

**Guiding Principles on Internal  
Displacement**  
**Annotations**

By Walter Kälin

The American Society of International Law

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Project on Internal Displacement

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## PREFACE TO THE REVISED EDITION

Ten years ago, my predecessor in the office of the Representative of the UN Secretary-General on Internally Displaced Persons, Francis M. Deng, submitted the Guiding Principles on Internal Displacement to the then UN Commission on Human Rights. These Principles, although not a binding legal instrument, have since gained considerable authority. The Heads of State and Government assembled in New York for the September 2005 World Summit unanimously recognized them as an “important international framework for the protection of internally displaced persons.” (UN General Assembly GA Resolution A/60/L.1 para. 132), and the General Assembly has not only welcomed “the fact that an increasing number of States, United Nations agencies and regional and non-governmental organisations are applying them as a standard” but also encouraged “all relevant actors to make use of the Guiding Principles when dealing with situations of internal displacement” (A/RES/62/153, para. 10). At the regional level, the Organization of African Unity (now the African Union) formally acknowledged the principles; the Economic Community of West African States (ECOWAS) called on its member states to disseminate and apply them; and in the Horn of Africa, the Intergovernmental Authority on Development (IGAD), in a ministerial declaration, called the principles a “useful tool” in the development of national policies on internal displacement. In Europe, the Organization for Security and Cooperation in Europe (OSCE) recognized that the principles as “a useful framework for the work of the OSCE” in dealing with internal displacement, and the Parliamentary Assembly of the Council of Europe as well as its Council of Minis-

ters urged its member states to incorporate the principles into their domestic laws.<sup>1</sup> The number of states that have incorporated the Guiding Principles into their domestic laws and policies is growing.

The Guiding Principles reflect and are consistent with international human rights law and international humanitarian law and to a large extent thus codify and make explicit guarantees protecting internally displaced persons that are inherent in these bodies of law. The first edition of the Annotations was intended to facilitate access to these legal sources. They, too, were favourably received. In Article 6 (2) of the 2006 Protocol on the Protection and Assistance to Internally Displaced Persons the Member States of the International Conference on the Great Lakes Region (Great Lakes IDP Protocol) even “accept to use the Annotations of the Guiding Principles as an authoritative source for interpreting the application of the Guiding Principles” which they undertake to incorporate into their domestic legal orders.

The 10<sup>th</sup> anniversary of the Guiding Principles provides a fitting occasion to publish a second edition of the Annotations. It follows very closely the structure and content of the first edition but reflects the significant legal developments that have taken place since the publication of the Annotations in 2000. These developments include the seminal 2005 study prepared under the auspices of the ICRC on customary international humanitarian law containing rich material on displacement related issues,<sup>2</sup> a series of new human rights instruments with some significance for the displaced including the 2007 UN Declaration on the Rights of Indigenous Peoples (A/RES/61/295 of 13 September 2007), the 2001 Draft

articles of the International Law Commission on state responsibility (A/RES/56/83, Annex ) clarifying when disregard of human rights by non-state actors may amount to breaches of international law entailing state responsibility, the “Pinheiro” Principles on Housing and Property Restitution for Refugees and Displaced Persons (E/CN.4/Sub.2/2005/17 and E/CN.4/Sub.2/2005/17/Add.1), and the Basic Principles and Guidelines on Development-Based Evictions and Displacement submitted to the UN Human Rights Council in 2006 by the Special Rapporteur on the Right to Adequate Housing (A/HRC/4/18, Annex I). More generally, the practice of the UN Security Council and General Assembly since the turn of the century, recent developments at the regional level, in particular the Great Lakes IDP Protocol, and emerging state practice regarding the application of the Guiding Principles are all relevant, too. They contribute to solidifying the legal foundations of the Principles and thus strengthen them as a standard capable of improving the condition of internally displaced individuals, families and communities all over the world.

WALTER KÄLIN

*Representative of the UN Secretary-General on the  
Human Rights of Internally Displaced Persons*



## **PREFACE TO THE FIRST EDITION**

This annotated version of the Guiding Principles on Internal Displacement is one of the principal outcomes of an intensive and extensive process in which Dr. Walter Kälin has played a leading role. As might be expected from a team of lawyers and policy analysts with expertise in a wide variety of issues, views often differed on both legal and policy matters. Dr. Kälin demonstrated outstanding leadership as the chair of the process that developed the Principles by striving to explore the common ground that invariably would enable the team to resolve the legal and policy issues involved and reconcile conflicting perspectives.

The Guiding Principles on Internal Displacement were developed to enhance protection and assistance for the more than 20 million people worldwide forcibly displaced within their own countries by violent conflicts, gross violations of human rights and natural and human-made disasters. The Principles consolidate into one document the legal standards relevant to the internally displaced drawn from international human rights law, humanitarian law and refugee law by analogy. In addition to restating existing norms, they address gray areas and gaps identified in the law. As a result, there is now for the first time an authoritative statement of the rights of internally displaced persons and the obligations of governments and other controlling authorities toward these populations.

Both the United Nations Commission on Human Rights and the General Assembly had requested that I develop an appropriate normative framework for the internally displaced. Initially, I was asked to examine the extent to which existing international law provides adequate coverage for internally displaced persons. In 1996, in collaboration with a team of international legal experts led by Robert Kogod Goldman, Walter Kälin and Manfred Nowak, I presented a *Compilation and Analysis of Legal Norms* to the Commission. The study concluded that while existing law provides substantial coverage for the internally displaced, there are significant areas in which it fails to provide an adequate basis for their protection and assistance. Consequently, the Commission and the General Assembly requested that I prepare a normative framework for the internally displaced based on the findings of the *Compilation and Analysis* as well as on a second study relating to protection against arbitrary displacement.

The drafting of the Guiding Principles on Internal Displacement brought together international legal experts from different parts of the world. They included representatives of international organizations, regional bodies, nongovernmental organizations (NGOs) and research institutions. At an expert consultation in Vienna in January 1998, hosted by the Government of Austria, the draft Principles were finalized.

Although the Principles do not constitute a binding instrument like a treaty, they do reflect and are consistent with existing international law. They address all phases of displacement—providing protection against arbitrary displacement, offering a basis for protection and assistance during displacement, and setting forth guarantees

for safe return, resettlement and reintegration. It is my hope that in time they may attain the status of customary international law, insofar as they do not already restate such law. For the time being, they serve as a morally binding statement that should raise awareness of the particular needs of internally displaced persons and provide guidance to those responding to their plight.

In a relatively short period of time, the Guiding Principles have gained a modicum of standing and authority. The Inter-Agency Standing Committee (IASC), composed of the heads of the major international relief and development agencies, welcomed the Principles and encouraged its member agencies to share them with their executive boards and staff and to apply them in their activities in the field on behalf of the internally displaced. After presenting them to the Commission on Human Rights in 1998, the Commission unanimously adopted a resolution taking note of the Principles and of my stated intention to use them in my ongoing dialogue with governments and all those whose mandates and activities relate to the needs of the internally displaced. The resolution also took note of the decision taken by the IASC on the practical application of the Principles in the field operations of its respective member agencies. The UN Economic and Social Council and General Assembly also acknowledged the Principles, and a wide range of UN agencies have begun to disseminate them. In addition, regional bodies such as the Inter-American Commission on Human Rights of the Organization of American States, the Organization of African Unity, and the Organization for Security and Co-operation in Europe have acknowledged the Principles and have begun to circulate them. NGOs as well have been distributing the

Principles and training their staffs in how to apply them in the field.

Because of the wide dissemination and use of the Principles, the Brookings Institution Project on Internal Displacement asked Dr. Kälin to prepare an annotated version of the Principles to clarify and explain their key aspects and set forth in detail their legal antecedents. The Annotations, prepared so expertly by Dr. Kälin, should provide an in depth understanding of the Principles for the legal community and all others seeking to strengthen international law so that it might better protect displaced persons and other civilians in internal conflict situations. Indeed, the publication of the three documents together—the Annotations, the Guiding Principles and the *Compilation and Analysis*—should lay a firm foundation for responding more effectively and comprehensively to the protection, assistance and reintegration needs of internally displaced populations.

FRANCIS M. DENG

*Representative of the UN Secretary-General  
on Internally Displaced Persons, 1992-2004*

## ACKNOWLEDGMENTS TO THE REVISED EDITION

The American Society of International Law and the Brookings Institution Project on Internal Displacement wish to express their appreciation to Dr. Walter Kälin for significantly updating his original Annotations to produce a revised edition. Thanks are also due to Dr. Khalid Koser and Erin Williams at the Brookings Project on Internal Displacement for their assistance in editing and formatting this revised edition. The American Society of International Law wishes to thank Scott Lyons, Deputy Director of Programs, for coordinating the completion of the project and bringing the book to publication.

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## GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

### ANNOTATIONS

BY WALTER KÄLIN

**Note:** The following Annotations to the Guiding Principles on Internal Displacement<sup>3</sup> indicate the legal sources that provide the basis of these Principles. They are not intended to be a legal commentary. The text of each of the Guiding Principles is presented first, followed by references to relevant parts of the *Compilation and Analysis of Legal Norms (Parts I<sup>4</sup> and II<sup>5</sup>)* that were submitted to the former Commission on Human Rights by Representative Deng in 1995 and 1998, respectively and provided the legal background and material to the drafters of the Guiding Principles.

### **Introduction to the Guiding Principles: Scope and Purpose**

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.
  
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
  - (1) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
  - (2) States when faced with the phenomenon of internal displacement;
  - (3) All other authorities, groups and persons in their relations with internally displaced persons; and
  - (4) Intergovernmental and nongovernmental organizations when addressing internal displacement.
  
4. These Guiding Principles should be disseminated and applied as widely as possible.

*(See Compilation and Analysis of Legal Norms: paragraphs 6–46; 410–415)*

*Paragraph 1:* The Guiding Principles approach displacement from the perspective of the needs of internally

displaced persons. These needs have been described in mission reports prepared by the Representative of the Secretary-General, Mr. Francis M. Deng, and in other relevant studies and discussions with experts. The Principles identify the rights and guarantees which, when fully observed and respected, can prevent arbitrary displacement and address the needs of internally displaced persons in terms of protection, assistance and solutions. In keeping with its focus on needs, the Principles are structured around the phases of internal displacement: They address protection against displacement (Principles 5 – 9); protection during displacement (Principles 10 – 23); the framework for humanitarian assistance Principles 24 – 27); and protection during return, local integration in the locations where persons have been displaced, and resettlement in another part of the country (Principles 28 – 30).

*Paragraph 2:* Paragraph 2 is a descriptive identification of the category of persons whose needs are the concern of the Guiding Principles. It highlights two elements: (1) the coercive or otherwise involuntary character of movement; and (2) the fact that such movement takes place within national borders. The second requirement is to be understood in a broad sense. It refers to the place where the displaced persons finds refuge and is also met if displaced persons, e.g., have to transit through the territory of a neighboring state in order to gain access to a safe part of their own country; first go abroad and then return (voluntarily or involuntarily) to their own country but cannot go back to their place of origin/habitual residence or home for reasons indicated

in paragraph 2; or left voluntarily to another part of their country but cannot return to their homes because of events occurring during their absence that make return impossible or unreasonable. In this sense, some countries simply require that the displaced person is “within the territory” of the country (Azerbaijan) or “living somewhere else in the country” (Nepal).<sup>6</sup>

This paragraph provides some examples of how internal displacement may be brought about - situations of generalized violence, violations of human rights, or natural or human-made disasters. Victims of disasters are included as experience shows that they also can, as a consequence of their displacement, become victims of human rights violations such as discrimination (e.g., because they have to move to an area where they constitute an ethnic minority), sexual and gender based violence (e.g., in overcrowded camps), or disregard of their property rights. The words “in particular” indicate that the listed examples are not exhaustive. It is clear that the Guiding Principles do not apply to persons who move voluntarily from one place to another solely in order to improve their economic circumstances.

It is important to stress that the notion of who is an internally displaced person contained in paragraph 2 is not a legal definition. Becoming displaced within one’s own country of origin or country of habitual residence does not confer special legal status in the same sense as does, say, becoming a refugee. This is because the rights and guarantees to which internally displaced persons are entitled stem from the fact that they are human beings and citizens or habitual residents of a particular state.

Those rights and guarantees emanate from the peculiar vulnerability and special needs that flow from the fact of being displaced. By locating the description of “internally displaced persons” in their introductory section rather than in their main body, the Guiding Principles seek to highlight the descriptive and non-legal nature of the term “internally displaced persons.” Internally displaced persons need not and cannot be granted a special legal status under international law comparable to refugee status. Rather, as human beings who are in a situation of vulnerability they are entitled to the enjoyment of all relevant guarantees of human rights and humanitarian law applicable to the citizens or habitual residents of the country concerned, including those that are of special relevance to them. This does not rule out the possibility of administrative measures such as registration on the domestic level to identify those who are displaced and need special assistance. However, lack of such registration would not deprive internally displaced persons of their entitlements under human rights and humanitarian law.

The words “as a result of or in order to avoid the effects of” recognize that people may become internally displaced either after suffering the effects of coercive factors or in anticipation of such effects.

Several states have adopted in their laws or policies notions of who is an internally displaced person in line with paragraph 2 either by using blanket references to the Guiding Principles,<sup>7</sup> by using the same wording as paragraph 2,<sup>8</sup> or by explicitly listing the two constitutive elements of involuntariness and presence inside their

own country as well as reflecting at least some of the causes of displacement mentioned in the paragraph.<sup>9</sup> At the regional level, the Protocol on the Protection and Assistance to Internally Displaced Persons adopted in 2006 by the Member States of the International Conference on the Great Lakes is the first instrument incorporating the Guiding Principles' notion of internally displaced persons into binding international law (Article 1, paragraph 4) and explicitly extending it to those displaced "as a result of or in order to avoid the effects of large scale development projects" (Article 1, paragraph 5). In Europe, the Committee of Ministers of the Council of Europe recommended that member states apply the Guiding Principles "to all internally displaced persons, including persons displaced from their homes or places of habitual residence due to natural or man-made disasters."<sup>10</sup>

*Paragraph 3:* The Guiding Principles are not a UN declaration on the rights of internally displaced persons, nor do they constitute, as such, a binding instrument. However, they reflect and are consistent with international human rights law and international humanitarian law. The legal basis of each of the principles is reflected in the Compilation and Analysis of Legal Norms (Parts I and II)<sup>11</sup> and briefly summarized in these Annotations. The Guiding Principles restate in more detail those legal provisions that respond to the specific needs of internally displaced persons and spell them out in order to facilitate their application in situations of internal displacement. They also clarify those areas where the Compilation came to the conclusion that present international law contains certain grey areas and even gaps.

The protection of internally displaced persons is complicated by the fact that internal displacement can occur in three different situations: (1) during peace, e.g., as a result of natural or man-made disasters or tensions and disturbances that fall short of internal armed conflict where human rights law applies; (2) during non-international armed conflict governed by some of the most important principles of humanitarian law and by many human rights guarantees; and (3) during interstate armed conflict where the detailed provisions of international humanitarian law become operative, and at the same time, many important human rights guarantees remain applicable. The Guiding Principles cover all three situations and attempt to facilitate the invocation and application of relevant legal norms, as it is often difficult in practice to determine which norms apply to each of these situations. The Principles identify those guarantees that have to be observed in all situations. At the same time, they differentiate among these situations where necessary. (See, e.g., Principle 7 on the modalities of displacement, which carefully distinguishes between the emergency stages of armed conflicts and disasters where, realistically, only very minimal guarantees can be observed by authorities, and other situations where procedural safeguards are possible. Another example is Principle 10, setting out in paragraph 1 the right to life in general, and specifying in paragraph 2 the guarantees that are relevant in situations of armed conflict only.)

Despite the fact that internally displaced persons are often forced to leave their homes and, thus, find them-

selves in refugee-like situations, refugee law is not directly applicable to them as international law defines refugees as persons who have fled across *international* borders and are in need of international protection by virtue of their being abroad and having no access to protection provided by the authorities of their country of origin. However, refugee law, *by analogy*, can be useful to a certain extent in proposing rules and establishing guidelines to protect the needs of the internally displaced. UNHCR documents such as the 1991 Guidelines on the Protection of Refugee Women or the 1994 Guidelines on Protection and Care of Refugee Children have inspired some of the Guiding Principles. Nevertheless, one must take into account that, by definition, refugees are not citizens of the host country, whereas internally displaced persons remain in their own country. As many of the norms and guidelines relating to the status of refugees guarantee refugees equal treatment only with *aliens* in the country of refuge, an analogous application of these provisions would deprive many internally displaced persons of the rights they have as citizens of their own country and would thus be detrimental to the interests of such persons.

The second sentence of paragraph 3 stresses the main purpose of these Principles, namely to provide guidance to all those dealing with situations of internal displacement. This guidance is mainly provided by synthesizing the many applicable but very general norms of international human rights and humanitarian law into clear principles and by highlighting those more concrete aspects of guarantees that are of special significance for the internally displaced. They aim at guiding not only the

Representative of the Secretary-General in carrying out his or her mandate but also states and intergovernmental and non-governmental organizations when dealing with internally displaced persons. As displacement often occurs in situations of internal armed conflict, it is especially important that other authorities, groups and persons also be guided by these Principles. Such authorities, groups and persons should respect basic standards of humane conduct as reflected in the Guiding Principles, especially when engaged in armed conflict (see *infra* Principle 2, paragraph 1).



## SECTION I – GENERAL PRINCIPLES

### Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

*(See Compilation and Analysis of Legal Norms: paragraphs 47–65)*

*Paragraph 1:* This paragraph embodies the principle of equality and non-discrimination and makes explicit what is only implicit in existing international law: internally displaced persons are entitled to enjoy the same rights and freedoms as other persons in their country. Any discrimination against internally displaced persons because of their displacement is prohibited.

The principles of equality and non-discrimination are firmly rooted in international law. Article 7 UDHR recognizes that “all are equal before the law and are entitled

without any discrimination to equal protection of the law.” Similarly, Article 26 CCPR, Article 24 ACHR and Article 3 AfCHPR set forth the principle of equality and prohibit discrimination on account of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Humanitarian law addresses the issue of equal treatment in several provisions. Thus, common Article 3 of the four Geneva Conventions states that persons not taking part in the hostilities shall be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth, wealth, or any other similar criteria. Similar provisions are found in Article 27(3) Geneva Convention IV, Article 75 Protocol I, and Articles 2(1) and 4(1) Protocol II.

An explicit prohibition of discrimination against internally displaced persons because of their being displaced does not exist in human rights law. However, Article 7 UDHR, Article 2 (2) CESC, Articles 2 (1) and 26 CCPR, and other human rights treaties stress that it is not only discrimination based on race, color, sex, language, religion, national origin, and similar reasons that is prohibited, but also discrimination based on “other status.” This last term, which was intended to be interpreted broadly, arguably covers the status of those who are internally displaced.

The prohibition of discrimination against internally displaced persons because of their being displaced is increasingly being recognized by state practice at the regional as well as the domestic level.<sup>12</sup>

Sometimes treating internally displaced persons differently in order to respond to their specific needs is unavoidable or even justified. In this respect, it should be noted that “[e]qual treatment does not mean [...] identical treatment, such that individual features distinguishing humans from one another, such as talents, characteristics, etc., may naturally play a role in the specific enforcement decision. [...] The requirement of equal treatment is violated when a court or administrative decision is based on manifestly arbitrary considerations, i.e. those devoid of any objective justification. A decision is arbitrary especially—but not exclusively— when persons are discriminated against solely on account of one or several of the criteria listed” in provisions prohibiting discrimination (Nowak, CCPR Commentary, Article 26, paras 14 - 15). Accordingly, the prohibition of discrimination is violated if internally displaced persons are disadvantaged on the sole ground that they are displaced, but it does not outlaw distinctions that are based on serious and objective reasons. In particular, the principle of non-discrimination does not preclude special measures addressing, for example, the specific needs of displaced women and children (see, *infra*, Principle 4) but, to the contrary, may, as recognized by the Council of Europe, “entail the obligation to consider specific treatment tailored to meet internally displaced persons’ needs.”<sup>13</sup>

*Paragraph 2:* Paragraph 2 cautions that the Guiding Principles do not affect the operation of rules of international criminal responsibility. The purport of this para-

graph is that persons suspected of having committed serious offences such as genocide, crimes against humanity and war crimes cannot avoid prosecution and punishment under international law simply on account of their being internally displaced, or by otherwise invoking the Guiding Principles. It should be emphasized, however, that persons suspected of crimes under international law are still entitled to their basic human rights, although some of these rights may be limited as a consequence of their criminal activities.

