo, signed 23 February 1999, devotes two paragraphs of Article II to the return of refugees. The agreement recognizes the right to return and provides that all measures necessary to facilitate the safe return of persons will be taken, including issuing necessary documents. It also provides the right to recover property and other possessions. Finally, the Parties agree to cooperate with the UNHCR and other organizations in implementing the return process. Although the return process has begun, the recent withdrawal of NATO peacekeeping forces may dissuade potential returnees who fear for their safety.

Macedonia Agreement:

The displacement of persons in Macedonia is a relatively recent phenomenon, beginning in 2001 when the National Liberation Army began fighting for the rights of ethnic Albanians in Macedonia. At the peak of the fighting, 70,000 people were displaced. With the signing of the Framework Agreement of 13 August 2001, which resulted in a constitutional change recognizing the rights of the minority Albanians, the situation has steadily improved; as of August 2002, only 7,421 persons remained displaced. The Agreement devotes three paragraphs of Annex C to Refugee Return, Rehabilitation and Reconstruction. It provides that all Parties will work to ensure the return of displaced persons. The Government pledges to complete an action plan for rehabilitation and reconstruction of areas to be resettled within thirty days. Finally, the Parties invite the international community to finance the measures to be undertaken.

Sierra Leone Agreement:

After more than a decade of civil war, the Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone was signed on 7 July 1999. The agreement addresses the displaced persons

situation in two Articles. Article XXIII states that the Parties agree to seek funding from the UN and other agencies to design and implement a plan for the reintegration of refugees and IDPs in conformity with international norms. Article XXIII guarantees that the Parties will take effective and appropriate measures to ensure the displaced persons rights to asylum are fully respected. The Resettlement Strategy applied to IDPs as well as refugees and provided for resettlement once areas were declared safe; by the end of 2002, all but two of the chiefdoms were declared safe and 220,000 displaced persons were resettled. However, many returnees have returned to areas with little or no infrastructure or facilities, and security remains fragile because of poor living conditions, overcrowding, human rights abuses, and the highly volatile situation in neighboring Liberia.

Liberia Agreement:

Civil war in Liberia has continued for over a decade, despite the signing of a peace agreement on 25 July 1993. The agreement addressed the Repatriation of Refugees in Article 18, but without an effective end to the fighting, no resettlement process could occur. In May 2003, the UN estimated that there were over 200,000 IDPs in Liberia, and the country teeters on the brink of a humanitarian disaster.

IV. Sample Comprehensive Agreement

Drafter's Note: The following agreement is a comprehensive model for future agreements on the resettlement of displaced persons. While the overall agreement may not have been a success, the section on displaced persons merges the three main objectives – right to voluntary return, commitment to safety and security for displaced persons, and mechanisms for implementing the resettlement process – into a comprehensive strategy for resettlement.

BURUNDI

Arusha Peace and Reconciliation Agreement for Burundi

Protocol IV: Reconstruction and Development

Chapter I: Resettlement and Rehabilitation of Refugees and *Sinistrés*

PREAMBLE

We, the Parties,

Having considered the issues relating to the overall problem of reconstruction and development, including those associated with rehabilitation and resettlement of the refugees and *sinistrés*, with physical and political reconstruction and with economic and social development,

Having identified the principles, guidelines and activities for the transitional institutions in dealing with these issues,

Having incorporated the essentials of our work, including the analysis of the origin of the specific problems and the principles, guidelines and activities required to remedy this problem, in a report of Committee IV which serves as a reference document for the present Protocol and is reproduced as Annex IV to the Agreement,

Have agreed:

1. To support the rehabilitation and resettlement of the refugees and *sinistrés* by complying with the provisions of Chapter I of the present Protocol;
2. To work towards the country's physical and political reconstruction in conformity with the principles and measures set out in Chapter II of the present Protocol;

3. To strive towards the economic and social development of Burundi by following the guidelines defined in Chapter III of the present Protocol.

CHAPTER I

REHABILITATION AND RESETTLEMENT OF REFUGEES AND *SINISTRÉS*

Article 1 Definitions

1. For the definition of the term "refugee", reference is made to international conventions, including the 1951 Geneva Convention Relative to the Status of Refugees, the 1966 Protocol Relative to the Status of Refugees and the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.
2. The term "*sinistrés*" designates all displaced, regrouped and dispersed persons and returnees.

