

**TRIPARTITE AGREEMENT ON THE VOLUNTARY REPATRIATION
OF REFUGEES FROM THE DEMOCRATIC REPUBLIC OF CONGO
LIVING IN THE UNITED REPUBLIC OF TANZANIA**

PREAMBLE

The Government of the United Republic of Tanzania, the Government of the Democratic Republic of Congo and the United Nations High Commissioner for Refugees (UNHCR), hereafter referred to as the “Contracting Parties”.

- (a) **Recognizing** that the right of all citizens to leave and to return to their country is a basic human right enshrined, *inter alia*, in Article 13(2) of the 1948 Universal Declaration of Human Rights and Article 12 of the 1966 International Covenant on Civil and Political Rights;
- (b) **Recalling** the 1951 Geneva Convention relating to the Status of Refugees and its additional Protocol of 31 January 1967, as well as the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969 and in particular Article 5 thereof concerning voluntary repatriation;
- (c) **Recalling** that the United Nations General Assembly Resolution 428 (V) of 14 December 1950, which adopted the Statute of UNHCR, ascribes to the High Commissioner the function of providing international protection to refugees and of seeking permanent solutions for the problems of refugees, *inter alia*, by promoting and facilitating their voluntary repatriation in safety and dignity;
- (d) **Considering** that voluntary repatriation, where conditions are conducive, constitutes the best durable solution for the refugee problem, and that Conclusions 18 (XXXI) and 40 (XXXVI) of the Executive Committee of the High Commissioner’s Programme set out internationally accepted principles and standards governing the voluntary repatriation of refugees;
- (e) **Bearing in mind** the importance of the principles in the ceasefire agreement that was signed in Lusaka on 10 July 1999 between the Government of the Democratic Republic of Congo, the Republic of Angola, the Republic of Namibia, the Republic of Rwanda, the Republic of Uganda and the Republic of Zimbabwe concerning the repatriation of Congolese refugees and the return of displaced persons.
- (f) **Taking note** of resolutions pertinent to the Inter-Congolese Dialogue of Sun City (South Africa) of 18 of April 2002 and the Global and Inclusive Agreement on the transition in the Democratic Republic of Congo signed in Pretoria on 17 December 2002 and adopted in Sun City on the 1 April 2003 along with the Decree-Law number 03/001 of the 15 of April 2003 on Amnesty for Acts of War and Crimes or Offences related to Political Activities.

- (g) **Considering** the resolutions on refugees and displaced persons included in the Dar-es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region that was adopted by Heads of States and Governments during the first summit in Dar-es-Salaam from 19 and 20 November 2004.
- (h) **Recognizing** the need to define the specific procedures and modalities for the voluntary repatriation and reintegration in the Democratic Republic of Congo of Congolese refugees in the United Republic of Tanzania with the assistance of the international community through UNHCR as may be supported and, where appropriate, by other United Nations agencies and intergovernmental and non governmental organizations;

Have agreed as follows:

I. GENERAL CLAUSES

Article 1

RIGHT TO RETURN

Any refugee from the Democratic Republic of Congo living in the United Republic of Tanzania and who wishes to return to the Democratic Republic of Congo has the right to do so without having to satisfy any pre-condition.

Article 2

VOLUNTARY CHARACTER OF REPATRIATION

The Contracting Parties hereby reaffirm that the repatriation of refugees from the Democratic Republic of Congo living in the United Republic of Tanzania shall take place on the basis of their freely expressed will and as such, no refugee from the Democratic Republic of Congo will be compelled to return against his or her will to his or her country of origin.

Article 3

REPATRIATION UNDER CONDITIONS OF SAFETY AND DIGNITY

The Contracting Parties will conduct the voluntary repatriation process in an orderly, phased, humane, safe and dignified manner, in an environment that is safe and conducive for sustained return. The assessment of whether the security conditions are conducive for return will be undertaken by mutual agreement by the Contracting Parties. The physical, psychological and material and security conditions must be present to allow UNHCR and other humanitarian actors to carry out their work.

Article 4

PRESERVATION OF FAMILY UNITY

Clause 1: Repatriation of Family Units and Reunification

In accordance with the principle of family unity, the Contracting Parties shall make every effort to ensure that refugee families are repatriated as units. Where such efforts fail, a mechanism shall be established for their reunification in the Democratic Republic of Congo.

Clause 2: Preservation of Family Units and Links

In order to preserve the unity of the family, spouses and /or children of repatriating refugees who are themselves not citizens of the Democratic Republic of Congo shall be allowed to enter and remain in the Democratic Republic of Congo. The principle established herein shall also apply to non-Congolese spouses as well as children of deceased refugees from the Democratic Republic of Congo.