This principle should be seen against the backdrop of a contemporary environment in which serious international crimes are increasingly common in situations of armed conflict, and in which the work of international criminal tribunals is gaining in prominence. Against this background, this paragraph sounds a note of caution to those who may wish to misuse the Guiding Principles as a pretext to evade prosecution.

This subparagraph does not have an exact counterpart in existing law. The closest parallel, albeit one that should be clearly distinguished, is the concept of exclusion under refugee law. Under this concept, a person is precluded from enjoying the benefits of refugee protection if there are serious reasons for considering that he or she has committed any one of certain specified offences (Article 1 F CSR51). An important distinction should be noted between the concept of exclusion in the refugee regime and the principle enshrined in Principle 1(2). A person is recognized as a refugee because he or she meets certain legal criteria, and such recognition confers

a legal status under international law from which entitlement to refugee protection flows. The effect of exclusion is to disqualify the excluded person from being recognized as a refugee, even though he or she meets the legal criteria. By contrast, whether someone is an internally displaced person depends on the existence of objective facts, and not on a process of legal recognition. Someone who is displaced remains an internally displaced person even if he or she has committed genocide, crimes against humanity and war crimes. However, such persons cannot use their situation as internally displaced persons to avoid the penal consequences of their criminal acts.

**Principle 2**

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.
2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

*Paragraph 1:* This Principle advocates the widest possible scope of observance for the Guiding Principles and emphasizes their impartial and neutral nature. By stressing that

their observance does not affect the legal status of anyone, paragraph 1 seeks to preempt their use for political ends.

By calling for observance by all authorities, groups and persons irrespective of their legal status, paragraph 1 might go beyond human rights provisions, which usually impose direct obligations only on states and state actors. Under the law of state responsibility, behavior of private actors incompatible with human rights standards is, however, attributable to the state, and thus directly relevant from a human rights perspective, if “the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct” (Article 8 ILC Draft Articles), if they are “in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority” (Article 9 ILC Draft Articles), or if they, as an insurrectional movement, later become the new government of a state (Article 10 ILC Draft Articles). To the extent that such private behavior amounts to crimes under international law non-state actors are directly responsible. Thus, for example, Article 4 Genocide Convention explicitly stipulates that persons committing genocide shall be punished irrespective of “whether they are constitutionally responsible rulers, public officials or private individuals” and the prohibition of crimes against humanity encompasses acts amounting to violations of fundamental human rights when carried out as part of a widespread or systematic attack directed against any civilian population pursuant to or in furtherance not only of a State but also an “organizational policy” to commit such attack (Article 7 (1))

and (2) (a) Rome Statute). Humanitarian law applicable in situations of non-international conflicts (common Article 3 Geneva Conventions and Protocol II) binds not only state actors but all parties to the conflict. Individuals are indirectly bound by human rights and humanitarian law insofar as they can be prosecuted for violations of these obligations if they amount to war crimes.

The second sentence of paragraph 1 seeks to preempt the use of the Guiding Principles for political ends by stressing that their observance does not affect the legal status of anyone. It reflects similar clauses found in common Article 3(2) Geneva Conventions and Article 4 Protocol I that were essential for the adoption of these provisions, as they made clear that these provisions are “exclusively of a humanitarian nature, and cannot confer any special protection or immunity on a Party, or increase its authority or power in any way” (ICRC Commentary to Article 4 Protocol I, p. 72).

*Paragraph 2:* The first sentence of paragraph 2 underscores that the Guiding Principles constitute a minimum standard and that more favorable provisions of human rights law, humanitarian law or domestic law shall not be restricted, modified or impaired by their application. Thus, the Guiding Principles can never provide any valid arguments for limiting rights and guarantees going beyond them. The wording of paragraph 2 follows closely the savings clause of Article 53 ECHR. Similar clauses are set forth in Article 5(2) CCPR, Article 29(b) ACHR, and Article 43 ArCHR. A different type of safeguard clause is found in Article 7 Geneva Convention

IV, which states that no special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them.

The second sentence affirms that the Guiding Principles should not be invoked to restrict or curtail the right to seek and enjoy asylum in other countries (Article 14(1) UDHR). Although the Guiding Principles articulate a wide range of rights and guarantees, internally displaced persons nevertheless retain the option to leave their countries to seek international protection as refugees. This paragraph counters any argument that assuring protection for internally displaced persons can somehow justify restricting their access to asylum in other countries.

**Principle 3**

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

*(See Compilation and Analysis of Legal Norms: paragraphs 361–362)*

*Paragraph 1:* The content of this paragraph is based on the generally recognized principle of sovereignty which as contained, *inter alia*, in Article 2(7) UN Charter, prohibits intervention in matters that are essentially within the domestic jurisdiction of any state. Providing protection and humanitarian assistance to nationals, including internally displaced persons, is a primary duty and responsibility of the state. Thus, the UN General Assembly, on several occasions, reaffirmed “the sovereignty of affected States and their primary role in the initiation, organization, coordination and implementation of humanitarian assistance within their respective territories” (GA Resolution 45/100 of 14 December 1990; see, e.g., also GA Resolution 46/182 of 19 December 1991). At the regional level, the content of Principle 3 has been explicitly recognized in the Great Lakes IDP Protocol (Art. 3(3)) and by the Council of Europe.<sup>14</sup> In situations where national authorities, that is, the official authorities of the state, lack the capacity to fulfill this duty or are no longer functional due to the particular situation in the country, Principle 5, which addresses the duties of all authorities, including *de facto* organs and international actors, becomes especially important.

To assume the primary responsibility for protecting and assisting internally displaced persons means on one hand respecting, protecting, and fulfilling their civil and political as well as their economic, social, and cultural rights. On the other hand, states have to take the legal and administrative measures necessary effectively to

address situations of internal displacement. In this sense, the UN General Assembly “[e]ncourages States to continue to develop and implement domestic legislation and policies dealing with all stages of displacement, including through the identification of a national focal point within the Government for issues of internal displacement, and through the allocation of budget resources.”<sup>15</sup> The number of states adopting such steps is growing.

*Paragraph 2:* The right of internally displaced persons to request and receive protection and humanitarian assistance from national authorities is the corollary of the state’s duty to protect and assist them. Paragraph 2 prohibits persecution or punishment of internally displaced persons who request protection and humanitarian assistance.

**Principle 4**

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment that takes into account their special needs.

*(See Compilation and Analysis of Legal Norms: paragraphs 48–65)*

*Paragraph 1:* Whereas Principle 1 refers to discrimination against internally displaced persons as compared with the rest of the population, Principle 4 prohibits discrimination among the displaced themselves on the basis of race, sex, language, religion and the other criteria enumerated above.

The wording of paragraph 1 closely follows formulations of human rights and humanitarian law provisions that prohibit discrimination. Thus, Article 2(1) CCPR states that “[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Similar clauses can be found in Article 2 UDHR, Article 2(2) CESCR, Article 2(1) CRC, Article 14 ECHR, Article 1(1) ACHR, Article 3(1) ArCHR, and Article 2 AfCHPR. Moreover, Article 27(3) Geneva Convention IV sets forth that “[w]ithout prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.” Likewise, common Article 3(1) and Article 75(1) Protocol I, as well as Articles 2(1) and 4(1) Protocol II, prohibit discrimination.

Like all these non-discrimination clauses, but unlike the general prohibition of discrimination in Principle 1, paragraph 1 does not guarantee an independent right to freedom from discrimination, but rather an accessory right. Thus, its scope is restricted to protecting internally displaced persons against discrimination only with respect to the provisions set forth in the Guiding Principles. As indicated by the term “similar criteria,” paragraph 1 gives a non-exhaustive list of prohibited criteria for distinction. As mentioned above (Principle 1, para. 1), distinctions not based on reasonable and objective criteria always constitute discrimination.

*Paragraph 2:* Paragraph 2 addresses the situation of particularly vulnerable groups of internally displaced persons, for example, unaccompanied children, expectant mothers, persons with disabilities or elderly persons, and emphasizes that they are entitled to the protection and assistance required by their condition and to treatment that takes into account their special needs. Whereas paragraph 2 sets out the general rule, several other Principles address specific aspects of the special attention that should be paid to vulnerable groups (see, e.g., Principles 13, 19 and 23). According special treatment to some groups of internally displaced persons does not violate the principle of equality as objectively disparate situations should not be treated equally and specific vulnerabilities should be taken into account. Thus, Council of Europe Recommendation (2006)<sup>6</sup> on internally displaced persons states in general that “[p]articular attention shall be paid [...] to the protection and assistance

requirements of the most vulnerable groups in accordance with relevant international law standards” (para. 3). A similar provision is contained in Article 4(1)(e) of the Great Lakes IDP Protocol.

Several provisions of humanitarian law expressly set forth that special measures for the protection of children and women shall be taken by the parties to a conflict. Similarly, human rights law deals with the special needs of vulnerable categories of persons in specific instruments such as the CRC, the CEDAW, and the 2006 Convention on the Rights of Persons with Disabilities. Article 11 of the latter convention is particularly important for displaced persons with disabilities by stating that “States Parties shall take [...] all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.” As regards children, ExCom Conclusion 107(LVIII)(2007) on Children at Risk is explicitly applicable to internally displaced children and sets out comprehensively relevant elements of child protection. At the regional level, the 1999 African Charter on the Rights and Welfare of the Child is of particular relevance. It obliges, *inter alia*, States parties to “take all appropriate measures to ensure that” internally displaced children “receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter” (Article 23).



## SECTION II – PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

### **Principle 5**

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

*(See Compilation and Analysis of Legal Norms: Part II, I.1)*

Principle 5 emphasizes the importance of compliance with international law for the prevention of internal displacement. Full respect for relevant norms of international law, including human rights and humanitarian law provisions, by domestic and international actors, whether or not they are of a governmental nature (see, *supra*, Principle 2), very significantly reduces the risk of internal displacement in situations of tensions and disturbances or armed conflict. Many situations of displacement could be avoided or minimized if guarantees of international human rights and humanitarian law were adequately adhered to.

**Principle 6**

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
  - (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at or resulting in alteration of the ethnic, religious or racial composition of the affected population;
  - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - (c) In cases of large-scale development projects that are not justified by compelling and overriding public interests;
  - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
  - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

*(See Compilation and Analysis of Legal Norms: Part II, I.E, II.D-F)*

*Paragraph 1:* In 1998 the Representative of the Secretary-General on Internally Displaced Persons stressed that the purpose of expressly stating a right not to be

arbitrarily displaced was to “defin[e] explicitly what is now only implicit in international law” and referred in this context to the fact that, “an express prohibition of arbitrary displacement is contained in humanitarian law and in the law relating to indigenous peoples. In human rights law, by contrast, this prohibition is only implicit in certain provisions, in particular those pertaining to freedom of movement and choice of residence, freedom from arbitrary interference with one’s home, and the right to housing. These rights, however, fail to provide adequate and comprehensive coverage of all instances of arbitrary displacement since they do not spell out the circumstances under which displacement is permissible and, furthermore, are subject to restrictions and derogation. They do, nonetheless, jointly point to a general rule according to which forced displacement may be undertaken only exceptionally and, even then, may not be effected in a discriminatory manner nor arbitrarily imposed” (E/CN.4/1998/53, para. 10). The guarantees mentioned in this statement include Article 12 UDHR, Articles 12(1) and 17 CCPR, Articles 11 and 22(1) ACHR, Article 12(1) AfCHPR, Article 26(1) ArCHR, Article 8 ECHR and Article 2(1) of Protocol No. 4 to the ECHR, Articles 49 and 147 Geneva Convention IV, Articles 51(7), 78(1) and 85(4) of Protocol I, Articles 4(3)(e) and 17 of Protocol II, and Article 16 of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, as well as Article 10 of the Declaration on the Rights of Indigenous Peoples. The ICRC Study found that prohibitions of displacement applicable in situations of armed conflict are part of customary international humanitarian law (Rules 129 and 130). Taken

together, these rights and guarantees constitute a sound legal basis for restating, in general terms, a general prohibition against arbitrary displacement. The limitation of the prohibition to those displacements that are arbitrary reflects the fact that most human rights and humanitarian law provisions provide for restrictions on the relevant rights or declare displacement to be permissible in certain situations.

In international human rights law, the key norm is Article 12 CCPR. It guarantees not only the right to liberty of movement but also freedom to choose one's residence which includes the right to remain there (paragraph 1). This right "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant" (paragraph 3). The guarantees regarding freedom from arbitrary interference with one's home (Art. 17 CCPR, etc.) contain similar limitation clauses.

In international humanitarian law, Article 49 Geneva Convention IV, with respect to occupied territories, states that forced movements of persons are allowed, on an exceptional basis only, if the security of the population or imperative military reasons so demand. However, civilians may not be evacuated across the borders into the territory of the occupying power or any other country, and evacuated persons "shall be transferred back to their homes as soon as hostilities in the area in question

have ceased.” These rules have become part of international customary law (ICRC Study, Rules 129(A), 130 and 132). For situations of international armed conflicts, Article 78(1) Protocol I stipulates that no party shall arrange for evacuation of children to a foreign country “except for a temporary evacuation where compelling reasons of health or medical treatment of children or, except in occupied territory, their safety, so require.” As regards internal armed conflict, Article 17 Protocol II prohibits forced movement of civilians for reasons related to the armed conflict unless “the security of the civilians involved or imperative military reasons so demand.” This prohibition has acquired international customary law status (ICRC Study, Rule 129(B)). Article 4(3)(e) Protocol II allows evacuations of children during non-international conflicts to safe areas with the consent of a parent or guardian, provided such removal takes place within the country and only temporarily.

Deportation of the civilian population in an occupied territory and forced movement of civilians for reasons related to the armed conflict in internal armed conflicts, unless the security of the civilians involved or imperative military reasons so demand, amount to war crimes (Article 8(2)(b)(viii) and (e)(viii) Rome Statute) and deportation or transfer of the civilian population to a crime against humanity (Article 7(1)(d) Rome Statute) and, thus, like the international humanitarian law provisions applicable in internal armed conflict, also create obligations for non-state actors.

Finally, Article 16 of ILO Convention No. 169 concerning Indigenous and Tribal Peoples and Article 10 of the Declaration on the Rights of Indigenous Peoples contain a prohibition against forcibly removing indigenous peoples from their lands.

Forced displacement of persons may, as this survey shows, be allowed in certain circumstances, but exceptions from protection against displacement are restricted to cases of an *ultima ratio* which shall be resorted to only if there are no other alternatives. In this regard, the term “arbitrary” implies that the acts in question contain “elements of injustice, unpredictability and unreasonableness” (Nowak, CCPR Commentary, Article 17, para. 12), particularly because they are not in conformity with domestic law, pursue purposes that are not legitimate in light of the requirements of international human rights and humanitarian law, are not based on objective and serious reasons, or are not necessary to achieve legitimate goals, i.e., lack proportionality (*id.*).

*Paragraph 2:* Paragraph 2 gives an illustrative and non-exhaustive list of situations in which displacement would be arbitrary.

*Subparagraph (a):* Displacement is arbitrary if it is based on policies of apartheid, “ethnic cleansing” or similar practices, and is aimed at or results in the altering of the ethnic, religious or racial composition of the population. Whereas an explicit prohibition of “ethnic cleansing” has not yet been adopted, Article 7(1) of the Rome Statute

of the International Criminal Court includes the “crime of apartheid” among the crimes against humanity and explains in paragraph 2 that “‘the crime of apartheid’ means inhumane acts [...], committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.” “Ethnic cleansing” may fulfill these criteria. This practice may also amount to genocide. According to Article II of the Genocide Convention, genocide means, *inter alia*, inflicting deliberately on a group conditions of life calculated to bring about its physical destruction in whole or in part with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group. Similar definitions are laid down in Article 6 of the Rome Statute for the International Criminal Court and Article 4 of the Statute for the ICTY. Finally, “any form of forced population transfer that has the aim or effect of violating or undermining any of” the rights of indigenous peoples as prohibited by Article 8 (2)(c) of the 2007 UN Declaration on the Rights of Indigenous Peoples amounts to arbitrary displacement. Thus, forced population transfers for the purpose of “ethnic cleansing” and similar purposes can never be justified under international law and, therefore, always have to be considered arbitrary.

*Subparagraph (b)*: By stating that displacement of civilians would be arbitrary in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, subparagraph (b) reflects the already cited articles of Geneva Convention IV and the Protocols that have acquired the status of cus-

tomary international humanitarian law, as well as the corresponding war crimes (see above, paragraph 1). With regard to these two exceptional circumstances in which forced displacement might be permissible, the ICRC Commentary to Article 17 Protocol II explains that “[i]t is self-evident that a displacement designed to prevent the population from being exposed to grave danger cannot be expressly prohibited. [...] Military necessity as a ground for derogation from a rule always requires the most meticulous assessment of the circumstances. [...] The situation should be scrutinized most carefully as the adjective ‘imperative’ reduces to a minimum cases in which displacement may be ordered. Clearly, imperative military reasons cannot be justified by political motives. For example, it would be prohibited to move a population in order to exercise more effective control over a dissident ethnic group” (p. 1472/3).

*Subparagraph (c)*: Large-scale development projects such as the construction or establishment of dams, ports, mines, large industrial plants, railways, highways, airports and irrigation canals can contribute significantly to the realization of economic and social human rights in particular. Such projects might, however, lead to involuntary displacement and relocation or resettlement. Subparagraph (c) does not prohibit such displacement, which is often an accepted part of a country’s development. Rather, it ensures that development cannot be used as an argument to disguise discrimination or any other human rights violation, by stressing that development-related displacement is permissible only when compelling and overriding public interests justify such projects, that is,

when the requirements of necessity and proportionality are met. As this corresponds to the limitations on the right to freedom of movement and of residence set forth by the human rights provisions, subparagraph (c) fully reflects international human rights law. Furthermore, international organizations such as the World Bank and the Organization for Economic Co-operation and Development (OECD) have addressed the issue of involuntary displacement caused by development projects and issued corresponding operational directives or guidelines. Thus, the World Bank Operational Policy 4.12 of 2001 (replacing former Directive 4.30) emphasizes that “[i]nvoluntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project designs.” Similarly, the OECD’s 1992 Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects explains that “[i]nvoluntary population displacement should be avoided or minimized whenever feasible by exploring all viable alternative project designs. In every case, the alternative to refrain from carrying out the project (the ‘non-action’ alternative) should seriously be considered, and people’s needs and environmental protection must be given due weight in the decision-making process.” The Basic Principles and Guidelines on Development-Based Evictions and Displacement stress that any eviction in the context of the implementation of a development project “must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation” (A/HRC/4/18, para. 21).

*Subparagraph (d)*: Forced displacement in situations of natural or human-made disaster is arbitrary if it is undertaken for reasons other than the safety and health of the affected persons. This is consistent with human rights provisions guaranteeing liberty of movement and freedom to choose one's residence, which allow limitations on rights only where necessary and where objective reasons exist. Reasons other than those mentioned in subparagraph (d) are hardly imaginable in situations of natural or human-made disasters. Under certain circumstances the duty to protect as a state obligation inherent in the right to life may require authorities to order and implement evacuations in order to avert imminent and serious dangers (see European Court on Human Rights, *Öneryildiz v Turkey*, Application 48939/99 (2004), para. 89).