Article 2 Principles governing return, resettlement and reintegration

1. The Government of Burundi shall encourage the return of refugees and *sinistrés* and resettle and reintegrate them. It shall seek the support of other countries and international and non-governmental organizations in carrying out this responsibility.
2. It shall respect the following principles:
 - a. All Burundian refugees must be able to return to their country;
 - b. Refugees no longer in their first country of asylum are entitled to the same treatment as other returning Burundian refugees;
 - c. Return must be voluntary and must take place in dignity with guaranteed security, and taking into account the particular vulnerability of women and children;

- d. The reception mechanisms must be put in place in advance of the return;
- e. Returnees must have their rights as citizens and their property restored to them in accordance with the laws and regulations in force in Burundi after the entry into force of the Agreement;
- f. All *sinistrés* wishing to do so must be able to return to their homes;
- g. Specific conditions must be provided for *sinistrés* who believe that they can no longer return to their property, so as to enable them to return to normal socio-professional life;
- h. In the return of the refugees and the resettlement and reintegration of the returnees and displaced and regrouped persons, the principle of equity, including gender equity, must be strictly applied in order to avoid any measure or treatment that discriminates against or favours any one among these categories.

Article 3 **Preparatory activities**

The Government shall undertake the following preparatory activities:

- a. Establishing and constituting a National Commission for the Rehabilitation of *Sinistrés* (CNRS), which shall have the mandate of organizing and coordinating, together with international organizations and countries of asylum, the return of refugees and *sinistrés*, assisting in their resettlement and reintegration, and dealing with all the other issues listed in the report of Committee IV. To this end, it shall draw up a plan of priorities. The members of the CNRS shall be drawn inter alia from the participating parties and the Government of Burundi, and shall elect the Commission's chairperson;
- b. Establishing and constituting a Sub-Commission of the CNRS with the specific mandate of dealing with issues related to land as set out in article 8 (j) of the present Protocol;
- c. Convening, in collaboration with the countries of asylum and the Office of the United Nations High Commissioner for Refugees, the Tripartite

Commissioner, involving in it representatives of the refugees and international observers;

- d. Requesting international organizations and the host countries concerned to conduct a gender and age disaggregated census of the refugees, including the old caseload refugees (1972);
- e. Conducting a multi-dimensional census of the *sinistrés*;
- f. Organizing information and awareness campaigns for refugees and *sinistrés* as well as visits to their places of origin;
- g. Undertaking information and awareness campaigns on the mechanisms for peaceful coexistence and return to *collines* of origin;
- h. Setting up reception committees where they do not yet exist. The role of these committees shall be to receive and provide support services for all the *sinistrés* returning to their homes, ensure their security and assist them in organizing their socio-economic reintegration.

Article 4

Guidelines governing resettlement and integration

The CNRS shall decide on the activities for the resettlement and integration of refugees and *sinistrés* in accordance with the priority plan taking into account the availability of resources, in order to achieve the following aims and objectives:

- a. To ensure the socio-economic and administrative reintegration of the *sinistrés*;
- b. To give all returning families, including female- and child-headed families, food aid, material support and assistance with health, education, agriculture and reconstruction until they become self-sufficient;
- c. To provide communes, villages and *collines* with assistance in the reconstruction of community infrastructures and with support for income-generating activities, paying special attention to women and enhancing their roles in building and sustaining families and communities;

- d. To settle all those who believe that they cannot yet return on sites close to home, in order to enable them to go and till their fields initially and return to their land later on;
- e. To encourage, to the extent possible, grouped housing in the reconstruction policy in order to free cultivable land;
- f. To ensure equity in the distribution of resources between the ethnic groups on the one hand and the provinces on the other, and to avoid overlap between the various parties involved;
- g. To promote the participation of the population in the resettlement activities;
- h. To help returnees to recover the property and bank accounts left in Burundi before their exile and whose existence has been duly proven;
- i. To offer intensive language courses for returnees to mitigate the language problems;
- j. To assist returnees in other areas such as medical services, psycho-social support, social security and retirement, education of children and the equivalency of diplomas awarded outside Burundi.

Article 5

Actions with regard to returnees in their country of asylum

The Government shall undertake the following actions with regard to returnees in their country of asylum:

- a. Helping returnees settle their disputes in their country of asylum relating notably to immovable property, bank accounts, social security, etc;
- b. In the context of agreements between countries or social security institutions, helping those who were employed in the country of asylum receive social security benefits to which they are entitled in respect of such employment;
- c. Studying ways of indemnifying and compensating returnees for property in the country of asylum they are unable to take with them, profit from or sell;

- d. Assisting pupils and students in their two final years of study in primary, secondary and higher education wishing to complete their studies in the country of asylum.