II. SPECIFIC CLAUSES

Article 5

RESPONSIBILITIES OF THE COUNTRY OF ASYLUM: THE UNITED REPUBLIC OF TANZANIA

Clause 1: Recognition of the Voluntary Character of Repatriation

The Government of the United Republic of Tanzania undertakes to guarantee the voluntary character of the repatriation of Congolese refugees from the Democratic Republic of Congo and will take, in consultation with the United Nations High Commissioner for Refugees, all measures necessary to uphold this fundamental principle of international protection. The status of those refugees who decide not to avail themselves of the voluntary repatriation programme under the present Agreement shall continue to be governed by the international and regional conventions relating to the status of refugees, as well as all other legal instruments in force in the country of asylum.

Clause 2: Access to Refugees by UNHCR

The Government of the United Republic of Tanzania shall grant to the United Nations High Commissioner for Refugees free and unhindered access to its territory and refugees therein to allow for the full implementation of the voluntary repatriation programme.

Clause 3: Exit Formalities

The Government of the United Republic of Tanzania shall facilitate the departure of refugees from the Democratic Republic of Congo and waive customs and excise duties and taxes on the exportation of property and personal effects. In addition, health formalities shall be simplified in accordance with existing regulations.

Clause 4: Security Arrangements

The Government of the United Republic of Tanzania undertakes the responsibility for ensuring the safety and security of the repatriating refugees returning to their country of origin, including in transit areas and during transport movements. The Government of the United Republic of Tanzania will take all necessary measures to ensure the safety and security of Democratic Republic of Congo government officials, United Nations High Commissioner for Refugees and implementing partner staff engaged in the voluntary repatriation operation.

Clause 5: Treatment of the Remaining Refugees

The Government of the United Republic of Tanzania shall ensure that refugees from the Democratic Republic of Congo, who do not opt to repatriate and who are deemed to be in continued need of International Protection, continue to enjoy asylum in the United Republic of Tanzania in accordance with the 1951 Geneva Convention and the 1969 OAU Convention as well as relevant Tanzanian laws this, notwithstanding, the relevant UNHCR Executive Committee Conclusions on the applicability of the cessation clause.

Article 6

RESPONSIBILITIES OF THE COUNTRY OF ORIGIN: THE DEMOCRATIC REPUBLIC OF CONGO

Clause 1: Voluntary Repatriation in Safety and Dignity

The Government of the Democratic Republic of Congo shall reinforce administrative, judicial and security measures in order to ensure that the return of refugees takes place in safety and dignity.

Clause 2: Sustainability of Return

To enhance conditions conducive to the sustainable return and reintegration of returnees, the Government of the Democratic Republic of Congo will continue to take all measures to sensitize and prepare local populations residing in areas of return for the reception and the reintegration of returnees.

Clause 3: Arrival Formalities

The Government of the Democratic Republic of Congo shall simplify formalities for the return of refugees and facilitate the entry of their goods and personal effects free from customs and excise duties or taxes. The controls and medical inspections at the entry point will be limited to the minimum necessary requirements and will be carried out with due respect to the dignity and basic human rights of the returnees.

Clause 4: Access to Returnees by UNHCR

The Government of the Democratic Republic of Congo shall facilitate the activities of the United Nations High Commissioner for Refugees during the repatriation operation. The latter shall be allowed to accompany returnees and shall be allowed free and unhindered access to returnees in their areas of return to conduct monitoring activities with regard to legal and physical protection as well as material assistance.

Clause 5: Settlement of Returnees

To ensure durable peace and achieve effective national reconciliation, the Government of the Democratic Republic of Congo shall take all measures possible to allow returnees to settle in their place of origin or habitual residence and shall ensure access to their property, immovable and movable. In this respect, it shall ensure their fair access and enjoyment of their property, movable and immovable property. It shall establish procedures and mechanisms to ensure the settlement of disputes arising from ownership and enjoyment of property rights in accordance with the laws and regulations in force.

Clause 6: Statelessness of Returnees

The Government of the Democratic Republic of Congo shall take all necessary measures to ensure that all nationals and habitual residents of the Democratic Republic of Congo exercise their right to return. The Parties shall endeavour to avoid instances of potential statelessness in accordance with the 1961 Convention on the Reduction of Statelessness.

Clause 7: Reintegration of Returnees

The Government of the Democratic Republic of Congo shall ensure the reintegration of returnees from the United Republic of Tanzania in the socio-economic life of the nation, benefiting as much as possible from the different national public services available to all citizens and habitual residents. It shall guarantee the returnees equal enjoyment of all the socio-economic, civil and political rights recognized in domestic and international law. In this respect, The Government of the Democratic Republic of Congo shall accord recognition, as appropriate, to equivalency of academic diplomas and vocational skills certificates obtained by refugees while in the United Republic of Tanzania.