*Subparagraph (e)*: Finally, forced displacement is arbitrary if it is used as a collective punishment. The prohibition of collective punishment is firmly rooted in humanitarian law. Thus, Article 33(1) Geneva Convention IV, Article 75(2)(d) Protocol I and Article 4(2)(b) Protocol II expressly state the prohibition of collective punishments and such prohibition is also part of customary international humanitarian law applicable in international as well as non-international armed conflict (ICRC Study, Rule 103). Concerning Article 33(1) Geneva Convention IV, the ICRC Commentary explains that the prohibition refers to "penalties of any kind inflicted on persons or entire groups of persons, in defiance of the most elementary principles of humanity, for acts that

these persons have not committed” (p. 225). The Commentary to Article 4(2)(b) Protocol II emphasizes that “[t]he concept of collective punishment [...] should be understood in its widest sense, and concerns not only penalties imposed in the normal judicial process, but also any other kind of sanction (such as confiscation of property)” (p. 1374).

In human rights law, a prohibition of collective punishment is not explicitly mentioned. Nevertheless, such punishment, depending on what form it takes, may violate multiple human rights, including the presumption of innocence, the right to security, and prohibitions of arbitrary detention and cruel or inhuman punishment.

*Paragraph 3:* If displacement occurs, it should last no longer than required by the circumstances. This requirement is an expression of the general principle of proportionality that is to be respected whenever the rights of human beings are limited. It is expressly provided for in Article 16(3) of the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, stating that “[w]henver possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.” Furthermore, Article 49(2) Geneva Convention IV stipulates that “[p]ersons [...] evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.” According to customary international humanitarian law applicable in both international and non-international armed conflict, internally “[d]isplaced persons have a right to voluntary return in

safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist” (ICRC Study, Rule 132). Human rights norms guaranteeing liberty of movement and freedom to choose one’s residence allow for restrictions only if the measures meet the criteria of necessity and proportionality. Prolonged displacement in situations where the circumstances no longer require restrictions on these rights would clearly be in contradiction of these criteria. Furthermore, it would inhibit the finding of “lasting solutions to questions related to internally displaced persons including their voluntary and safe return and rehabilitation” called for by the 1993 Vienna World Conference on Human Rights in its Declaration and Programme of Action (A/CONF.157/23 , 12 July 1993, part I, para. 23).

**Principle 7**

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
  - (a) A specific decision shall be taken by a state authority empowered by law to order such measures;
  - (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
  - (c) The free and informed consent of those to be displaced shall be sought;
  - (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
  - (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
  - (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

*(See Compilation and Analysis of Legal Norms: Part II, I.E.2–6)*

Principle 7 outlines the standards and modalities that must be observed when displacement is being undertaken. They are applicable to all instances of displacement, regardless of the causes. They apply, in principle, whether or not displacement is permissible, meaning that

the non-arbitrary character of displacement in a given case does not justify any departure from the requirements of Principle 7. In particular, paragraph 2 can be respected even in cases of arbitrary displacement, whereas absence of measures in line with paragraph 3 may be an indication that displacement serves the purposes of, e.g., ethnic cleansing or collective punishment.

*Paragraph 1:* According to paragraph 1, the responsible authorities have to explore all feasible alternatives before taking any decision requiring the forced displacement of persons. Furthermore, if no alternatives to displacement exist, the authorities are expected to minimize the scope and adverse effects of the resettlement. This provision reflects the requirement of Article 12(3) CCPR and similar human rights guarantees that restrictions on the rights to liberty of movement and freedom to choose one's residence must be necessary and proportional. These criteria require "a precise balancing between the right to freedom of movement and those interests to be protected by the interference. Interference is necessary only when its severity and intensity are proportional to a purpose listed in Art. 12(3)" (Nowak, CCPR Commentary, Article 12, para. 36). This principle is also embodied in the World Bank's Operational Directive 4.12 and the OECD's 1992 Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects. According to the OECD Guidelines, "involuntary population displacement should be avoided or minimized whenever feasible by exploring all viable alternative project designs. [...] Where displacement is unavoidable, resettlement plans should be formulated with due care given

to peoples' needs and to environmental protection.”

Similarly, the Basic Principles and Guidelines on Development-Based Evictions and Displacement stress in paragraph 32 that “States must give priority to exploring strategies that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. ‘Eviction-impact’ assessment should also include exploration of alternatives and strategies for minimizing harm.”

*Paragraph 2:* The wording of paragraph 2 corresponds to Article 49(3) Geneva Convention IV. Similarly, Article 17(1) Protocol II stipulates that “[s]hould such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.” Paragraph 2 also corresponds to the requirements of customary international humanitarian law (ICRC Study, Rule 131). Furthermore, the World Bank’s Operational Directive 4.12 and the OECD’s 1992 Guidelines provide for a range of similar measures for situations other than armed conflict. In circumstances below the threshold of application of humanitarian law, the content of paragraph 2 can be derived from human rights guarantees pertaining

to social rights (Articles 10 and 11 CESCR) and the protection of families (Article 17 CCPR).

*Paragraph 3:* For cases of involuntary displacement that are not related to emergency situations during armed conflicts or disasters, paragraph 3 provides a number of procedural safeguards and guarantees with a view to ensuring the fairness of the process of displacement and the decision-making procedures related to it. Similar guarantees and safeguards are stipulated in ILO Convention No. 169 concerning Indigenous and Tribal Peoples, the UN Declaration on the Rights of Indigenous Peoples, as well as in the World Bank's Operational Directive 4.12, the OECD's 1992 Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, and the Basic Principles and Guidelines on Development-Based Evictions and Displacement.

The principles embodied in subparagraphs (a) and (e), that only competent authorities empowered by law can order and implement the transfer of persons, as well as the right to an effective remedy as stated in subparagraph (f), are derived from general principles of human rights. Regarding Article 12(3) CCPR, it has been suggested that restrictions on freedom of movement and choice of residence must be set down by a legislative body (Nowak, CCPR Commentary, Article 12, para. 29) and that the right to an effective remedy in such cases can be derived from Article 2(3) CCPR. Regarding subparagraphs (b) and (c), reference can be made to Article

16 of ILO Convention No. 169 concerning Indigenous and Tribal Peoples and Article 10 of the 2007 UN Declaration on the Rights of Indigenous Peoples, which provide that relocation should generally take place only by free and informed consent of the peoples concerned. If consent cannot be obtained, “such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned” (Article 16 ILO Convention No. 169). Furthermore, in cases in which the return to the peoples’ traditional land is not possible, they shall be provided with “lands of quality and legal status at least equal to that of the lands previously occupied by them” or with compensation in money if they so choose (*id.*, Article 16(4)). Finally, the relocated persons “shall be fully compensated for any resulting loss or injury” (*id.*, Article 16(5) and Article 10 UN Declaration). The World Bank and OECD emphasize the importance of planning the resettlement and including in such plans, *inter alia*, provisions about the legal framework, community participation and compensation. Similar requirements are addressed in the Basic Principles and Guidelines on Development-Based Evictions and Displacement.

**Principle 8**

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

*(See Compilation and Analysis of Legal Norms: Part II,*

*I.A)*

The Guiding Principles not only explicitly outline situations in which displacement would be arbitrary (see Principle 6) but identify the specific ways of carrying out displacement whether or not it is arbitrary that are prohibited by human rights guarantees. In particular, displacement shall not be carried out in a manner that violates the non-derogable rights to life and freedom from cruel, inhuman or degrading treatment.

**Principle 9**

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

*(See Compilation and Analysis of Legal Norms: Part II, III)*

Article 13(1) of ILO Convention No. 169 concerning Indigenous and Tribal Peoples recognizes that “governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.” When relocation of such peoples is deemed necessary, Article 16(3) of the Convention stipulates that the “peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to ex-

ist.” Similarly, Article 10 of the 2007 UN Declaration on the Rights of Indigenous Peoples stipulates that they “shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

The particular attention which states have to pay to the special dependency and attachment to the land of indigenous groups, pastoralists, minorities and others is also reflected in the World Bank’s Operational Directive 4.12, the OECD’s 1992 Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, and the Basic Principles and Guidelines on Development-Based Evictions and Displacement.



### **SECTION III – PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT**

#### **Principle 10**

1. Every human being has the inherent right to life, which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (e) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (f) Starvation as a method of combat;
- (g) Their use to shield military objectives from attack or to shield, favour or impede military operations;

- (h) Attacks against their camps or settlements;  
and
- (i) The use of anti-personnel landmines.

*(See Compilation and Analysis of Legal Norms: Paragraphs. 66–101; 109–113; 157–164)*

*Paragraph 1:* The wording of the first two sentences of paragraph 1 closely follows Article 6 paragraph 1 CCPR. The right to life is the most fundamental human right and, therefore, is made non-derogable by all human rights treaties. It prohibits, *inter alia*, summary or arbitrary executions. Article 3 common to the Geneva Conventions prohibits the parties to an internal armed conflict from committing acts of “violence to life and person, in particular murder of all kinds” against persons who do not or no longer participate in hostilities (persons *hors de combat*). This guarantee has been further developed by Articles 27 and 32 Geneva Convention IV, Article 75(2) Protocol I and Article 4 Protocol II. The two protocols stress that not only carrying out these acts but also threatening to do so are prohibited. Incitement to commit violence against life is explicitly prohibited by international law in Article III Genocide Convention and Article 25(3)(e) in conjunction with Articles 6 (genocide) and 8(2)(c)(i)(violence to life, in particular murder) of the Rome Statute of the International Criminal Court.

In subparagraphs (a) to (d), paragraph 1 sets forth a non-exhaustive list of acts that threaten the right to life and to which internally displaced persons may fall vic-

tim. Commissioning such acts, as well as threatening or inciting to commit them, is prohibited. A definition of genocide can be found in the Genocide Convention. According to its Article II, genocide is “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.” A similar definition is laid down in Article 6 of the Rome Statute for the International Criminal Court.

The 2007 International Convention for the Protection of All Persons from Enforced Disappearance defines the notion of “enforced disappearance” as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law” (Article 2; see also the preamble of the Declaration on the Protection of All Persons from Enforced Disappearances of 18 December 1992, UN General Assembly Resolution 47/133). The Rome Statute for the International Criminal Court contains a similar definition but expands it to include disappearances carried out by “a political organization” (Article 7(2)(i)).

*Paragraph 2:* The second paragraph addresses the right to life of internally displaced persons who find themselves in situations of armed conflict. It reflects Article 3 common to the Geneva Conventions and several other provisions of Geneva Convention IV and the Protocols including Articles 13 and 14 Protocol II, according to which attacks or acts of violence against persons who do not or no longer participate in hostilities (persons *hors de combat*) are prohibited. In line with these provisions customary international humanitarian law applicable in international as well as non-international armed conflict prohibits attacking persons *hors de combat*, i.e., “(a) anyone who is in the power of an adverse party; (b) anyone who is defenceless because of unconsciousness, shipwreck, wounds or sickness; or (c) anyone who clearly expresses an intention to surrender; provided he or she abstains from any hostile act and does not attempt to escape” (ICRC Study, Rule 47). These notions cover internally displaced persons in different situations but make clear that displaced persons who take up arms or are otherwise directly engaged in hostilities are not protected against being attacked.

Subparagraph (a) prohibits direct or indiscriminate attacks or acts of violence and explicitly forbids the creation of “free-fire zones,” areas in which indiscriminate attacks on the civilian population are permitted. This subparagraph reflects the fundamental principle of distinction, i.e., the obligation of parties to a conflict to distinguish at all times between civilians and combatants and direct their attacks only against members of armed

forces and other persons directly participating in hostilities, but never against civilians who do not. These rules are not only enshrined in Articles 48 – 51 Protocol I and Article 13 Protocol II but are also part of customary international humanitarian law applicable to international and non-international armed conflicts (ICRC Study, Rules 1, 5 and 6). Their violation amounts to war crimes (Article 8(2)(b)(i) and (e)(i) Rome Statute of the International Criminal Court). The principle of distinction is also violated by indiscriminate attacks (Article 51(4) Protocol I; ICRC Study, Rule 11, applicable in international and non-international armed conflict), i.e., “(a) those which are not directed at a specific military objective; (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction” (Article 51(4) Protocol I; similarly, ICRC Study, Rule 12).

These provisions preclude the creation of areas in which civilians may be indiscriminately attacked. Therefore, no new standards are set by explicitly prohibiting the creation of “free-fire zones.”

According to subparagraph (b), starvation as a method of combat is prohibited. The wording reflects Article 54(1) Protocol I and Article 14 Protocol II. It is therefore prohibited “to attack, destroy, remove or render useless objects indispensable to the survival of the civil-

ian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive” (Article 54(2) Protocol I). Starvation as a method of combat is also outlawed by customary international humanitarian law applicable to international and non-international armed conflict (ICRC Study, Rule 53) and constitutes a war crime in international armed conflicts (Article 8(2)(b)(xxv) Rome Statute of the International Criminal Court). Article II(c) Genocide Convention declares that deliberately inflicting on a group conditions of life calculated to bring about its physical destruction in whole or in part constitutes an act of genocide. Human rights law implicitly prohibits starvation as a method of combat. Aside from the protection provided by the non-derogable right to life in Article 6 CPPR, Article 11 CESCR sets forth the right of everyone to an adequate standard of living, including adequate food, and the right of everyone to be free from hunger. In this sense, General Comment No. 3 [1990] of the Committee on Economic, Social and Cultural Rights stresses that “a State party in which any significant number of individuals is deprived of essential foodstuffs [...] is, prima facie, failing to discharge its obligations under the Covenant” (para. 10), a condition that is certainly met wherever starvation is used as a method of warfare.

Subparagraph (c) reflects the provision of Article 51(7) Protocol I explicitly prohibiting the use of civilians to shield military objectives. Comparable protection is offered by Article 28 Geneva Convention IV. Customary international humanitarian law also prohibits the use of human shields and extends this prohibition to non-international armed conflicts (ICRC Study, Rule 97). However, neither human rights law nor humanitarian law provides any express protection against the use of internally displaced persons as human shields in situations of tensions or disturbances. By setting forth that internally displaced persons shall not be used as human shields regardless of the situation and the object protected by these shields, the Guiding Principles fill this gap. This is justified, particularly because using civilians as human shields might constitute cruel, inhuman or degrading treatment and affects their right to life as well as their physical or mental well-being as protected by several human rights provisions.

Subparagraph (d) explicitly prohibits attacks against settlements or camps of internally displaced persons. This prohibition is covered by those provisions of Geneva Convention IV, the Protocols, and customary international humanitarian law, that prohibit attacks or acts of violence against persons who do not participate in hostilities. Subparagraph (d) furthermore reflects UNHCR Executive Committee Conclusion No. 48 (XXXVIII), in which “all violations of the rights and safety of refugees and asylum-seekers and in particular military or armed attacks on refugee camps and settlements” are con-

demned and the States urged “to abstain from these violations, which are against the principles of international law and, therefore, cannot be justified,” as well as UNHCR Executive Committee Conclusion No. 72 (XLIV) and the 1984 UN General Assembly Resolution 39/140, which also address the issue of personal safety of refugees and asylum-seekers.

Finally, subparagraph (e) protects internally displaced persons against the use of anti-personnel landmines and thus reflects the evolving ban on the use of such devices. The various efforts to ban anti-personnel landmines culminated in the adoption in September 1997 and entry into force on 1 March 1999 of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. According to Article 2(1) of this convention, “[a]ntipersonnel mine’ means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.” Customary international humanitarian law does not prohibit the use of landmines but does oblige a party to the conflict which has used such mines to “remove or otherwise render them harmless to civilians, or facilitate their removal” at the end of active hostilities (ICRC Study, Rule 83).

**Principle 11**

1. Every human being has the right to dignity and physical, mental and moral integrity.
2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:
  - (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
  - (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation or forced labour of children; and
  - (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

*(See Compilation and Analysis of Legal Norms: paragraphs 114–142; 172–179)*

*Paragraph 1:* The wording of the first paragraph follows Article 5(1) ACHR, according to which “[e]very person has the right to have his physical, mental, and moral integrity respected.” Similarly, Article 5 AfCHPR upholds the physical, mental and moral integrity of individuals. Acts violating the physical, mental and moral integrity of persons are not explicitly mentioned in the universal human rights instruments, but they are covered

by the prohibition of torture or cruel, inhuman or degrading treatment or punishment set forth, *inter alia*, in Article 7 CCPR, Article 37(a) CRC, Article 5(2) ACHR, Article 8 ArCHR, Article 5 AfCHPR, and Article 3 ECHR. The Human Rights Committee recognized, in its General Comment 20[44], that the aim of the article prohibiting cruel, inhuman or degrading treatment is “to protect both the dignity and the physical and mental integrity of the individual” (para. 2). Moreover, both Article 75(2)(a) Protocol I and Article 4(2)(a) Protocol II prohibit, *inter alia*, violence to the physical or mental well-being of persons.

*Paragraph 2:* This paragraph takes up the general principle stated in paragraph 1 and gives a non-exhaustive list of prohibited violations of this right to which internally displaced persons may run the risk of being subjected during flight or when relocated in camps. As the prohibition of torture and cruel, inhuman or degrading treatment or punishment is not only non-derogable but also absolute, under no circumstances and in no situations are limitations of and exceptions to the right to be protected against such treatment permissible. During times of armed conflict of any kind whatsoever, several provisions including common Article 3, Article 75(2)(a) Protocol I and Article 4(2)(a) Protocol II, and customary international humanitarian law (ICRC Study, Rule 90) prohibit torture, inhuman and degrading treatment as well as outrages upon personal dignity. Thus, internally displaced persons are protected by the right to dignity and physical, mental and moral integrity in all situations, even if their liberty has been restricted. Fur-

thermore, it is explicitly stated that threats or incitement to commit acts of violence against the dignity or the physical, mental and moral integrity of internally displaced persons are prohibited.

Even if “gender-specific violence” as prohibited by subparagraph (a) affects in particular women and girls, the term refers to violence against individuals of either sex. Gender-specific violence should, for the purposes of these Guiding Principles, be understood as an act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering on account of one’s gender, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. This definition follows the one contained in Article 1 of the 1993 United Nations Declaration on the Elimination of Violence against Women and Article 1 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, but expands them so as to cover individuals of both sexes. Human rights instruments implicitly address the issue of gender-specific violence by prohibiting any discrimination on the ground of sex and guaranteeing the right to be free from torture or cruel, inhuman or degrading treatment or punishment (e.g., Article 7 in conjunction with Article 2(1) and 3 CCPR). Similar to Article 76(1) Protocol I, Article 27(2) Geneva Convention IV states that “[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.” Customary international humanitarian law prohibits rape and other forms of sexual violence regard-

less of gender (ICRC Study, Rule 93). Rape can be punished as a crime against humanity or a war crime (Articles 7(1)(g) and 8(2)(e)(vi) of the Rome Statute for the International Criminal Court).