Article 6
Other actions

Any other action decided upon by the CNRS in accordance with the priority plan and in the light of available resources may be taken.

Article 7
Access and safety of international personnel

The Government shall allow international organizations and international and local non-governmental organizations unrestricted access to returnees and other *sinistrés* for purposes of the delivery of humanitarian assistance. It must guarantee the safety of the staff of such organizations and must also facilitate the provision of short-term aid for repatriation, appropriately supervised and without discrimination.

Article 8
Issues relating to land and other property

To resolve all issues relating to land and other property, the following principles and mechanisms shall be applied:

- a. Property rights shall be guaranteed for all men, women and children. Compensation which is fair and equitable under the circumstances shall be payable in case of expropriation, which shall be allowed only in the public interest and in accordance with the law, which shall also set out the basis of compensation;
- b. All refugees and/or *sinistrés* must be able to recover their property, especially their land;
- c. If recovery proves impossible, everyone with an entitlement must receive fair compensation and/or indemnification;
- d. Refugees who do not return may receive a just and equitable indemnification if their land had been expropriated without prior indemnification and in

contravention of the principle set out in sub-paragraph (a) of the present article;

- e. The policy with respect to distribution of State-owned land shall be reviewed so that priority can be given to the resettlement of *sinistrés*;
- f. An inventory of destroyed urban property shall be drawn up with a view to making it habitable in order to redistribute it or return it as a priority to the original owners;
- g. A series of measures shall be taken in order to avoid subsequent disputes over land, including the establishment of a register of rural land, the promulgation of a law on succession and, in the longer term, the conduct of a cadastral survey of rural land;
- h. The policy of distribution or allocation of new lands shall take account of the need for environmental protection and management of the country's water system through protection of forests;
- i. Burundi's Land Act must be revised in order to adjust it to the current problems with respect to land management;
- j. The Sub-Commission on Land established in accordance with article 3 (b) of the present Protocol shall have the specific mandate of:
 - i. Examining all cases of land owned by old caseload refugees and state-owned land;
 - ii. Examining disputed issues and allegations of abuse in the (re)distribution of land and ruling on each case in accordance with the above principles;
- k. The Sub-Commission on Land must, in the performance of its functions, ensure the equity, transparency and good sense of all its decisions. It must always remain aware of the fact that the objective is not only restoration of their property to returnees, but also reconciliation between the groups as well as peace in the country.

Article 9

National Fund for *Sinistrés*

A National Fund for *Sinistrés* shall be established, and shall derive its funding from the national budget and from grants by bilateral and multilateral aid agencies or assistance from non-governmental organizations.

Article 10

Vulnerable groups

The Government shall ensure, through special assistance, the protection, rehabilitation and advancement of vulnerable groups, namely child heads of families, orphans, street children, unaccompanied minors, traumatized children, widows, women heads of families, juvenile delinquents, the physically and mentally disabled, etc.

Additional Sources of Information

United Nations High Commission for Refugees (UNHCR), “The State of the World Refugees: In Search of Solutions,” New York: Oxford Press (1995).

Frank Newman and David Weissbrodt, “International Human Rights: Law, Policy, and Process” (2d ed. 1996).

Francis M. Deng, “Internally Displaced Persons Compilation and Analysis of Legal Norms,” New York: United Nations (1998).

The primary international legal instruments governing refugee issues are:

- Universal Declaration of Human Rights (1948)
- Convention Relating to the Status of Refugees (1954)
- Protocol Relating to the Status of Refugees (1967)
- Convention on the Rights of the Child (1990)
- European Convention for the Protection of Human Rights and Fundamental Freedoms (1953)
- American Declaration of the Rights and Duties of Man (1948)
- The Organization of American States (OAS) Charter (1948)
- American Convention on Human Rights (1978)
- The African Charter on Human and Peoples’ Rights (1986)
- Geneva Convention IV (1949) and Protocols I and II (1977)

The following legal instruments provide additional governance on issues regarding internally displaced persons:

- International Covenant on Civil and Political Rights (1976)
- International Covenant on Economic, Social, and Cultural Rights (1976)
- International Convention on the Elimination of All Forms of Racial Discrimination (1969)
- Convention on the Elimination of All Forms of Discrimination Against Women (1981)
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)

For additional information and reference materials, see:

- Worldwide Refugee Information, U.S. Committee on Refugees (USCR)
- Norwegian Refugee Council
- United Nations Commissioner of Human Rights
- The SAIS-Brookings Project on Internal Displacement