Clause 8: Cooperation on Reintegration of Returnees

The Government of the Democratic Republic of Congo shall, in close cooperation with the United Nations High Commissioner for Refugees, take necessary measures to ensure the reintegration of all returnees coming from the United Republic of Tanzania, including those who had for a long time resided outside the Democratic Republic of Congo.

Clause 9: Facilitating the Activities of UNHCR and Implementing Partners

The Government of the Democratic Republic of Congo shall grant to the United Nations High Commissioner for Refugees free and unhindered access to its territory and the returnees to allow for the full implementation of the repatriation programme. In this respect, the Government of the Democratic Republic of Congo shall further facilitate the movement of the United Nations High Commissioner for Refugees and implementing partner staff, as well as relief goods and equipment used by the same in the voluntary repatriation and reintegration operation.

Clause 10: Security Arrangements

The Government of the Democratic Republic of Congo undertakes the responsibility for ensuring the safety and security of the refugees returning to their country of origin, including in transit areas and during transport movements. The Government of the Democratic Republic of Congo will take all necessary measures to ensure the safety and security of the staff of the United Nations High Commissioner for Refugees and implementing partners and the officials of the Government of the United Republic of Tanzania involved in the voluntary repatriation and reintegration operations.

Clause 11: Legal Guarantees Upon Return

The Government of the Democratic Republic of Congo shall adopt, together with all concerned, formal legal guarantees to ensure the respect of returnees' rights against harassment, intimidation, persecution, discrimination, prosecution or any punitive measures whatsoever on account of having left, or remained outside of the Democratic Republic of Congo. In this respect, the returnees shall benefit from the relevant provisions of the Decree-Law n. 03/001 of 15 April 2003 on Amnesty for Acts of War and Crimes or Offences related to Political Activities, in force in the Democratic Republic of Congo. This clause shall not apply to war crimes, crimes against humanity, the crime of genocide, the crimes against peace or any other crimes for which persons may be subject to prosecution under the Rome Statute on the International Criminal Court or any other relevant provisions of international law.

Clause 12: Juridical Status and Equivalency

The Government of the Democratic Republic of Congo shall accord recognition to all administrative documents issued by the United Republic of Tanzania to refugees from the Democratic Republic of Congo, *inter alia*, births, deaths, adoptions, marriage and divorce certificates.

Article 7

RESPONSIBILITIES OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Clause 1: Verification of the Voluntary Character of Repatriation

The United Nations High Commissioner for Refugees shall have free and full access to refugees to verify the voluntary character of their decision to repatriate.

Clause 2: Facilitation of Safe and Dignified Character of Repatriation

The United Nations High Commissioner for Refugees shall establish a presence in the main areas of the returnees' settlements, so as to facilitate return in safety and dignity of the refugees and to contribute to the implementation of reintegration measures.

Clause 3: Special Protection Needs

The United Nations High Commissioner for Refugees shall ensure that refugees with special needs, including women heads of households, unaccompanied and separated children and the elderly persons are protected and their fundamental rights, particularly the principle of family unity, are upheld.

Clause 4: Treatment of Remaining Refugees

The United Nations High Commissioner for Refugees shall ensure that refugees from the Democratic Republic of Congo who do not opt to repatriate and who are deemed to be in continued need of international protection, continue to enjoy asylum in the United Republic of Tanzania in accordance with the 1951 Geneva Convention and the 1969 OAU Convention and relevant Tanzanian laws, this, notwithstanding, the relevant UNHCR Executive Committee Conclusions on the applicability of the cessation clause.

Clause 5: Funding and Coordination Arrangements

The United Nations High Commissioner for Refugees shall coordinate and mobilize funds for the repatriation operation from the international community. In this respect, UNHCR will provide its assistance and may be supported, where appropriate, by other United Nations Agencies, Intergovernmental and Non Governmental Organizations.

Article 8

TRIPARTITE COMMISSION

Clause 1: Establishment of the Tripartite Commission

A Tripartite Commission responsible for all issues relating to the voluntary repatriation of refugees from the Democratic Republic of Congo living in the United Republic of Tanzania is hereby established.

Clause 2: Composition of the Tripartite Commission

A Tripartite Commission shall be composed of six (06) representatives for each of the Government Parties and three (3) representatives for UNHCR. The chairperson and the co-chairperson of the Tripartite Commission will alternate between the two Governments. UNHCR shall act as secretary and may be assisted in this role by a representative of either Government, designated by the chairperson at that particular session. The chairperson will decide on dates of Tripartite Commission sessions in consultation with all Contracting Parties. The Tripartite Commission shall adopt its own Internal Rules of Procedure. It shall meet once every six months. Extraordinary sessions may be convened at the express request of one of the Contracting Parties. The Tripartite Commission may invite or authorize any individual or organization involved in the repatriation operation to participate in its meetings as an observer. Deliberations of the Tripartite Commission will be recorded in reports, which will be transmitted to the Contracting Parties.