Regarding subparagraph (b), Article 1(1) of the 1926 Slavery Convention defines slavery as “status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” Furthermore, Article 1 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery prohibits, *inter alia*, “(a) debt bondage [...]; (b) serfdom [...]; (c) any institution or practice whereby: (i) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) a woman on the death of her husband is liable to be inherited by another person; (d) any institution or practice whereby a child or young person under the age of eighteen years is delivered by either or both his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.” Furthermore, Article 7 of the Rome Statute for the International Criminal Court lists enslavement among the crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population. In paragraph 2(c), it defines enslavement as “the exercise of any or all of the powers

attaching to the right of ownership over a person [including] the exercise of such power in the course of trafficking in persons, in particular women and children.” In addition, Article 6 CEDAW obliges states parties to take “all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.” Furthermore, Articles 32 through 36 CRC prohibit child labour, the use of children in the production and distribution of drugs, sexual exploitation of children and the sale and trafficking of children. ILO Convention No. 182 on Worst Forms of Child Labour requires States to prohibit and eliminate, *inter alia*, “[a]ll forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict” as well as the “use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances” (Article 3(a) and (b) in conjunction with Article 1). In international humanitarian law, slavery in all its forms is explicitly prohibited by Article 4(2)(f) Protocol II and customary international humanitarian law applicable in international as well as non-international armed conflicts (ICRC Study, Rule 94). It is furthermore implicitly outlawed by the entitlement of protected persons to “respect for their persons” (Article 27(1) Geneva Convention IV) and the prohibition of “outrages upon personal dignity” (Article 75(2)(b) Protocol I).

Acts of spreading terror among the civilian population such as mentioned in subparagraph (c) (e.g., sum-

mary executions in public) are prohibited by Article 51(2) of Protocol I, Article 13(2) of Protocol II, and customary international humanitarian law (ICRC Study, Rule 2).

**Principle 12**

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

*(See Compilation and Analysis of Legal Norms: paragraphs 143–164)*

*Paragraph 1:* The wording of this paragraph corresponds to Article 9(1) CCPR, according to which “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.” Similar provisions are found in all major universal and

regional human rights instruments: *inter alia*, Article 37(b) CRC, Article 7 ACHR, Article 6 AfCHPR, Article 14 ArCHR, and Article 5(1) ECHR. Restrictions on as well as derogations from the right to liberty are permissible only on certain limited grounds. For situations of international armed conflicts, Article 78 Geneva Convention IV allows for internment or assigned residence of civilians only if imperative reasons of security call for such a measure. However, humanitarian law relating to non-international conflicts does not explicitly prohibit arbitrary detention of civilians, instead addressing the issue of their detention or internment only by setting forth minimal standards for persons deprived of their liberty for reasons related to the armed conflict (see Article 5 Protocol II). Paragraph 1 addresses this gap by affirming the prohibition of arbitrary arrest or detention in all situations.

With respect to Article 9(1) CCPR, it has been stated that “the prohibition of arbitrariness is to be interpreted broadly. Cases of deprivation of liberty provided for by law must not be manifestly unproportional, unjust or unpredictable, and the specific manner in which an arrest is made must not be discriminatory and must be able to be deemed appropriate and proportional in view of the circumstances of the case” (Nowak, CCPR Commentary, Article 9, para. 30). The same should hold true for Principle 12(1).

*Paragraph 2:* This paragraph stipulates that internally displaced persons shall not be interned or confined to a camp unless and as long as such a measure is absolutely necessary. This principle addresses the use of

closed camps which internally displaced persons cannot leave, and has to be distinguished from the practice of using camps where those staying here can leave them and come back. It reflects not only the notion of arbitrariness laid down in Article 9(1) CCPR but also that in Article 78 Geneva Convention IV. This latter provision allows for internment or assigned residence of civilians in occupied territories only if such measures are required by the security of the state with absolute necessity. The ICRC Commentary to the Fourth Geneva Convention states in this context that “only absolute necessity, based on the requirements of state security, can justify recourse to these two measures, and only then if security cannot be safeguarded by other, less severe means” (p. 258). The requirement that internment or confinement that cannot be avoided because of compelling reasons shall not last longer than required by the circumstances is recognized by customary international humanitarian law (ICRC Study, Rule 128(B) and (C)) and constitutes an expression of the principle of proportionality that has to guide the application both of human rights and humanitarian prohibitions of arbitrary detention and internment.

*Paragraph 3:* By stating explicitly that internally displaced persons shall not be arrested or detained as a result of their displacement, paragraph 3 sets out that arrest or detention of a person simply because he or she is displaced would be discriminatory and, therefore, arbitrary. Thus, paragraph 3 specifies the general principle, embodied in Principle 1(1) that internally displaced persons should not be discriminated against on the ground that they are displaced. To detain displaced persons, e.g.,

solely because they lack documentation as a consequence of their displacement, would therefore be arbitrary.

*Paragraph 4:* This paragraph reflects various provisions of Geneva Convention IV and the two Protocols as well as customary international humanitarian law applicable to international and non-international armed conflict (ICRC Study, Rule 96). Whereas common Articles 3 Geneva Conventions and 4(2)(c) Protocol II prohibit the taking of civilians as hostages during non-international conflicts, Articles 34 Geneva Convention IV and 75(2)(c) Protocol I stipulate the same prohibition for international conflicts. In its Commentary to Article 4(2)(c) Protocol II, the International Committee of the Red Cross (ICRC) explains that “hostages are persons who are in the power of a party to the conflict or its agent, willingly or unwillingly, and who answer with their freedom, their physical integrity or their life for the execution of orders given by those in whose hands they have fallen, or for any hostile acts committed against them” (p. 1375). Human rights law does not explicitly address hostage-taking. However, the taking of hostages is implicitly prohibited by the right to personal liberty.

### **Principle 13**

1. In no circumstances shall displaced children be recruited, required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular, any cruel, in-

human or degrading practices that compel compliance or punish noncompliance with recruitment are prohibited in all circumstances.

*(See Compilation and Analysis of Legal Norms: paragraphs 165–171)*

*Paragraph 1:* By stating that displaced children shall not be recruited or be required or permitted to take part in hostilities, paragraph 1 reiterates several provisions of human rights law and humanitarian law. According to Article 77(2) Protocol I, “[t]he Parties to the Conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces.” Similarly, Article 4(3)(c) Protocol II sets forth that “children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.” Taking a “direct part” in hostilities covers not only actual combat but also gathering and transmission of military information; transportation of arms and munitions; and provision of supplies (see ICRC Commentary on Protocol I, p. 901). These rules are also part of customary international humanitarian law (ICRC Study, Rules 136 and 137). Article 8(2)(b)(xxvi and (e)(vii) Rome Statute lists as a war crime the conscription or enlisting of children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities. Article 38 CRC calls upon states to “take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities” (para. 2) as

well as to “refrain from recruiting any person who has not attained the age of fifteen years into their armed forces” (para. 3). ILO Convention No. 182 on Worst Forms of Child Labour (Article 1 and 3(a)) and the African Charter on the Rights and Welfare of the Child (Art. 22(2)) contain a similar prohibition. ExCom Conclusion 107(LVIII)(2007) which is applicable to internally displaced children, also calls on States and other relevant actors to “[t]ake appropriate measures to prevent the unlawful recruitment or use of children by armed forces or groups, and work towards the unconditional release from armed forces or groups of all children recruited or used unlawfully by armed forces or groups, and their protection and reintegration” (para. (h)(vi)).

Paragraph 1 remains silent on the question of the age limit protecting internally displaced children against recruitment. This is partly because at the time of the paragraph’s drafting, negotiations were in progress on an additional protocol to the CRC that would raise the relevant age to eighteen years. Today, the relevant provisions of the Protocols and the CRC make clear that involvement of children below the age of fifteen is clearly prohibited in all cases. Beyond that age, Article 77(2) Protocol I and Article 38(3) CRC become applicable, stating that: “[i]n recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.” The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 25 May 2000 does not prohibit re-

recruitment of children who are between 15 and 18 years old, but obliges its States parties to “take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities” (Article 1) and to “ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces” (Article 2). ILO Convention No. 182 on Worst Forms of Child Labour raises the relevant age for recruitment and participation in hostilities to eighteen years.

*Paragraph 2:* Article 51(1) Geneva Convention IV prohibits Occupying Powers from compelling protected persons to serve in their armed or auxiliary forces. Furthermore, Article 51(2) Geneva Convention IV stipulates that “[p]rotected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations.” These provisions, however, only protect the civilian population of an occupied territory. By contrast, human rights treaties do not explicitly address the issue of recruitment; rather, Article 8(3)(ii) CCPR sets forth that an obligation to perform military service does not constitute forced or compulsory labor. Similar provisions are found in Articles 4(3)(b) ECHR and 6(3)(b) ACHR. However, all human rights treaties prohibit discrimination and insist upon the right not to be subjected to cruel, inhuman or degrading treatment or punishment. Discriminatory recruitment of internally displaced persons and cruel, inhuman or degrading treatment to compel compliance or punish non-compliance with recruitment undoubtedly would violate these guarantees. It follows that human

rights law implicitly recognizes that discriminatory or degrading recruitment practices are prohibited. In this sense, paragraph 2 specifies for the field of recruitment the general prohibition of discrimination against internally displaced persons on the ground of their being displaced, as spelled out in Principle 1.

**Principle 14**

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

*(See Compilation and Analysis of Legal Norms: paragraphs 221–235)*

*Paragraph 1:* This paragraph does not address the question of protection against displacement (see Principle 6); rather, it concerns movement rights during displacement. Its wording corresponds to Article 12(1) CCPR, according to which “[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” Similar provisions are found, *inter alia*, in Article 13(1) UDHR, Article 2(1) Protocol No. 4 to the ECHR, Article 22(1) ACHR, Article 12(1) AfCHPR, and Article 26(1) ArCHR. Several of these human rights instruments expressly allow for restrictions on these freedoms. Thus, Article 12(3) CCPR sets forth that these

rights “shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.”

*Paragraph 2:* Paragraph 2 explicitly addresses the situation of internally displaced persons relocated in camps or other settlements and states that they have the right to move freely in and out of camps or settlements. This right is implicit in the general guarantee of liberty of movement and constitutes an aspect of this right that is of particular importance for those displaced. It applies to camps and settlements that are open. The issue of closed camps and settlements is addressed in Principle 12(2).

### **Principle 15**

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty or health would be at risk.

*(See Compilation and Analysis of Legal Norms: paragraphs 221–257)*

*Subparagraph (a)* sets forth the right of internally displaced persons to seek safety in another part of the

country. Even if neither human rights nor humanitarian law provisions explicitly recognize such a right, the right to seek safety in another part of one's country is implicitly guaranteed by international law. Human rights law protects liberty of movement (see, *supra*, annotation to Principle 14(1)). Such liberty "means the right to move freely about the entire territory of a State Party" (Nowak, CCPR Commentary, Article 12, para. 12). Thus, if personal safety is at risk in one part of their country, the right to freedom of movement affords internally displaced persons the right to move and seek refuge in another part of their country.

*Subparagraph (b)* reflects several human rights provisions. Thus, Article 13(2) UDHR states that "[e]veryone has the right to leave any country, including his own." Similarly, Article 12(2) CCPR, Article 2(2) Protocol No. 4 to the ECHR, Article 22(2) ACHR and Article 12(2) AfCHPR set forth the right to leave one's own country. This right can be limited if the restrictions are provided for by law and are necessary for the protection of national security, public order, public health or morals and the rights and freedoms of others. Humanitarian law does not guarantee a general right of civilians to leave the country of which they are citizens.

By stating that internally displaced persons have the right to leave their country, the Guiding Principles draw on human rights law: Even in times of armed conflict, the human rights guarantee of the right to leave one's own country is applicable, as long as no derogation from this guarantee has been declared.

*Subparagraph (c)*: By stating that internally displaced persons have the right to seek asylum from persecution in another country, subparagraph (c) reiterates the guarantees of Article 14(1) UDHR, Article 22(7) ACHR and Article 12(3) AfCHPR. The 1993 Vienna Declaration and Programme of Action “reaffirms that everyone, without distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from persecution” (part I, para. 23). This entitlement is underscored by the fact that some of the principal causes of internal displacement find their reflection in regional refugee definitions. Article 1(2) of the 1969 Organization of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa provides that the term refugee applies, *inter alia*, to persons fleeing “[e]vents seriously disturbing public order in either part or the whole of [the] country of origin or nationality.” In a similar vein, Article III(3) of the 1984 Cartagena Declaration on Refugees includes in its definition of Central American refugees “[p]ersons 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.” Persecution in the sense of the refugee definition in the 1951 Refugee Convention is also understood to occur in situations of armed conflict. In its 1998 Conclusion on International Protection No. 85 (XLIX), UNHCR’s Executive Committee expressed “[i]ts concern about the increasing use of war and violence as a means to carry out persecutory policies against groups targeted on

account of their race, religion, nationality, membership of a particular social group, or political opinion.”

Finally, subparagraph (d) sets forth the right of internally displaced persons to be protected against forcible return or resettlement to places where their life, safety, liberty or health would be at risk. This is the corollary to the principle that return has to be voluntary (see Principle 28) but phrased in this way states a novel principle with no direct antecedent in existing instruments. It has now been explicitly recognized at the regional level by the Council of Europe when it stated that “Internally displaced persons shall not be sent back to areas where they would face a real risk of being subjected to treatment contrary to” the right to life and the prohibition of torture and inhuman or degrading treatment.<sup>16</sup>

Protection against forcible return to situations of danger is well established in the refugee law principle of *non-refoulement*, and in major human rights protections relating to torture and the deportation or extradition of aliens. As prohibiting the return of internally displaced persons to situations of danger can contribute significantly to their physical protection and security, subparagraph (d) meets an important need by applying, by analogy, the authority of existing refugee- and alien-related human rights law to the field of internal displacement. The wording of this subparagraph therefore echoes various existing refugee law and human rights sources. The principle of *non-refoulement* in Article 33(1) CSR51 stipulates: “No Contracting State shall expel or return

(‘*refouler*’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a social group or political opinion.” This fundamental principle of refugee protection is widely regarded as being a part of customary international law and has direct counterparts in human rights law. Article 3(1) of the Convention against Torture states that “[n]o State Party shall expel, return (‘*refouler*’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Article 22(8) ACHR states that “[i]n no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinions.”

In refugee law and human rights law, states bear responsibility for violations of the *non-refoulement* principle and for forcibly returning aliens to situations of danger. The European Court of Human Rights derived the prohibition of return from the prohibition of torture and inhuman treatment (Article 3 ECHR), and referred to the “liability incurred by the extraditing State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment.”<sup>17</sup> Similarly, the Human Rights Committee stresses that under Article 7 CCPR, States parties “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”<sup>18</sup> When this reasoning is

applied to the context of internal displacement, it is clear that states bear an affirmative duty to ensure that internally displaced persons are not compelled to return to or be resettled in places where their lives or liberty are at risk.

**Principle 16**

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

*(See Compilation and Analysis of Legal Norms: paragraphs 102–108)*

*Paragraph 1:* By setting forth that all internally dis-

placed persons have the right to know the fate and whereabouts of missing relatives, this paragraph reproduces the language of Article 33 Protocol I. However, as pointed out in the ICRC Commentary to Protocol I, this article does “not impose obligations on a State with respect to its own nationals” (p. 346) and is not, therefore, directly applicable to internally displaced persons. In contrast, humanitarian law applicable to non-international armed conflicts states in Article 8 Protocol II that “[w]hen circumstances permit, and particularly after an engagement, all possible measures shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked.” In situations of international armed conflict, Article 26 Geneva Convention IV applicable to the whole of the populations of the countries in conflict obliges each party to the conflict to “facilitate enquiries made by members of families dispersed owing to the war”.

By guaranteeing an express right of internally displaced persons to know the whereabouts of their relatives, paragraph 1 fills a gap in the Geneva Conventions and their Additional Protocols. However, in the Commentary to Protocol I it is already contended that “[t]he recognition of such a right in international armed conflicts should have further repercussions, particularly with regard to the families of missing persons in non-international armed conflicts and in the framework of human rights, even during internal disturbances or tensions” (p. 346 note 19). Furthermore, it should be considered “how important it is for families to be informed of the fate of their missing relatives [...], particularly in

an internal fratricidal conflict” (ICRC Commentary to Article 8 Protocol II, p. 1415). Arguably, customary international humanitarian law applicable not only in international but also non-international armed conflict now obliges parties to a conflict to “take all feasible measures to account for persons reported missing as a result of armed conflict and [...] provide their family members with any information it has on their fate” (ICRC Study, Rule 117), regardless of their nationality.

Even though a right to know the whereabouts of relatives of internally displaced persons is expressly recognized in international humanitarian law, the content of such right is not easy to determine as “[i]n fact, it cannot be denied that there is no individual legal right for a representative of a family to insist that a government or other organization concerned undertake any particular action” (ICRC Commentary on Article 32 Protocol I, p. 346).

Human rights law provides a more solid basis for such an individual right. Refusal to account for the fate of missing persons and inform their families may, as the European Court on Human Rights stated in a case involving relatives of internally displaced persons who went missing in the context of a military invasion, amount to inhuman treatment as these persons “were condemned to live in a prolonged state of acute anxiety which cannot be said to have been erased with the passage of time” and therefore continue to “endure the agony of not knowing whether family members were killed in the conflict or are still in detention or, if detained,

have since died” (Case of Cyprus v. Turkey, Application no. 25781/94, Grand Chamber, Judgement of 10 May 2007, para. 157). The Council of Europe recommended that “Member states shall, in accordance with Article 8 [protection of family life] of the European Convention on Human Rights, take appropriate measures to facilitate the reunification of families which are separated by internal displacement. Such measures may include locating missing family members, notably those that have been taken hostage. Competent authorities should convey to relatives of an internally displaced person, upon their request, any information they may have on his/her whereabouts.”<sup>19</sup> These principles can also be deduced from prohibitions of torture and inhuman treatment and guarantees of protection of family life in universal and other regional human rights conventions. At the domestic level, some laws and policies assign responsibility for tracing missing family members and for family reunification.<sup>20</sup>

*Paragraph 2:* In order to guarantee the right of internally displaced persons to know the fate and whereabouts of missing relatives, paragraph 2 introduces the obligation of the concerned authorities to take measures to establish the fate and whereabouts of missing internally displaced persons, to cooperate with international organizations engaged in the same task, and to notify the relatives of the progress of the investigations. Paragraph 2 reflects the provisions of Article 33 Protocol I, which obliges the Parties to an international conflict to search, facilitate the search and transmit information about missing persons. However, Article 33 Protocol I protects all persons *except* nationals and is, thus, usually not appli-

cable to internally displaced persons. In this regard, customary international humanitarian law (ICRC Study, Rule 117, cited above) arguably goes beyond these treaty provisions.

*Paragraph 3:* Paragraph 3 repeats the guarantees set forth in Articles 33(4) and 34 Protocol I and Article 16 Geneva Convention IV and also reflects customary international humanitarian law applicable in international as well as non-international armed conflict (ICRC Study, Rule 115). Similarly, Article 8 Protocol II provides that “[w]hen circumstances permit [...], all possible measures shall be taken [...] to search [...] for the dead, prevent their being despoiled, and decently dispose of them.” Accordingly, authorities should engage in collecting and identifying the remains of the deceased, prevent their mutilation, facilitate the return of the remains to their relatives, or dispose of them respectfully.

*Paragraph 4:* The wording of paragraph 4 follows closely the provisions of Article 34 Protocol I and the corresponding obligations under customary international humanitarian law applicable in international as well as non-international armed conflict (ICRC Study, Rule 116). According to Article 34(1) Protocol I, grave sites shall be respected, maintained and marked. Furthermore, paragraph 2 of this article calls upon the parties to a conflict to conclude agreements in order to facilitate access to grave sites as well as to protect and maintain such grave sites permanently.

**Principle 17**

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

*(See Compilation and Analysis of Legal Norms: paragraphs 285–301)*

*Paragraph 1:* This paragraph reflects the principle common to international human rights and humanitarian law that the family as fundamental unit of society is entitled to special protection. The wording of the paragraph corresponds to Article 8(1) of the ECHR. Provisions prohibiting interference with family life are found in all

major human rights and humanitarian law instruments: Article 12 UDHR sets forth that “[n]o one shall be subjected to arbitrary interference with his [...] family [...]” Similarly, Article 17(1) CCPR as well as Article 16(1) CRC, Article 11(2) ACHR, Article 21(1) ArCHR, and Article 27(1) Geneva Convention IV state the right to respect for the family and prohibit arbitrary and unlawful interference with the family.

Neither human rights law nor humanitarian law offers a definition of the notion of “family.” Human rights bodies have repeatedly stated that a uniform definition cannot be found: According to the Human Rights Committee, “the concept of family may differ in some respects from State to State, and even from region to region within a State” (General Comment 19[39], para. 2). Therefore, the term “family” should “be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned” (General Comment 16[32], para. 5). Similarly, “family” within the meaning of Article 8(1) ECHR and Article 11(2) ACHR is not limited to relationships of the nuclear family, but encompasses also *de facto* families if there are sufficiently close and genuine factual ties. Finally, the ICRC Commentary to Article 74 Protocol I also opts for a wide scope of the term “family”: “the word ‘family’ [...] covers relatives in a direct line—whether their relationship is legal or natural—spouses, brothers and sisters, uncles, aunts, nephews and nieces, but also less closely related relatives, or even unrelated persons, belonging to it because of shared life or emotional ties (cohabitation, engaged couples etc.). In short, all those who consider themselves and are considered by

each other, to be part of a family, and who wish to live together, are deemed to belong to that family” (p. 859). In accordance with this practice, “family” within the meaning of Principle 17 should be interpreted broadly to comprise all those persons who are either understood to belong to a “family” by a given society or are linked together by close and genuine family ties.

*Paragraph 2:* Respect for family life carries the obligation not to separate family members who wish to remain together. Some international documents explicitly address this aspect of family life. Thus, according to Article 9(1) CRC and Article 19(1) of the 1999 African Charter on the Rights and Welfare of the Child, states are obliged to ensure that children are not separated from their parents against their will, except when such separation is necessary for the best interest of the child. Article 49(3) Geneva Convention IV obliges Occupying Powers to ensure, to the greatest practicable extent, that members of the same family are not separated during evacuation of an occupied territory. These provisions are reflected in the more general language used in paragraph 2. This corresponds to the requirement of customary international humanitarian law to take, “[i]n case of displacement, all possible measures [...] in order [...] that members of the same family are not separated” (ICRC Study, Rule 131).

*Paragraph 3:* Reunification of separated family members constitutes a further aspect of respect for family life. Whereas the wording of the last sentence of paragraph 3 corresponds to Articles 26 Geneva Conven-

tion IV and 74 Protocol I, the first two sentences do not have an exact counterpart. Still, the issue of family reunification is dealt with in some international instruments. Thus, Article 10(1) CRC stipulates that states should deal in a “positive, humane and expeditious manner” with applications to enter or leave a country in view of reunification of children and parents. Similarly, Article 22(2) CRC sets forth that states are bound to cooperate in efforts of the United Nations or any intergovernmental or non-governmental organization working with the United Nations to trace the parents or other family members of refugee children. However, these provisions deal only with cases in which children and their parents reside in different countries and do not, therefore, normally apply to internally displaced persons. Humanitarian law is more specific: according to Article 26 Geneva Convention IV as well as Article 74 of Protocol I to the Geneva Conventions, the parties to a conflict shall facilitate the reuniting of dispersed families and encourage the work of humanitarian organizations engaged in this task. The fate of children separated from their families is addressed in Article 24(3) and 50 Geneva Convention IV. Finally, the principle of family reunification has been reiterated in various UNHCR Executive Committee Conclusions. Conclusion 24(XXXII) on Family Reunification, for example, states that “[i]n application of the Principle of the unity of the family and for obvious humanitarian reasons, every effort should be made to ensure the reunification of separated refugee families.”

Despite the reluctance evident in universal human rights instruments to guarantee a right to family reunifi-

cation in cases of reunification of family members across international borders, such a right is increasingly being recognized for situations of internal displacement. In its Conclusion 107(LVIII) on Children at Risk, which also covers internally displaced children, the UNHCR Executive Committee stressed that states should “[f]acilitate children's enjoyment of family unity through putting in place procedures to prevent separation, and in respect of unaccompanied and separated children, facilitate tracing and family reunification with their family members.” At the regional level, Article 23(2) of the 1999 African Charter on the Rights and Welfare of the Child provides that States undertake to cooperate with international organizations specialized in tracing and reuniting children separated from their families. Article 4(1)(i) of the Great Lakes IDP Protocol provides that Member States undertake to “[f]acilitate family reunification”. In Europe, Council of Europe member states “shall, in accordance with Article 8 of the European Convention on Human Rights, take appropriate measures to facilitate the reunification of families which are separated by internal displacement. Such measures may include locating missing family members, notably those that have been taken hostage. Competent authorities should convey to relatives of an internally displaced person, upon their request, any information they may have on his/her whereabouts” (Council of Ministers Rec(2006)6, para. 6).

The appropriateness of steps and efforts with regard to family reunification mentioned in the second sentence of paragraph 3 depends on the circumstances of each situation. The ICRC Commentary to Geneva Convention

IV mentions as conceivable examples of efforts undertaken by the authorities “the organization of official information bureaux and centers; notification by postal authorities of changes of address and possible places of evacuation: the arranging of broadcasts; [and] the granting of facilities for forwarding requests for information and the replies” (pp. 196–97). According to the last sentence of paragraph 3, authorities shall encourage and cooperate with humanitarian organizations engaged in the field of family reunification. Activities of such organizations might include, *inter alia*, setting up tracing and message services. Cooperation of the authorities with humanitarian organizations, however, means not only refraining from obstructing the efforts of these organizations, but also facilitating and supporting their work as much as possible.

*Paragraph 4:* The wording of paragraph 4 follows closely the relevant articles of humanitarian law. Although human rights and refugee law do not address the issue of family unity of interned families or families confined to a camp, Article 82(2) and (3) Geneva Convention IV state that “[t]hroughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the same place of internment” and be “given separate accommodation from other internees, together with facilities for leading a proper family life.” Although these provisions apply only to internees, Article 75(5) Protocol I applies to all persons in the power of a party to the conflict and provides that if “families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.” Fur-

thermore, Article 77(4) Protocol I addresses explicitly the issue of arrested, detained and interned children and states that “children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units.” These principles are also reflected in customary international humanitarian law applicable in international as well as non-international conflicts (ICRC Study, Rules 119 and 120).

The content of paragraph 4 has a wider scope than the rules of international humanitarian treaty law, since its applicability is not limited to international armed conflicts. However, customary international humanitarian law as well as human rights prohibitions of interference with family life (e.g., Article 17 CCPR) recognize that families should not be separated unless there is a compelling reason for such a measure. Although there can be justification for separations (e.g., when a family member is serving a prison term), relocating internally displaced persons to camps is another matter entirely. Only in exceptional circumstances can they be interned or confined in a camp (see, *supra*, Principle 12). It is therefore necessary to ease the rigors of internment or confinement by allowing the displaced to maintain their family life. Separation of families in these situations would hardly ever meet the requirements of proportionality and necessity to justify interference with their rights.

**Principle 18**

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
  - (a) Essential food and potable water;
  - (b) Basic shelter and housing;
  - (c) Appropriate clothing; and
  - (d) Essential medical services and sanitation.
  
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

*(See Compilation and Analysis of Legal Norms: paragraphs 180–194)*

*Paragraph 1:* The wording of paragraph 1 corresponds to Article 11(1) CESC, which recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.” Similarly, Article 25(1) UDHR states that “everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care.” Furthermore Article 27(1) CRC sets forth that “States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.” Unlike human rights law, humanitarian law does not explicitly set forth a right to an adequate standard of living. The basic supplies for survival such as food, water and shelter are, however, expressly protected by several rather specific provisions

of the Geneva Conventions and Protocols (see below). Thus, humanitarian law does implicitly guarantee a right to an adequate standard of living.

*Paragraph 2:* This paragraph addresses the core of subsistence rights by enumerating those commodities that are absolutely essential for survival and, therefore, have to be provided to all internally displaced persons without discrimination and regardless of the circumstances. These are, according to paragraph 2, essential food and potable water (subparagraph (a)), basic shelter and housing (subparagraph (b)), appropriate clothing (subparagraph (c)) and essential medical services and sanitation (subparagraph (d)). If these commodities are already available in a specific situation, providing the displaced with safe access to them becomes the main issue.

*Subparagraph (a):* The right to “essential food and potable water” is expressly protected by several human rights and humanitarian law provisions. Thus, Articles 11(1) CESC, 27(3) CRC and 25(1) UDHR state that the right to an adequate standard of living includes essential food. Furthermore, Articles 54 Protocol I and 14 Protocol II as well as customary international humanitarian law (ICRC Study, Rules 53 and 54) and international criminal law (Article 8(2)(b)(xxv) Rome Statute of the International Criminal Court) expressly outlaw starvation of civilians as a method of combat and prohibit “to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and

supplies and irrigation works” (Articles 14 Protocol II and 54(2) Protocol I).

Article 55 of the Fourth Geneva Convention charges the occupying power with the duty of ensuring the food supplies of the population. The article specifically states that the Occupying Power should provide for the necessary foodstuffs, if the resources of the occupied territory are insufficient. This article also prohibits the occupier from requisitioning food, even when destined for the sole use of its occupying forces, without taking into account the needs of the civilian population. Article 23(1) Geneva Convention IV applicable to the whole of the populations of the countries in conflict obliges states to allow the free passage of consignments of essential foodstuffs intended for children under fifteen years of age, expectant mothers and maternity cases.

As regards the right to water, the Committee on Economic, Social and Cultural Rights has stressed that “[a]n adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements” and concluded that a right to water embodying an entitlement of “everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” can be derived from Articles 11 and 12 CESCR (General Comment 15(2002), paras 2 and 3).

*Subparagraph (b)*: For the survival of internally displaced persons, the availability of “basic shelter and hous-

ing” is essential. The right to shelter and housing is explicitly guaranteed by Article 25(1) UDHR, Article 11(1) CESCR, Article 27(3) CRC, Article 38 ArCHR and Article 31 ESC as an aspect of the right to an adequate standard of living. General Comment 7 (1997) of the Committee on Economic, Social and Cultural Rights sets out the protection provided by this guarantee against forced evictions. Such protection also applies to internally displaced persons who had access to housing during their displacement but are at risk of losing it as a consequence of being evicted.

Even though humanitarian law does not contain any explicit provision protecting civilian housing and shelter, Article 54(2) Protocol I protects objects that are indispensable for survival. The ICRC Commentary points out that “it cannot be excluded that as a result of climate or other circumstances, objects such as shelter or clothing must be considered as indispensable to survival” (p. 655) and are, therefore, protected against attack, removal or destruction. This issue is also covered, at least implicitly, by the prohibition against destruction of property belonging to private persons as embodied in Article 53 Geneva Convention IV.

*Subparagraph (c):* Like shelter and housing, “appropriate clothing” is an essential aspect of survival. The right to appropriate clothing is explicitly addressed in Articles 11(1) CESCR, 27(3) CRC and 25(1) UDHR. Although a right to appropriate clothing is not expressly mentioned in any provision of humanitarian law, such a guarantee might be inferred from the protection of objects that are indispensable to survival as described in Articles 54(2) Protocol I and 14 Protocol II.

*Subparagraph (d)* states that internally displaced persons are entitled to have access to “essential medical services and sanitation” and, thus, reiterates various provisions of human rights law and humanitarian law. Article 25(1) UDHR sets forth a right to medical care. Furthermore, Article 12(1) CESC recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” With regard to children, a similar provision is laid down in Article 24(1) CRC. Additionally, issues of access to medical care are addressed in Article 12(1) CEDAW, Article 11 ESC, Article 16(1) AfCHPR, Article 39 ArCHR, and Article XI American Declaration. Furthermore, several provisions of humanitarian law deal with medical care. Thus, common Article 3 obliges the parties to collect and care for the wounded and sick. Therefore, wounded and sick persons who are under the control of a party to a conflict are entitled to medical care. Article 7(2) Protocol II elaborates on this provision and states that wounded and sick persons “shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.” Furthermore, Article 8 Protocol II obliges the parties to a conflict to search for and collect the wounded and sick and to ensure their adequate care. Finally, in situations of international conflict, according to Article 10 Protocol I, “[a]ll the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected” and “receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by

their condition.” Medical care is also provided for in Articles 16, 23, 55 and 56 Geneva Convention IV.

*Paragraph 3:* This paragraph attempts to ensure that women can fully participate in the planning and distribution of basic subsistence supplies. It reflects paragraph 147(f) of the Beijing Platform for Action, which states that in order to provide protection to, *inter alia*, internally displaced women, all appropriate measures should be taken “to eliminate discrimination against women and girls in order to ensure equal access to appropriate and adequate food, water and shelter, education, and social and health services, including reproductive health care and maternity care and services to combat tropical diseases.” Furthermore, Article 14(2) CEDAW states that “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas [...] and, in particular, shall ensure to such women the right: [...] (b) To have access to adequate health care facilities, including information, counselling and services in family planning; [...] (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.” Moreover, in its Conclusion No. 105 (LVII) on Women and Girls at Risk, UNHCR’s Executive Committee calls for strengthening “women’s leadership, including by enhancing their representation and meaningful participation in displaced community and camp management committees, in decision making, and in dispute resolution systems, by enhancing their access to and control over services and resources” (paragraph k(i)). The UNHCR Guidelines on the Protection of Refugee

Women (1991) stress the need for assistance policies ensuring “that single refugee women and women-headed households gain access to food, shelter, health care, clean water, firewood etc.”(Guidelines, p.16) and contain numerous standards relevant to the implementation of paragraph 3 which are easily applicable by analogy to women who are internally displaced.

**Principle 19**

1. All wounded and sick internally displaced persons, as well as those with disabilities, shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
  
2. Special attention should be paid to the health needs of women including access to female health care providers and services, such as reproductive health care, and appropriate counselling for victims of sexual abuse and other abuses.
  
3. Special attention should be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

*(See Compilation and Analysis of Legal Norms: paragraphs 195–220)*

*Paragraph 1:* Paragraph 1 reflects to a large extent the wording of Article 10 Protocol I and Article 7 Protocol II as well as customary international humanitarian law (ICRC Study, Rule 110). In human rights law, Article 12(1) CESCR recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Similarly, Article 24(1) CRC stresses “the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” As regards persons with disabilities, customary international humanitarian law stresses that, *inter alia*, the “disabled and infirm affected by armed conflict are entitled to special respect and protection” (ICRC Study, Rule 138). The 2007 Convention on the Rights of Persons with Disabilities sets out in detail what such protection entails, including in “situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters” (Article 11).

With regard to the expression “to the fullest extent practicable,” the ICRC stated in its Commentary to Article 7(2) Protocol II that this notion “was incorporated as a matter of realism, in order to take into account the means and personnel available. It is sometimes materially impossible to provide the care and attention required. The obligation remains to provide it and to do so as well and as quickly as possible, given the circumstances” (p. 1410). Only medical factors are allowed to justify giving priority in medical care and attention.

Thus, it is prohibited to distinguish between wounded, sick or disabled internally displaced persons on the basis of race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, or other attribute, or to disadvantage displaced persons *vis-à-vis* those still living at their place of habitual residence, simply because they are displaced.

*Paragraph 2:* Whereas all wounded, sick or disabled internally displaced persons shall have access to medical care, special attention should be paid to the health needs of women. Thus, paragraph 2 takes up the statement of the Beijing Platform for Action, which recognized in respect of women's health that "[h]ealth policies and programmes often perpetuate gender stereotypes and fail to consider socio-economic disparities and other differences among women and may not fully take account of the lack of autonomy of women regarding their health. Women's health is also affected by gender bias in the health system and by the provision of inadequate and inappropriate medical services to women" (para. 90). Furthermore, Article 12 CEDAW calls upon states to take appropriate measures to eliminate discrimination against women in the field of access to health care and stipulates that "States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."

*Paragraph 3:* A further aspect of medical care is the prevention of contagious and infectious diseases. Para-

graph 3 reflects Article 12(2)(c) CESC, which recognizes that the steps to achieve the full realization of the highest attainable standard of physical and mental health shall include “[t]he prevention, treatment and control of epidemic, endemic, occupational and other diseases.” The necessity of taking preventative measures for health protection is furthermore acknowledged in Article 16(2) AfCHPR, where it is stated that steps should be taken “to protect the health of [...] people.” Similarly, Article 11 ESC calls upon states to take appropriate measures “to prevent as far as possible epidemic, endemic and other diseases.”

**Principle 20**

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one’s area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their

own names.

*(See Compilation and Analysis of Legal Norms: paragraphs 258–268)*

*Paragraph 1:* The wording of paragraph 1 corresponds to Article 6 UDHR. Similar provisions are set forth in Article 16 CCPR, Article 3 ACHR and Article 5 AfCHPR. Article 5(a) CERD guarantees more specifically the right to equal treatment before tribunals and all other organs administering justice. The recognition of legal personality “means that the individual is a person (and not a thing) and furthermore is endowed with the *capacity to be a person before the law*” (Nowak, CCPR Commentary, Article 16, para. 2). Thus, this guarantee is a necessary prerequisite to all other individual rights and is, therefore, non-derogable (see Article 4(2) CCPR and Article 27(2) ACHR). Humanitarian law does not explicitly guarantee the recognition of legal personality. However, in several provisions it sets forth the obligation to issue documents necessary for the enjoyment and exercise of legal rights. Implicitly, it is therefore understood that recognition of legal personality is guaranteed.

*Paragraph 2:* Few human rights instruments address explicitly the question of identity documents. Article 8(2) CRC states that “[w]here a child is illegally deprived of some or all the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.” Furthermore, Article 24(2) CCPR sets forth

that “[e]very child shall be registered immediately after birth and shall have a name.” Even if most human rights treaties remain silent on the issue of identity documents, the reluctance of authorities to issue documents may raise questions under several other guaranteed rights. With regard to refugees, Article 25(2) CSR51 holds that the authorities “shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities,” and Article 27 requires them to issue identity papers to refugees not possessing a valid travel document. However, as internally displaced persons do not cross international borders, this provision does not apply to them. Furthermore, Article 50(2) Geneva Convention IV states that “the Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage”, but this provision is not applicable in situations of internal armed conflict.

The Compilation correctly underscored that “[p]resent international law does not adequately protect the needs of internally displaced persons for personal identification, documentation and registration” (para. 268). Paragraph 2 attempts to fill this gap. Consistent with this, paragraph 7 of Council of Europe Recommendation (2006)<sup>6</sup> provides that “[i]nternally displaced persons shall be provided with all documents necessary for the effective exercise of their rights as soon as possible following their displacement and without unreasonable conditions being imposed.”

*Paragraph 3:* Article 2 CEDAW condemns all forms of discrimination against women and provides that states parties shall undertake, *inter alia*, “(c) [t]o establish legal protection of the rights of women on an equal basis with men and [...] (d) [t]o refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.” Equality and non-discrimination would require that women and girls receive documentation in their own name. In this sense, the Executive Committee of UNHCR has urged States to ensure that refugee women receive individual documentation (Conclusions No. 105(LVII) on Women and Girls at Risk, paragraph (j)(iii). See also Conclusions No. 64 (XLI) and No. 73 (XLIV)). The Uganda National Policy on Internally Displaced Persons contains a recognition of the right of women to obtain documents in their own name on an equal basis with men (Chapter 3, paragraph 3.5(2)). Any differences in treatment when issuing replacement and other documentation would be incompatible with the prohibition of discrimination on grounds of sex and with the right to recognition of legal personality for everyone regardless of gender.