Clause 3: Role and Functions of the Tripartite Commission

The Tripartite Commission is responsible for planning and monitoring the implementation of measures to facilitate voluntary repatriation of refugees from the Democratic Republic of Congo and their reintegration in their communities of origin or place of habitual residence. It shall ensure the implementation of the provisions of this Agreement, particularly those relating to the security and assistance of returnees. The Tripartite Commission shall keep the Contracting Parties informed of the progress made and difficulties encountered. It shall advise the latter on measures to be taken to overcome these difficulties and propose appropriate solutions.

Clause 4: Official Missions of the Tripartite Commission

The Tripartite Commission is tasked to plan and to carry out measures aimed at facilitating voluntary repatriation and reintegration of Congolese refugees in the Democratic Republic of Congo. The Tripartite Commission will ensure the enforcement of the provisions of the agreement, particularly those provisions relating to security and assistance provided to returnees. It shall periodically evaluate the progress and the difficulties encountered and propose solutions. In order to accomplish its tasks, the Tripartite Commission will undertake working missions to the areas of return of refugees. The Contracting Parties shall be notified by the Tripartite Commission of the calendar of such missions.

Clause 5: Information and Sensitization Campaign

The Tripartite Commission shall organize mass information campaigns for refugees from the Democratic Republic of Congo living in United Republic of Tanzania to provide them with objective and accurate information on repatriation, reintegration and prevailing security conditions in the areas of return, so as to assist them to reach an informed decision to repatriate in full knowledge of the facts. If need be, it shall facilitate go-and-see visits to the Democratic Republic of Congo by some refugees in order for them to acquaint themselves of the current realities and to report to their groups accordingly.

Clause 6: Arrangements for Registration

The Tripartite Commission shall devise the most appropriate means of registering refugees who wish to repatriate to the Democratic Republic of Congo.

Clause 7: Documentation

Duly completed Voluntary Repatriation Forms (VRFs), the format of which shall be mutually agreed upon by the Tripartite Commission, shall be recognized as valid identity documents in the United Republic of Tanzania and the Democratic Republic of Congo and as travel documents for the purpose of refugees' return to their final destinations in the Democratic Republic of Congo.

Clause 8: Entry and Exit Points

The Tripartite Commission shall agree on entry and exit points for voluntary repatriation movements.

Clause 9: Information Sharing in the Tripartite Commission

To assist the Tripartite Commission to fulfil its responsibilities, the Contracting Parties will, on request, avail all information relating to the implementation of this Agreement.

Clause 10: Establishment of Technical Working Committee on Voluntary Repatriation

The Tripartite Commission shall establish a Technical Working Committee on Voluntary Repatriation to assist it to discharge its responsibilities. It will be composed of a maximum of six (06) persons of each Contracting Party.

III. COMMON PROVISIONS

Article 9

Clause 1: Application of this Agreement to spontaneous returnees

The Contracting Parties hereby recognize, as a matter of principle that all assurances and other provisions set out in this Agreement shall also apply, where feasible, to the refugees from the Democratic Republic of Congo who spontaneously repatriate from the United Republic of Tanzania.

Clause 2: Exemption of Taxes for Relief Items

All relief goods, materials, equipment and means of transport destined for use in the voluntary repatriation and reintegration programme shall be exempt from all customs, excise duties and taxes.

IV. FINAL PROVISIONS

Article 10

Clause 1: Resolution of Disputes

Any question arising out of the interpretation or application of this Agreement, or for which no provision is expressly made herein, shall be resolved amicably through consultations between the Contracting Parties.

Clause 2: Amendments

This Agreement may be amended by the mutual written consent of the Contracting Parties.

Clause 3: Validity and Termination

This Agreement shall remain in force until it is terminated by the mutual written agreement of the Contracting Parties or upon the assurance of written notice of termination by one Contracting Party to the other two, which notice shall become effective at the end of ninety (90) days from the latter date of receipt of notice by either of the other two Contracting Parties.

Clause 4: Entry into Force

This Agreement shall enter into force on the date of its signature by the Contracting Parties.

In witness whereof, the authorized representatives of the Contracting Parties have hereby signed the present Agreement.

Done in Dar-es-Salaam, this 20th day of January 2005 in six (06) originals in the English and French languages, each being equally authentic.

**For the Government of the
United Republic of Tanzania**

**Hon. Omar R. Mapuri (MP)
Minister of Home Affairs**

**For the Government of the
Democratic Republic of Congo**

**Prof. Théophile Mbemba Fundu
Minister of Home Affairs,
Decentralisation and Security**

**For the United Nations High Commissioner for Refugees
Mr. Chrysantus Ache
UNHCR Representative**