**Principle 21**

1. No one shall be arbitrarily deprived of property and possessions.
  
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
  - (a) Pillage;

- (b) Direct or indiscriminate attacks or other acts of violence;
  - (c) Being used to shield military operations or objectives;
  - (d) Being made the object of reprisal; and
  - (e) Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

*(See Compilation and Analysis of Legal Norms: paragraphs 269–284)*

*Paragraph 1:* The content of this paragraph reflects several provisions of human rights instruments. Thus, Article 17 UDHR states that “(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.” Similar norms can be found at the regional level where Article 21 ACHR, Article 31 ArCHR, Article 14 AfCHPR, and Article 1 Protocol No. 1 to the ECHR all recognize a right to property which, however, can be restricted and does not belong to those rights which are non-derogable. However, humanitarian law, without containing a general guarantee of property, protects certain aspects of this right in times of armed conflict in several detailed provisions, for example by prohibiting pillage and destruction of private property (see references below).

*Paragraph 2:* This paragraph sets forth in subparagraphs (a) to (e) a non-exhaustive list of acts that violate the right to own, use and enjoy property and possessions in all circumstances, and thus reflect the core of property rights as embodied in various provisions of humanitarian law that are applicable at the universal level. These acts can never be justified and, thus, would also constitute arbitrary deprivation of the property of internally displaced persons as prohibited by regional human rights law.

*Subparagraph (a):* Pillage is proscribed by Articles 33(2) Geneva Convention IV and 4(2)(g) Protocol II and customary law applicable in international as well as non-international armed conflict (ICRC Study, Rule 52). Furthermore, “[t]he pillage of a town or place [...] is prohibited” according to Article 28 of the Hague Regulations respecting the Laws and Customs of War on Land. Article 8 of the Rome Statute for the International Criminal Court lists pillage as one of the war crimes covered by the jurisdiction of the Court (para. 2(b)(xvi)). In its commentary on Article 33(2) Geneva Convention IV, the ICRC underscored that the prohibition of pillage “is general in scope. It concerns not only pillage through individual acts without the consent of the military authorities, but also organized pillage [...]. Paragraph 2 of Article 33 is extremely concise and clear; it leaves no loophole. [...] It guarantees all types of property, whether they belong to private persons or to communities or the State” (pp. 226–27).

*Subparagraph (b)* prohibits “direct or indiscriminate

attacks or other acts of violence” against non-military property and thus reflects the general principle of immunity of civilian objects laid down in Article 52 of Protocol I. According to this provision, “[c]ivilian objects shall not be the object of attack or of reprisals.” Its paragraph 2 provides that “[a]ttacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.” Furthermore, Article 51(4)(a) of Protocol I prohibits attacks that are not directed at a specific military objective and thus constitute indiscriminate attacks. These principles are also part of customary international humanitarian law applicable in both international as well as non-international armed conflict (ICRC Study, Rules 7 – 13).

The protection of persons against being used to shield military operations or objectives is embodied in Article 51(7) Protocol I. The use of human shields also contradicts Article 28 Geneva Convention IV. It is also incompatible with the prohibition of hostage-taking (Article 75(2)(c) Protocol I, common Article 3, and Article 4(2)(c) Protocol II) and the prohibitions of cruel and inhuman or degrading treatment as embodied in human rights law. By prohibiting the use of property belonging to internally displaced persons for purposes of shielding, the Guiding Principles go beyond existing international humanitarian law; however, such use of property arguably amounts to arbitrary deprivation of one’s property

under human rights law for lack of a legitimate aim.

By stating that private property and possessions of internally displaced persons are protected from being made the object of reprisals, subparagraph (d) reflects Article 33(3) Geneva Convention IV, which provides that “[r]eprisals against protected persons and their property are prohibited,” as well as the similar provision of Article 52(1) Protocol I.

Finally, subparagraph (e) sets forth the right of internally displaced persons to protection of their property and possessions from destruction or appropriation as a form of collective punishment. With respect to occupied territories, Article 53 Geneva Convention IV states that “[a]ny destruction by the Occupying Power of real or personal property [...] is prohibited, except where such destruction is rendered absolutely necessary by military operations.” Arguably, in customary international humanitarian law, collective punishment is prohibited not only during international but also non-international armed conflict (ICRC Study, Rule 103).

*Paragraph 3:* Private property and possessions left behind by internally displaced persons during displacement should be protected against destruction or arbitrary and illegal appropriation, occupation or use. This principle is not based on explicit language in present human rights or humanitarian law, but reflects a strong trend in present international law towards deducing from human rights guarantees the duty of authorities not only to refrain from violations but to provide protection against

violations by others. In this context, the UN Secretary General, in his 2007 Report on the protection of civilians in armed conflict, recommended to the Security Council the following measures: (a) Preventive and deterrent actions, such as the strategic deployment of peacekeeping troops to prevent evictions and the illegal appropriation of land and property, and the identification and prosecution by national courts or the International Criminal Court of those criminally responsible for the illegal appropriation or destruction of land and property; (b) Preparatory actions, such as the early identification and registration of land and property abandoned by internally displaced persons and refugees to facilitate restitution or, where necessary, compensation, and the issuance of ownership documentation where this has been lost or destroyed” (S/2007/643, paragraph 59).

At the domestic level, the Uganda National Policy for Internally Displaced Persons obliges local governments “to the extent possible, to endeavour to protect property and possessions left behind by IDPs against pillage, destruction, arbitrary and illegal appropriation, or occupation or use” (paragraph 3.6.2).

**Principle 22**

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:
  - (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
  - (b) The right to seek freely opportunities for em-

- ployment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
  - (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
  - (e) The right to communicate in a language they understand.

*(See Compilation and Analysis of Legal Norms: paragraphs 302–332; 344–358)*

A general non-discrimination clause according to which internally displaced persons shall not be discriminated against on the ground that they are internally displaced is provided for in Principle 1 of these Guiding Principles. Principle 22 elaborates on the prohibition of discrimination in respect of the enjoyment of important individual rights and underscores that internally displaced persons, regardless of whether they are living in camps or not, shall not be discriminated against as a result of their displacement. The wording of this principle follows the phrasing of Article 5 of the UN Convention on the Elimination of All Forms of Racial Discrimination. The principle of non-discrimination of internally displaced persons is recognized in many national laws and policies on internal displacement.<sup>21</sup>

*Subparagraph (a):* Internally displaced persons shall not be discriminated against in the enjoyment of the “rights to freedom of thought, conscience, religion or

belief, opinion and expression.” These rights are guaranteed by all major human rights documents. Thus, Articles 18 and 19 UDHR guarantee to everyone the right to freedom of thought, conscience and religion, as well as the right to freedom of opinion and expression. Similar provisions are found in Articles 18 and 19 CCPR, Articles 13 and 14 CRC, Articles 12 and 13 ACHR, Article 30 ArCHR, and Articles 8 and 9 AfCHPR. Whereas these rights may be subject to restrictions, Articles 18 CCPR and 12 ACHR are non-derogable. Furthermore, Article 4(1) Protocol II states that “[a]ll persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices.” Finally, Article 27 Geneva Convention IV and Article 75(1) Protocol I set forth non-discrimination clauses and state, *inter alia*, that protected persons shall be treated “without any adverse distinction based upon [...] religion or belief, political or other opinion [...]” (Article 75(1) Protocol I).

*Subparagraph (b)*: Internally displaced persons shall furthermore not be discriminated against in the “right to seek freely opportunities for employment and to participate in economic activities.” Article 23 UDHR recognizes that everyone has “the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment” and “[t]o equal pay for equal work.” Article 5(e)(i) CERD prohibits any racial discrimination in the enjoyment of these rights. Furthermore, Articles 6 and 7 CDESCR recognize the right to work, as well as the right to the enjoyment of

just and favourable conditions of work. Similar provisions can be found at the regional level in Article XIV of the American Declaration, Article 34 ArCHR, Article 15 AfCHPR, and Articles 1 and 2 ESC. Humanitarian law sets out minimum standards of working conditions for different categories of persons who are made to work during situations of armed conflict (Article 40 Geneva Convention IV and Article 5(1)(e) Protocol II), but unlike human rights law, does not explicitly address the issue of the right to work except for aliens in the territory of a party to a conflict (Article 39 Geneva Convention IV). Here, it is important to note that subparagraph (b) of Principle 22 does not create an independent right to be provided with work but prohibits, in line with basic tenets of humanitarian law, discrimination in situations where there are opportunities to work.

*Subparagraph (c)* recognizes the right of internally displaced persons to be protected against discriminatory limitations on their “right to associate freely and participate equally in community affairs” as guaranteed by most human rights instruments. Thus, Article 20 UDHR states that “everyone has the right to freedom of peaceful assembly and association.” Similarly, Article 21 CCPR, Article 15 CRC, Article 16 ACHR, Article 11 AfCHPR, Article 24(5) ArCHR, and Article 11 ECHR all guarantee the right to freedom of association. However, these provisions may be subject to restrictions and derogation. Furthermore, neither the Geneva Conventions nor the Protocols contain any provisions that would protect the right to freedom of assembly. Again, the subparagraph does not create a new right but prohibits discrimination against

internally displaced persons when others are entitled to enjoy this right, i.e., it aims at their equal treatment.

*Subparagraph (d)* sets forth that internally displaced persons shall not be discriminated against in their “right to vote and to participate in governmental and public affairs.” According to Article 21 UDHR, “[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives” and, according to Article 5(c) CERD, may not be discriminated against on the basis of race in the exercise of political rights. The right to political participation in one’s own country is, likewise, recognized in Article 25 CCPR, Article 23 ACHR, Article 13 AfCHPR, Article 24 ArCHR, and Article 3 Protocol No. 1 to the ECHR. Whereas restrictions on the right to political participation are permissible under all these provisions, the ACHR declares it to be non-derogable. Unlike human rights law, humanitarian law does not address the issue of political participation. Therefore, at least in situations of armed conflict, the issue of political participation of internally displaced persons remains unclear and subparagraph (d) might appear to set new standards. However, if internally displaced persons were excluded from the right to political participation because of their displacement, this would be incompatible with the non-discrimination clauses of human rights law.

With respect to Article 25 CCPR, the Human Rights Committee held in its General Comment 25[57] that “[i]n contrast with other rights and freedoms recognized by the Covenant [...], Article 25 protects the rights of

‘every citizen’. [...] No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (para. 3). “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. [...] If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote” (para. 11). The Council of Europe recommended that “Member states should take appropriate legal and practical measures to enable internally displaced persons to effectively exercise their right to vote in national, regional or local elections and to ensure that this right is not infringed by obstacles of a practical nature” (Rec(2006)6, para. 9).

Finally, *subparagraph (e)* provides that internally displaced persons shall not be deprived, because of their displacement, of the “right to communicate in a language they understand.” Whereas most non-discrimination clauses include language as a non-permissible ground for distinction, linguistic rights are addressed explicitly by only a few international documents. Thus, Article 27 CCPR asserts that in states “in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, [...] to use their own language.” A similar provision can be found in Article 30 CRC. Article 2 of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provides that members of ethnic, religious and linguis-

tic minorities “have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.” The 2007 UN Declaration on the Rights of Indigenous Peoples goes further in stating a right of these peoples and their members not only to use their language but also, if necessary, to be provided with interpreters in contacts with authorities, and to have education and media in their own language (Articles 13, 14 and 16). Regional instruments such as the 1992 European Charter for Regional or Minority Languages and the 1995 Council of Europe Framework Convention for the Protection of National Minorities also recognize a right of minorities to use their own language. Even if outside the context of minority protection and protection of indigenous peoples linguistic rights are not explicitly addressed in most human rights treaties, the right to communicate in a language one understands is an element of the recognized right to freedom of expression, and it cannot be limited simply because a person is displaced.

**Principle 23**

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

*(See Compilation and Analysis of Legal Norms: paragraphs 333–343)*

*Paragraph 1:* The right to education is recognized by Article 26 UDHR and several human rights treaties, including Article 13 CESC, Article XII of the American Declaration, Article 17(1) AfCHPR, Article 41 ArCHR, and Article 2 Protocol No. 1 to the ECHR. Furthermore, Article 28(1) CRC recognizes “the right of the child to education.” Article 10 CEDAW calls upon states parties to “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education,” and Article 5(e)(v) CERD prohibits racial discrimination in the area of education and training. The importance of the right to education was, moreover, underscored in several UNHCR Executive Committee Conclusions in which states were called upon to observe, *inter alia*, “the right of children and adolescents to education” (Conclusion No. 84 (XLVIII); similarly Conclusion 107(LVIII). The Beijing Platform for Action stated with respect to education that actions should be taken to “[f]acilitate the availability of educational ma-

terials in the appropriate language—in emergency situations also—in order to minimize disruption of schooling among refugee and displaced children” (para. 147(g)). Humanitarian law mainly deals with the question of children’s education. Thus, Article 4(3)(a) Protocol II requires that children “receive an education, including religious and moral education.” Furthermore, Article 24(1) Geneva Convention IV states that “[t]he Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, [...] and [that] their education [is] facilitated in all circumstances.” Article 50(1) of the same Convention obliges Occupying Powers to facilitate the proper working of educational institutions in occupied territories. Finally, Article 78(2) Protocol I sets forth that “[w]hen an evacuation occurs [...], each child’s education, including his religious and moral education as his parents desire, shall be provided while he is away with the greatest possible continuity.” Therefore, the right to education is well recognized by present international law in times of peace as well as in armed conflict.

The importance of providing education to internally displaced children is increasingly being recognized at the domestic level.<sup>22</sup>

*Paragraph 2:* Whereas paragraph 1 sets forth the principle that every human being has the right to education, paragraph 2 addresses the means of implementation. Insofar as free and compulsory education at the primary level is concerned, the wording of paragraph 2

follows closely Article 26(1) UDHR, which states that “[e]ducation shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.” Similarly, Article 13(2)(a) CESC, Article 28(1)(a) CRC, Article XII (4) of the American Declaration, and Article 41(2) ArCHR recognize the compulsory and free character of primary education. Furthermore, Article 29(1)(c) CRC recognizes that a child’s education shall be directed, *inter alia*, to the development of “his or her own cultural identity, language and values.” Similarly, Article 24(1) Geneva Convention IV states that “education shall, as far as possible, be entrusted to persons of a similar cultural tradition.” Finally, in cases in which children have been evacuated to a foreign country, Article 78(2) Protocol I provides that education shall be provided “with the greatest possible continuity.” In this respect, the ICRC Commentary underscores that “[a]ny measures aimed at converting children to a religion other than that of their family, even if such conversion is voluntary, are of course prohibited. Similarly, indoctrination must be prohibited. Having said this, it will not always be easy to find a sufficient number of people who are able to ensure the education of children in the same conditions they enjoyed up to that time. Language problems may arise, as well as problems of custom and understanding; nevertheless, all possible measures should be taken” (p. 914).

Article 4(3)(a) Protocol II states that children “shall receive an education, including religious and moral education, in keeping with the wishes of their parents.”

*Paragraph 3:* This paragraph reflects the aim of Article 10 CEDAW, which obliges states parties to “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: (a) The same conditions for career and vocational guidance, for access to studies [...]; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training.” In similar terms, the Beijing Platform for Action stated that actions should be taken to “[a]dvance the goal of equal access to education by taking measures to eliminate discrimination in education at all levels on the basis of gender, race, language, national origin, age or disability, or any other form of discrimination” (para. 80(a)). Finally, the UNHCR Executive Committee stressed in several Conclusions the need to enhance access of refugee women and girls to education and vocational training (No. 64 (XLI) and 105(LVII)).

*Paragraph 4:* By stating that education and training facilities should be made available to internally displaced persons as soon as conditions permit, the Guiding Principles underline the importance of an education with the fewest possible interruptions. The aim of the greatest possible continuity in education is firmly rooted in both human rights and humanitarian law. Whereas the relevant human rights norms guarantee to everyone a compulsory and free primary education and, thus, try to minimize interruptions in schooling for financial or other reasons, humanitarian law directly addresses the issue of

continuity by stating that education should be facilitated in all circumstances (Article 24(1) Geneva Convention IV) or should be provided with the greatest possible continuity (Article 78(2) Protocol I).



## SECTION IV – PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

### **Principle 24**

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

*Paragraph 1:* The requirements laid down in paragraph 1 reflect relevant provisions of humanitarian law. Thus, Article 18(2) Protocol II states that if during internal armed conflict “the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.” Similarly, for situations of international conflicts, Article 70(1) Protocol I provides that “[i]f the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the

agreement of the Parties concerned in such relief actions.” Articles 23 and 55 Geneva Convention IV also provide relevant guarantees regarding humanitarian assistance.

In the case of *Nicaragua v. United States of America*, the International Court of Justice held that for the provision of humanitarian assistance to escape condemnation as an intervention in the internal affairs of a country, “not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely ‘to prevent and alleviate human suffering,’ and ‘to protect life and health and to ensure respect for the human being’; it must also, and above all, be given without discrimination to all in need [...]” (Case Concerning the Military and Paramilitary Activities in and against Nicaragua, Judgment of 27 June 1986, ICJ Report 1986, p. 125, para. 243). Similarly, the Guiding Principles annexed to GA Resolution 46/182 concerning the Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations of 19 December 1991 state that “[h]umanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality.” The General Assembly reaffirmed these principles in the 2005 World Summit Outcome document (General Assembly Resolution A/60/L.1, para. 169).

Human rights law does not explicitly address the issue of humanitarian assistance. However, human rights instruments guarantee the right to life, which requires states to adopt positive measures necessary to protect human life (Human Rights Committee, General Comment No 6[XVI], para. 5). The same is true for social

rights, including the right to food and the right to health. Thus, states are under an international obligation to assist “individually and through international assistance and co-operation” (Article 2(1) CESC) internally displaced persons, if resources necessary for survival are not available to them. When providing such assistance, states are bound by the prohibition against discrimination.

Humanitarian assistance encompasses material and services that are essential for the survival of internally displaced persons, such as food, water, medical supplies, shelter and clothing. With respect to Article 70(1) Protocol I, the ICRC Commentary explains that “[t]he *humanitarian* character of the action is fulfilled once it is clear that the action is aimed at bringing relief to victims, i.e., in the present case, the civilian population lacking essential supplies. What matters most of all is to avoid deception, that is to say, using the relief action for other purposes. [...] The *impartial* character of the action may be assumed on the basis of fulfilling the obligation, also laid down, to conduct the action ‘without any adverse distinction’. [...] The second obligation results from the philosophical concept of the equality of human beings, which is actually a basic consequence of the principle of humanity. This refers to the real object of the action: the persons who are suffering. By contrast, the concept of impartiality refers to the agent of the action: it is a moral quality which must be present in the individual or institution called upon to act for the benefit of those who are suffering. In other words, the principle of nondiscrimination removes objective distinctions between individuals, while impartiality removes the subjective distinctions” (pp. 817–18).

*Paragraph 2:* Paragraph 2 emphasizes that humanitarian assistance shall not be diverted, for example, for military or political reasons. This principle is contained in Article 23(2) Geneva Convention IV. According to Article 70(4) Protocol I, “[t]he parties to the conflict shall protect relief consignments and facilitate their rapid distribution.” In this context, the ICRC Commentary explains that “[t]he obligation to protect relief consignments means, on the part of the Party concerned, that it must do its utmost to prevent such relief from being diverted from its legitimate destination, particularly by strictly punishing looting and any other diversion of relief and by providing clear and strict directives to the armed forces” (p. 828). By its nature, humanitarian assistance is aimed at bringing relief to victims in an impartial manner. Diverting such assistance for military or political reasons would run counter to the requirements of humanity, impartiality and non-discrimination.

**Principle 25**

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a state’s internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

*(See Compilation and Analysis of Legal Norms: paragraphs 359–395)*

*Paragraph 1:* As already pointed out in Principle 3(1), the primary duty and responsibility for providing humanitarian assistance lies with national authorities. This has been reflected in several General Assembly Resolutions. Thus, the Guiding Principles annexed to General Assembly Resolution 46/182 concerning the Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations of 19 December 1991 emphasize that “[e]ach State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory.”

*Paragraph 2:* The first sentence of paragraph 2 reflects common Article 3(2) of the Geneva Conventions, which states that “[a]n impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.” As ICRC is mentioned only as an example, this provision offers the same right to other organizations. A similar provision is contained in Article 18(1) Protocol II. The second sen-

tence of paragraph 2 is based on Article 70(1) Protocol I, which provides explicitly that “[o]ffers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts.” The third sentence of paragraph 2 reflects those provisions of humanitarian law that address the question of consent to relief actions by the concerned authorities. Thus, *inter alia*, Article 70(1) Protocol I makes relief actions “subject to the agreement of the Parties concerned.” Furthermore, Article 59(1) Geneva Convention IV states that “the Occupying Power shall agree to relief schemes,” while Article 18(2) Protocol II provides that relief actions “shall be undertaken subject to the consent of the High Contracting Party concerned.” However, the question remains whether consent to international relief actions may be refused. In its Commentary to Article 18(2) Protocol II, the ICRC explains that “[t]he fact that consent is required does not mean that the decision is left to the discretion of the parties. If the survival of the population is threatened and a humanitarian organization fulfilling the required conditions of impartiality and nondiscrimination is able to remedy this situation, relief actions must take place. In fact, they are the only way of combating starvation when local resources have been exhausted. The authorities responsible for safeguarding the population in the whole of the territory of the State cannot refuse such relief without good grounds. Such a refusal would be equivalent to a violation of the rule prohibiting the use of starvation as a method of combat as the population would be left deliberately to die of hunger without any measure being taken” (p. 1479). It is on the basis of such arguments that the Guiding Principles do not allow states to

withhold their consent arbitrarily. Council of Europe Recommendation (2006)6 acknowledges that the responsibility of states to provide humanitarian assistance “entails not to arbitrarily refuse offers from other states or international organisations to provide such aid” (paragraph 4).

Such a principle can also be deduced, to a certain extent, from the Human Rights Covenants. With regard to Article 2(1) CESCR, the Committee on Economic, Social and Cultural Rights has emphasized that “in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States” (General Comment No. 3[5], para. 14). Article 11(2) CESCR provides explicitly that on behalf of the fundamental right of everyone to be free from hunger, the states parties shall take the required measures “individually and through international cooperation.” Moreover, the right to life as embodied, *inter alia*, in Article 6 CCPR obliges states to adopt positive measures to ensure enjoyment of this right (see, e.g., Human Rights Committee, General Comment No. 6[1982], para. 5). Refusal of a state to consent to an offer of relief might, therefore, amount to a violation of the right to life, at least in certain circumstances.

Since the early 1990s, the UN Security Council,<sup>23</sup> based on Chapter VII of the UN Charter, has repeatedly insisted that authorities must grant immediate and unimpeded access by international humanitarian organizations

to all those in need of assistance in countries with humanitarian problems, while at the same time reaffirming the sovereignty, territorial integrity, and political independence of the concerned states. Thus, for example, in Resolution 1216 of 21 December 1998 on the crisis in Guinea-Bissau, the Security Council expressed “its firm commitment to preserve the unity, sovereignty, political independence and territorial integrity of Guinea-Bissau” and called “upon all concerned, including the Government and the Self-Proclaimed Military Junta, to respect strictly relevant provisions of international law, including humanitarian and human rights law, and to ensure safe and unimpeded access by international humanitarian organizations to persons in need of assistance as a result of the conflict.” Similar language can be found in recent resolutions of the Security Council on specific country situations.<sup>24</sup> Resolution 1502(2003) on the Protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones urges, in general, “all those concerned to allow full unimpeded access by humanitarian personnel to all people in need of assistance, and to make available, as far as possible, all necessary facilities for their operations” (para. 6). In Resolution 1764 (2006) on protection of civilians in armed conflict, the Security Council recognized that denial of humanitarian access may violate international law when it affirmed “its condemnation in the strongest terms of all acts of violence or abuses committed against civilians in situations of armed conflict in violation of applicable international obligations with respect in particular to [...] (vii) the intentional denial of humanitarian assistance” and demanded “that all parties put an end to such prac-

tices” (para. 5). It urged all relevant actors “as set forth in international humanitarian law, including the Geneva Conventions and the Hague Regulations, to allow full unimpeded access by humanitarian personnel to civilians in need of assistance in” (para. 22). The Heads of State and Government assembled in New York for September 2005 World Summit also stressed the need to ensure “that humanitarian actors have safe and unhindered access to populations in need in conformity with the relevant provisions of international law and national laws” (UN General Assembly GA Resolution A/60/L.1 para. 169). More specifically, the General Assembly called on governments further to improve humanitarian access to internally displaced persons by UN agencies and humanitarian organizations (A/RES/62/153, para. 15).

*Paragraph 3:* The wording of paragraph 3 follows closely Article 70(2) Protocol I, which states that “[t]he parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse Party.” As part of customary international humanitarian law, the same rule is also applicable in non-international armed conflict (ICRC Study, Rule 55). The ICRC explains in its Commentary to Article 70(2) Protocol I that “[t]he intention of these words is to avoid any harassment, to reduce formalities as far as possible and dispense with any that are superfluous. Customs officials and the police in particular should receive instructions to this effect” (p. 823). The Security Council, as described

above (Principle 25, paragraph 2) has insisted on free passage of humanitarian assistance and unimpeded access for international humanitarian organizations on many occasions.

**Principle 26**

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

*(See Compilation and Analysis of Legal Norms: paragraphs 396–409)*

Article 7(1) of the Convention on the Safety of United Nations and Associated Personnel sets forth that “United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate.” This Convention, however, only protects UN and associated personnel carrying out UN operations.

Humanitarian law explicitly protects medical and religious personnel, as well as their means of transportation. With respect to relief personnel, Article 71(2) Protocol I states that “[s]uch personnel shall be respected and protected.” Persons who are not or who are no longer participating actively in the hostilities enjoy general protection from the effects of military operations. Civilians must be respected and protected in all circumstances. They must be treated humanely and must in no case be made the object of attacks. This protection is also enjoyed by the per-

sonnel of humanitarian organizations. Customary international humanitarian law provides that humanitarian relief personnel and objects used for humanitarian relief operations must be respected and protected in international as well as non-international armed conflict (ICRC Study, Rules 31 and 32).

The Security Council, in Resolution 1502 (2003) on the Protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones strongly condemns all forms of violence against humanitarian workers as well as attacks on humanitarian convoys and acts of destruction and looting of their property (paragraph 1), urges “States to ensure that crimes against such personnel do not remain unpunished” (paragraph 2), and reaffirms “the obligation of all parties involved in an armed conflict to comply fully with the rules and principles of international law applicable to them related to the protection of humanitarian personnel and United Nations and its associated personnel” (paragraph 3).

UNHCR Executive Committee Conclusion No. 83(XLVIII) on the Safety of UNHCR Staff and Other Humanitarian Personnel calls upon states and other concerned parties “to refrain from any actions which prevent or obstruct [...] humanitarian personnel [...] from performing the functions required under their mandates,” as well as “to take all possible measures to safeguard the physical security and property” of such personnel (paragraph b(i) and (ii)).

**Principle 27**

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.
2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by states.

*Paragraph 1:* Paragraph 1 emphasizes the close links between humanitarian assistance and protection of the civilian population. Although these concepts may be considered separate in theory, in practice they are closely associated because in many cases humanitarian action encompasses both protection and assistance. Protection is essentially aimed at securing respect for the rights of victims, whereas the purpose of assistance is to bring material aid. The two are closely related to each other as in practice “no operation strictly limited to the delivery of relief supplies can be fully effective” and “assistance very often serves as a means of protecting the population concerned.”<sup>25</sup>

All organizations and other actors involved in giving assistance and providing protection should respect the relevant international standards and codes of conduct.

These include, for example, the 1994 Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (adopted by the Council of Delegates of the International Red Cross and Red Crescent Movement), which “seeks to maintain the high standards of independence, effectiveness and impact to which disaster response NGOs and the International Red Cross and Red Crescent Movement aspire,” a series of field codes inspired by it,<sup>26</sup> as well as the Sphere Standards.<sup>27</sup>

*Paragraph 2:* Even if according to paragraph 1 all international humanitarian organizations providing assistance to internally displaced persons should give due regard to protection needs, paragraph 2 stresses the special role of international organizations that have been specifically entrusted with a mandate for protection. The only organization expressly entrusted by international humanitarian law with such a protection mandate is the ICRC, whose mandate extends beyond situations of armed conflicts, for example, as guardian and promoter of international humanitarian law even in times of peace. The ICRC is also provided with the right of initiative in both international and non-international armed conflict. Article 10 Geneva Convention IV accepts the possibility that “any other impartial humanitarian organization” besides the ICRC might undertake, with the consent of the parties to the conflict concerned, humanitarian activities not only to assist victims but “for the protection of civilian persons,” thus giving a role to such other organizations with a protection mandate.

The UN General Assembly has repeatedly stressed UNHCR's role in providing assistance and protection to internally displaced persons. For example, Resolution 48/116, adopted on 20 December 1993, reaffirmed support for the High Commissioner's efforts, "on the basis of specific requests from the Secretary-General or the competent principal organs of the United Nations and with the consent of the concerned State [...] to provide humanitarian assistance and protection to persons displaced within their own country in specific situations calling for the Office's particular expertise."<sup>28</sup> Today, UNHCR has assumed responsibility for the "protection cluster" introduced by the Inter-Agency Standing Committee in 2005 as part of the reform of the UN's humanitarian sector.<sup>29</sup> Many other intergovernmental and non-governmental organizations are also mandated to address at least some of the assistance and protection needs of internally displaced persons.

## SECTION V – PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

### **Principle 28**

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
  
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

*(See Compilation and Analysis of Legal Norms: paragraphs 242–257)*

*Paragraph 1:* This paragraph addresses the post-displacement phase, i.e. the issue of durable solutions<sup>30</sup> for internally displaced persons. Three types of such solution exist: Return of such persons to their former homes, integration at the location they were displaced to, or resettlement to another part of the country. Internally displaced persons have the right to choose freely between return, local integration or resettlement, and com-

petent authorities are responsible for creating the conditions that allow displaced persons to rebuild their lives in any one of these locations.

Voluntary return of internally displaced persons to their former homes is often regarded as the preferable solution in such situations by displaced persons and authorities alike. Human rights law recognizes the right of an individual outside his or her national territory to return to his or her country: See, for example, Article 13(2) UDHR, Article 12(4) CCPR, Article 22(5) ACHR, Article 12(2) AfCHPR, and Article 3(2) of Protocol No. 4 to the ECHR. In contrast, there is no general rule in present human right law that explicitly affirms the right of internally displaced persons to return to their original place of residence or to move to another safe place of their choice within their own country. However, such a right can be deduced from the right to the liberty of movement and the right to choose one's residence as embodied in Article 12 CCPR (see, *supra*, Principle 14), which, however, can be limited under certain conditions (see Article 12(3) CCPR). ILO Convention No. 169 concerning Indigenous and Tribal Peoples states explicitly that “[w]henever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist” (Article 16(3)). If return is not possible, “these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development” (Article 16(4)). The return option is also mentioned, albeit in weaker form, in the 2007 UN Declaration on the

Rights of Indigenous Peoples (Article 10). In international humanitarian law, Article 49, paragraph 2 Geneva Convention IV, applicable during interstate armed conflicts, stresses that persons who have been evacuated during an occupation “shall be transferred back to their homes as soon as hostilities in the area in question have ceased.” Article 85(4)(b) Protocol I declares as a grave breach, *inter alia*, unjustifiable delay in the repatriation of civilians when committed willfully and in violation of the Geneva Conventions and the Protocol. In situations of internal armed conflict, neither common Article 3 nor Protocol II contain rules governing the right of the internally displaced to return to their residences. However, that internally “[d]isplaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist” arguably has become part of customary international humanitarian law applicable in both international and non-international armed conflict (ICRC Study, Rule 132).

In line with this conclusion, the UN Security Council, has not only called on governments and the international community to facilitate the return of internally displaced persons but on several occasions explicitly recognized and affirmed the right of such persons to return to their former homes, e.g., with regard to Bosnia-Herzegovina (S/RES/820 (1993), para. 7); Croatia (S/RES/1009 (1995), para. 2); Georgia (*inter alia* S/RES/876 (1993) and S/RES/1781 (2007), para 15);, and Kosovo (S/RES/1244(1999), preambular paragraph 7). The Security Council has also mandated peace-

keeping operations under Chapter VII of the UN Charter to work towards facilitating the voluntary return of internally displaced persons to their former homes (e.g., E/RES/ S/RES/1778 (2007) para 1 (Chad) and S/RES/1756 (2007), para 3(b)(Democratic Republic of Congo)). Similarly, the General Assembly has reaffirmed the right of all displaced persons to return to their homes or former places of residence in the territories occupied by Israel since 1967 (A/RES/51/126).

More generally, the former Sub-Commission on Prevention of Discrimination and Protection of Minorities affirmed “the right of refugees and displaced persons to return, in safety and dignity, to their country of origin and/or within it, to their place of origin or choice” (Sub-Commission Resolution 94/24, UN Doc. E/CN.4/Sub.2/1994/56. 28 October 1994). This right has been reiterated in the Principles on Housing and Property Restitution for Refugees and Displaced Persons.<sup>31</sup> Among the treaty bodies, the Committee on the Elimination of Racial Discrimination, in General Recommendation XXII(1996) on Article 5 of the Convention on refugees and displaced persons reaffirmed that all “refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety” (paragraph 2(a)).

At the regional level, the European Court on Human Rights while explicitly referring to Principles 18 and 28 has stressed that “the authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow the applicants to return voluntarily, in safety and with dignity, to their homes or

places of habitual residence, or to resettle voluntarily in another part of the country” (ECHR, *Doğan v. Turkey*, Judgment of 29 June 2004, para. 154).

The right of return for internally displaced persons is embodied in many contemporary peace agreements. Annex 7 of the Dayton Peace Agreement for Bosnia and Herzegovina (DPA) of 14 December 1995 set a standard by explicitly providing for the right of more than two million refugees and internally displaced persons “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. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina” (Article I (1) of Annex 7). A right to return is also stated, *inter alia*, in the 1994 Abkhazia Quadripartite agreement on voluntary return of refugees and displaced persons (Art. 3(a)), the 1995 Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium (Erdut Agreement)(para. 7), the 2006 Darfur Peace Agreement (para. 176), and the 2006 Comprehensive Peace Accord for Nepal (para. 7.3.3).

At the core of Principle 28 lies the notion of free choice of internally displaced persons between return, local integration and resettlement in another part of the country. This principle is a consequence of the liberty of movement and the freedom to choose one’s own residence (Article 12 CCPR) that internally displaced persons

can enjoy because they have not left their own country. It also flows, at least in some instances, from the prohibition against the forcible return of internally displaced persons to any place where their life, safety, or health would be at risk, as embodied in Principle 15(d) of these Guiding Principles. In the area of refugee law, the 1969 OAU Refugee Convention emphasizes the importance of respect for the voluntary character of return in Article 5. Many Security Council resolutions<sup>32</sup> and peace agreements<sup>33</sup> recognize the notion of voluntary return not only for refugees but for internally displaced persons too. The 2006 Comprehensive Peace Accord Nepal goes one step further by explicitly stating that the parties to the agreement “shall respect and protect the citizens' right to free mobility and the freedom to choose within legal norms the location of one's residence and express the commitment to respect the right of the people displaced by the conflict and their families to return back to their homes or to settle in any other location of their choice” (para. 7.3.3). At the regional level, the Committee of Ministers of the Council of Europe has explicitly recognized the right of internally displaced persons “to return voluntarily, in safety and in dignity, to their homes or places of habitual residence, or to resettle in another part of the country in accordance with the European Convention on Human Rights” (Rec(2006)6, para. 12).

*Paragraph 2:* Full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration is not only important in ensuring that such movements are voluntary, but also will greatly facilitate return or resettlement. Re-

garding refugees, the UNHCR has stressed the need for refugees to make an informed decision regarding their voluntary return (Executive Committee Conclusion No. 18 (XXXI/1980) on Voluntary Repatriation). Particular safeguards are required to ensure that a refugee woman's decision to repatriate is truly voluntary and not a result of coercion, either direct or circumstantial (Conclusion No. 73 (XLIV/1993)). As regards internally displaced persons, the Council of Europe stressed that such "persons should be properly informed, but also consulted to the extent possible, in respect of any decision affecting their situation" not only prior to and during but also "after their displacement" (Committee of Ministers Rec(2006)6, para. 11).

**Principle 29**

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in

obtaining appropriate compensation or another form of just reparation.

*(See Compilation and Analysis of Legal Norms: paragraphs 269–284)*

*Paragraph 1:* This paragraph stresses the applicability of the general prohibition of discrimination as embodied in Principle 1(1) of these Guiding Principles and the right to participate as embodied in Principle 22(1)(c) and (d) in situations of return or resettlement. That (formerly) displaced persons should not be discriminated against has been recognized in some peace agreements (e.g., 2006 Darfur Peace Agreement, para. 27; 1995 Dayton Peace Agreement, Annex 7, Article 1(2)).

*Paragraph 2:* Whereas Principle 21 addresses the right of property during displacement, this paragraph deals with an aspect of this right which becomes relevant at the time of return or resettlement. Internally displaced persons regularly lose access to their property when displaced. When they return to their former habitual residence or when return becomes impossible and they are resettled, they may find their properties destroyed, confiscated, expropriated or occupied by other people, raising questions of whether they have a right to restitution for the property or to compensation for its loss. There is a certain trend in general human rights instruments, along with the progressive development of international law, to answer these questions in the affirmative insofar as they guarantee the right to property (see, e.g., Article 17 UDHR, Article 21 ACHR, Article 14 AfCHPR, Arti-

cle 31 ArCHR, and Article 1 Protocol No. 1 to the ECHR) or, in some cases, the rights to be free from arbitrary interference with one's home (Art. 12 UDHR, Article 17 CCPR, Article 11 ACHR, Article 21 ArCHR, Article 8 ECHR) and to adequate housing (Article 25 UDHR, Article 11 CESC, Article 27 CRC, Article 26 ACHR in conjunction with Article 31 (k) of the 1970 Buenos Aires Protocol to the Charter of the Organization of American States, Article 38 ArCHR, and Article 31 (1) of the 1996 revised European Social Charter; see also Article 5 (e) (iii) CERD and Article 14 (2) (h) CEDAW regarding non-discrimination in the area of housing).

In its advisory opinion of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice referred to the fundamental principle that breaches of international law entail a duty to provide reparation that “must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which should serve to determine the amount of compensation due for an act contrary to international law”<sup>34</sup> and concluded that these principles apply to reparation in the form of restitution of or compensation for “the requisition and destruction of homes, businesses and agricultural holdings” owned by natural or legal persons that was a consequence of the

construction, in violation of international human rights and humanitarian law, of the wall in the Occupied Palestinian Territory.<sup>35</sup>

As regards the issue of restitution, the Security Council has on one occasion (Georgia) affirmed the importance of internally displaced persons being able to return “to their homes and property” as well as the fact that “individual property rights have not been affected by the fact that owners had to flee during the conflict and that the residency rights and the identity of those owners will be respected” (SR/RES/1781(2007), paragraph 15). This resolution is in line with the UN Secretary General’s general call to take “[r]estorative actions, such as the inclusion of the right to return and restitution of housing, land or property in all future peace agreements and all relevant Council resolutions, and the inclusion of housing, land and property issues as an integral part of future peacekeeping and other relevant missions, with provisions for dedicated, expert capacity to address these issues.” (Report on the protection of civilians in armed conflict, S/2007/643, paragraph 59).

The Principles on Housing and Property Restitution for Refugees and Displaced Persons<sup>36</sup> provide that refugees and internally displaced persons “have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal” ( Principle 2.1). The principles extend these rights to “tenants, social occupancy rights holders and other legitimate occupants or users of housing, land and property” and stresses that such claimants should, ”to the maximum extent possi-

ble”, be “able to return to and re-possess and use their housing, land and property in a similar manner to those possessing formal ownership rights” (Principle 16.1). As regards the difficult issue of “secondary occupants”, i.e., persons (often refugees or internally displaced persons themselves) who were allowed to use property left behind by the displaced, the Restitution Principles are based on the premise that the rights of the original owners are stronger than those of such occupants. At the same time, they call upon States to ensure “that secondary occupants are protected against arbitrary or unlawful forced eviction” and that evictions which are unavoidable to return property to the original owners “are carried out in a manner which is compatible with international human rights law and standards”, i.e., with “an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress” (Principle 17.1). As regards the relationship between restitution of property and compensation, the Restitution Principles give clear priority to restitution when they state “that the remedy of compensation is only used when the remedy of restitution is not factually possible or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation” (Principle 21.1). The 2001 World Bank Operational Policy 4.12 on Involuntary Resettlement requires for cases of physical relocation that “the resettlement plan or resettlement policy framework includes measures to ensure that the displaced persons are (i) provided assistance (such as moving allowances) during relocation; and (ii) provided with residential housing, or housing sites, or, as required, agricultural sites for which a combination of productive potential, locational

advantages, and other factors is at least equivalent to the advantages of the old site” (paragraph 6). Similar principles are embodied in the Basic Principles and Guidelines on Development-Based Evictions and Displacement.<sup>37</sup>

The Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in its resolution 60/147 (2006), states that “victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation” including restitution and compensation. The regional human rights tribunals have consistently ordered compensation for victims of human rights violations in the European and Inter-American systems (Leading cases are Inter-American Court of Human Rights, *Aloeboetoe et al. Case, Reparations* (Article 63(1) of the American Convention on Human Rights, Judgment of September 10, 1993. Ser. C No. 15, awarding compensation to a number of victims of human rights abuses, including surviving relatives; European Court of Human Rights, *Kurt v. Turkey*, Judgment of 25 May 1998, Reports 1998-III, No. 74, awarding compensation for human rights abuses, including surviving relatives, *Doğan v. Turkey*, Judgment of 29 June 2004, awarding compensation for human rights abuses involving denial of access to property and possessions, including unregistered land to which the applicants were attributed rights in accordance with local custom). More specifically, the Inter-American Commission on Human Rights has recommended payment of just compensation to returning inter-

nally displaced persons for the loss of their property, including homes, crops, livestock and other belongings, in the *Miskito* case (Report on the situation of human rights of a segment of the Nicaraguan population of Miskito origin, OEA/Ser.L/V/II.62, doc. 10, rev. 3, 29 Nov. 1983).

The Rome Statute of the International Criminal Court provides that the Court “shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation” (Art. 75(1) Statute), a provision that is important in the context of displacement-related international crimes (see above, Principle 6). The Statute of the War Crimes Tribunal for the former Yugoslavia (ICTY) allows the Tribunal to order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners’.<sup>38</sup>

The 2001 World Bank Operational Policy 4.12 on Involuntary Resettlement provides for “prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project” (paragraph 6).

With respect to international armed conflicts, states have an obligation to pay compensation for breaches of their obligations in accordance with Article 3 of the Hague Convention (IV) respecting the Laws and Customs of War on Land of 18 October 1907, Article 148 Fourth Geneva Convention and Article 91 Protocol I.

Restitution of property to displaced persons is a feature of many recent peace agreements and they often foresee specific implementation mechanisms. The 1995 Dayton Peace Agreement for Bosnia and Herzegovina (DPA) set an example by creating specific domestic ob-

ligations to return abandoned properties and establishing a Commission for Real Property Claims of Displaced Persons and Refugees in Annex 7, with the explicit mandate to decide in a final and binding manner any claims for real property where the property has not voluntarily been sold or otherwise transferred during the war period 1991–1995. In addition, the Human Rights Chamber for Bosnia and Herzegovina, which was the highest human rights court in the country established under Annex 6 of the DPA, delivered a number of judgments in which the legislation or administration of property issues (in particular, laws on abandoned apartments and properties aimed at preventing refugees and internally displaced persons from returning to their homes) were found to violate the ECHR or other applicable international treaties (see, e.g., *Medan et al. v. the State and the Federation of BH*, Decision of 7 November 1997, CH/96/3; *Kalinčević v. the State and the Federation of BH*, Decision of 11 March 1998, CH/96/23; *Kevešević v. Federation of BH*, Decision of 10 September 1998, CH/97/46; *Eraković v. Federation of BH*, Decision of 15 January 1999, CH/97/42; *Gogić v. Republika Srpska*, Decision of 11 June 1999, CH/98/800; *Pletilic et. al (“20 Gradiska Cases”) v. Republika Srpska*, Decision of 8 July 1999 to be delivered in September 1999, CH/98/659). Other peace agreements providing for property restitution in Europe include the 1995 Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium (Erdut Agreement; paragraphs 8 and 9) and the 1994 Quadripartite Agreement on the Voluntary Return of Refugees and Displaced Persons to Abkhazia, Georgia (paragraph 3(g)). In Africa, the Protocol on Property Rights of Re-

turning Persons adopted within the framework of the Pact on Security, Stability and Development in the Great Lakes Region of 15 December 2006 is particularly important as it addresses in a comprehensive way the provision of legal protection for the property of refugees and internally displaced persons by establishing legal principles to ensure that such persons, upon their return to their areas of origin, recover their property with the assistance of local traditional and administrative authorities. It provides a legal basis for resolving disputes; highlights the special protection needs of returning women, children, and communities with special attachment to land; and addresses legal remedies for loss or destruction of property. The 2006 Darfur Peace Agreement provides for the restoration of land rights to internally displaced persons, including traditional and historical rights in respect of land or access to water and for compensation where this is not possible (paragraph 159). Furthermore, it envisages the establishment of Property Claims Committees as an implementation mechanism (paragraph 197). Earlier, the 1992 General Peace Agreement for Mozambique provided that refugees and displaced persons shall be guaranteed restitution of property owned by them and the right to take legal action to secure the return of such property from individuals in possession of it (Protocol III, para. IV(e)).

States affected by internal displacement such as Afghanistan, Burundi, Croatia, Rwanda, or Turkey have set up post-displacement property restitution and compensation programs and mechanisms without being obliged in a peace agreement. In Bosnia, a provisional legal regime

was established and resolved 200,000 property claims through domestic administrative procedures between 1998 and 2004. In Afghanistan, the President of the Afghan Interim Administration issued a Decree on the Dignified Return of Refugees in 2001 providing for the “recovery of movable and immovable properties such as land, houses, markets, shops, *sarai*, apartments and others” (Article 5); and because ordinary courts proved to be unable to handle all the property claims expeditiously, a Special Property Dispute Resolution Court was set up by Presidential Decree on 30 October 2003. In Turkey, the 2004 “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism” provides not only for compensation for the destruction or denial of access to property during military operations against insurgents causing displacement, but also sets up a system of compensation commissions at the provincial level.

In UN-administered Kosovo Article 3.4 of the “Constitutional Framework for Provisional Self-Government” of 15 May 2001 provided that “[a]ll refugees and displaced persons from Kosovo shall have the right to return to their homes, and to recover their property and personal possessions”. In order to implement the right to property restitution, UNMIK set up the Housing and Property Directorate as well as the Housing and Property Claims Commission. In 2006, the Kosovo Property Agency was established to allow recovery of abandoned agricultural and commercial property.

**Principle 30**

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective

mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

*(See Compilation and Analysis of Legal Norms: paragraphs 359–381)*

This principle specifies the need for access of international humanitarian organizations and other appropriate actors such as development agencies, to internally displaced persons during and after return or resettlement. The provisions and standards embodied in Principles 24–27 of these Guiding Principles apply *mutatis mutandis*.



## NOTES

1. See Roberta Cohen, The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting, *Global Governance* 10 (2004), 459–480, at 469-70.
2. Jean Louis Henkaerts/Louise Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules*, Cambridge, 2005.
3. UN Doc E/CN.4/1998/53/Add.2. Reproduced in the Annex.
4. Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1995/57, *Compilation and Analysis of Legal Norms*, UN Doc. E/CN.4/1996/52/Add.2, of 5 December 1995 [hereinafter *Compilation and Analysis of Legal Norm*], reproduced in Annex II of the first edition of these Annotations and available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/75550ee91a4fb1ff802566cc005c2c63?Opendocument>.
5. Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39, *Compilation and Analysis of Legal Norms, Part II: Legal Aspects Relating to the Protection against Arbitrary Displacement*, UN Doc E/CN.4/1998/53/Add. 1, of 11 February 1998 [hereinafter *Compilation and Analysis of Legal Norms, Part II*], reproduced in Annex II of the first edition of these Annotations and

available at

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/f8d9f21803a0317a802566cc005548c5?OpenDocument>.

6. Law of the Republic of Azerbaijan “on Status of Refugees and Forcibly Displaced persons (Persons Displaced within the Country” Persons” of 21 May 1999, Article 1; Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina (1999), Article 4; Nepal National Policies on Internally Displaced Persons, 2063 (2007), Article 3 (a).
7. E.g., Angola, Council of Ministers Decree Number 1/01 of 5 January 2001, first preambular paragraph; Burundi, Protocol for the Creation of a Permanent Framework for Consultation on the Protection of Displaced persons (7 February 2001), last preambular paragraph; Liberia, The Guiding Principles on Internally Displaced Persons, Instrument of Adoption (2004).
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9. E.g., Law of the Republic of Azerbaijan “on Status of Refugees and Forcibly Displaced Persons (Persons Displaced within the Country” Persons” of 21 May

1999, Article 1; Law No. 335-II of Georgia on Internally Displaced Persons – Persecuted of 28 July 1996, Article I (version of 18 December 2001); Nepal National Policies on Internally Displaced Persons, 2063 (2007), Article 3 (a).

10. Council of Europe, Rec(2006)6 of the Committee of Ministers to member states on internally displaced persons of 5 April 2006, paragraph 1.
11. See notes 4 and 5.
12. Colombia, Ley 387 (1997), Article 2(3); Peru, Ley No. 28223 sobre los desplazamientos Internos, 10 May 2004, Article 3; Council of Europe, Committee of Ministers Rec(2006)6, paragraph 2.
13. Council of Europe, Committee of Ministers, Rec(2006)6, paragraph 2. Similarly, Georgia, State Strategy for Internally Displaced Persons – Persecuted, 2 February 2007, paragraph 2.2.2.
14. Council of Europe, Committee of Ministers, Rec(2006)6, paragraph 4.
15. A/RES/62/153, paragraph 11. For a more detailed elaboration of steps to be taken by governments see Framework for national responsibility, E/CN.4/2006/71/Add.1; also available as: “Addressing internal displacement: a framework for national responsibility”, Brookings Institution-University of Bern Project on Internal Displacement Washington D.C. 2005.

16. Council of Europe, Committee of Ministers, Rec(2006)6, paragraph 5.
17. European Court of Human Rights, Cruz Varas Case, Judgment of 20 March 1991, Series A, No. 201, para. 69. See also European Court of Human Rights, Saadi v. Italy case, Judgment as 28 February 2008 (Grand Chamber), paras. 124-133.
18. Human Rights Committee, No. 20[44], para. 9. See also Human Rights Committee, Charles Chitat Ng v. Canada, Communication 469/1991, Views adopted on 5 November 1993, para. 16.1.
19. Council of Europe, Committee of Ministers, Rec(2006)6, paragraph 6.
20. E.g., Angola, Standard Operational Procedures for the Enforcement of the “Norms on the Resettlement of Displaced Populations” (Council of Ministers, Decree Nr. 79/02, 6 December 2002), Article 11; Georgia, Law No. 335-II S on Internally Displaced Persons – Persecuted of 28 June 1996 (amended 18 December 2001), Article 5(i); Uganda National Policy for Internally Displaced Persons, paragraph 3.7.
21. E.g., Bosnia-Herzegovina, Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina, Article 2; Burundi, Protocol for the Creation of a Permanent Framework for Consultation on the Protection of Displaced Persons, first preambular paragraph; Colombia, Law 387 of 1997, Article 2(3); Peru, Law 28223 of 2004, Article 3; Nepal, National Policies on Internally Displaced Persons, 2063 (2007), para. 8.1.

22. E.g., Azerbaijan, Law “on Status of Refugees and Forcibly Displaced (Persons Displaced within the Country) Persons” (21 May 1999), Article 6; Bosnia-Herzegovina, Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina, Article 18; Georgia, Law No. 335-II S on Internally Displaced Persons – Persecuted of 28 June 1996 (amended 18 December 2001), Article 5; Uganda National Policy for Internally Displaced Persons (August 2004), paragraphs 3.1.1.
23. See Resolutions S/RES/668 (1991) para. 3 (Iraq); S/RES/770 (1992), para. 2 (Bosnia and Herzegovina); S/RES/794 (1992), para. 10 (Somalia); S/RES/929 (1994), para. 3 (Rwanda).
24. E.g., S/RES/1974 (2007), para. 17; S/RES/1744 (2007), para. 11 (Somalia); S/RES/1701 (2006), para. 7 (Lebanon); S/RES/1564, preambular paragraphs (Sudan). See also S/RES/1539 (2004), para. 1 (strongly condemning denial of humanitarian access to children in armed conflict).
25. Jean-Philippe Lavoyer, *Guiding Principles on Internal Displacement*, 38 *International Review of the Red Cross*, No. 324, p. 477.
26. E.g., the 1997 Code of Conduct for Humanitarian Agencies in Sierra Leone and the 2005 Code of Conduct for NGOs engaged in Humanitarian Action, Reconstruction, and Development in Afghanistan.

27. The Sphere Humanitarian Charter and Minimum Standards in Disaster Response, revised Handbook 2004.
28. See also General Assembly Resolutions A/RES/47/105 (1992) and A/RES/49/169 (1994).
29. See “Update on UNHCR’s Leadership Role within the Cluster Approach and IDP Operational Work-plans”, Informal Consultative Meeting of the Standing Committee, 25 May 2007; and UNHCR’s “Policy Framework and Implementation Strategy”, EC/58/SC/CRP.18, June 2007.
30. On the elements of durable solutions see: When Displacement ends – A framework for durable solutions, Brookings-Bern Project on Internal Displacement, Washington D.C., June 2007.
31. See Principles on Housing and Property Restitution for Refugees and Displaced Persons, in: Final Report of the Special Rapporteur on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons, E/CN.4/Sub.2/2005/17, paragraphs 22-28.
32. E.g., S/RES/1795 (2008), paragraph 7 (Cote d’Ivoire); S/RES/1770 (2007), paragraph 2(b)(i) (Iraq); S/RES/1756 (2007), paragraph 2(b) (Democratic Republic of Congo).
33. E.g., 1994 Abkhazia Quadripartite agreement on voluntary return of refugees and displaced persons (Art. 3(a)), the 1995 Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium

(Erdut Agreement)(para. 7), the 2006 Darfur Peace Agreement (para. 178).

34. International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004 the para. 152, quoting Factory at Chrozów, Merits, Judgment *No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47.
35. *Id.*, para 152 and 153.
36. *Supra* Note 28.
37. U.N. Doc. E/CN.4/2006/41 (2006), paragraphs 64-68.
38. Article 24(3) Statute of the International Criminal Tribunal for the former Yugoslavia. According to Article 105 of the Rules of Procedure and Evidence of the Tribunal of Feb. 11, 1994 (U.N. Doc. IT/32, 14 March 1994), the Tribunal has the possibility to award, in conjunction with a judgment of conviction, the restitution of property or its proceeds to victims, even if the property is in the hands of third parties not otherwise connected with the crime of which the convicted person has been found guilty.



## ACRONYMS AND ABBREVIATIONS

***ACHR***: American Convention on Human Rights, 1969

***AfCHPR***: African Charter on Human and Peoples' Rights, 1981

***ArCHR***: Arab Charter on Human Rights, 2004

***American Declaration***: American Declaration of the Rights and Duties of Man, 1948

***Basic Principles and Guidelines***: Basic Principles and Guidelines on Development-Based Evictions and Displacement, in: Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, A/HRC/4/18, Annex I

***Beijing Platform***: Beijing Platform for Action, adopted by the Fourth World Conference on Women, September 1995

***CCPR***: International Covenant on Civil and Political Rights, 1966

***CEDAW***: Convention on the Elimination of All Forms of Discrimination against Women, 1979

***CERD***: International Convention on the Elimination of All Forms of Racial Discrimination, 1966

***CESCR***: International Covenant on Economic, Social and Cultural Rights, 1966

***CRC***: Convention on the Rights of the Child, 1989

***CSR51***: Convention Relating to the Status of Refugees, 1951

**DPA:** Dayton Peace Agreement for Bosnia and Herzegovina, 1995

**ECHR:** European Convention on Human Rights, 1950

**ESC:** European Social Charter, 1961

**ExCom:** Executive Committee of the High Commissioner's Programme

**Geneva Convention IV:** Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949

**Genocide Convention:** Convention on the Prevention and Punishment of the Crime of Genocide, 1948

**Great Lakes IDP Protocol:** Protocol on the Protection and Assistance to Internally Displaced Persons, adopted by the Member States of the International Conference on the Great Lakes, 2006

**ICRC:** International Committee of the Red Cross

**ICRC Commentary:** Jean Pictet (ed.), Commentary to the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, ICRC Geneva 1958 and Yves Sandoz (ed.), Commentary to the Additional Protocols of 8 June 1977 to the Geneva Convention of 12 August 1949, ICRC Geneva 1987

**ICRC Study:** Jean Louis Henckaerts/Louise Doswald-Beck, Customary International Humanitarian Law, Volume 1: Rules, ICRC/Cambridge University Press, Cambridge 2005

**ICTY:** International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

**ILC:** International Law Commission

***ILC Draft Articles:*** International Law Commission, Draft Articles on Responsibility of States for Internally Wrongful Acts, General Assembly Resolution A/Res/56/83 (2001), Annex

***ILO:*** International Labour Organization

***Nowak Commentary:*** Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary, Kehl/Strasbourg/Arlington 2nd rev. edition 2005

***OECD Guidelines:*** Organization for Economic Cooperation and Development, Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, Paris 1999

***para.:*** paragraph

***Protocol I:*** Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977

***Protocol II:*** Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1977

***Refugee Convention:*** Convention Relating to the Status of Refugees, 1951

***Rome Statute:*** Rome Statute of the International Criminal Court, adopted 17 July 1998

***San Remo Principles:*** Declaration on the Rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts, adopted by the Council of the International Institute of Humanitarian Law, Taormina (Italy), 7 April 1990 (approving the conclusions and commentary of the Fourteenth Round Table of the International Institute of Humanitarian Law, San Remo (Italy), 13-14 September 1989), *re-*

*printed* in 278 *International Review of the Red Cross*  
404 (1990)

***UDHR:*** Universal Declaration of Human Rights, 1948

***UN:*** United Nations

***UN Charter:*** Charter of the United Nations, 1945

***UNHCR:*** United Nations High Commissioner for Refugees

***World Bank Directive:*** Operational Directive on Involuntary Resettlement, World Bank Operational Manual, OD 4.30, June 1990

## **ANNEX:**

### **GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT**

#### **INTRODUCTION: SCOPE AND PURPOSE**

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
  - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
  - (b) States when faced with the phenomenon of internal displacement;
  - (c) All other authorities, groups and persons in their relations with internally displaced persons; and

(d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

#### SECTION I. – GENERAL PRINCIPLES

##### Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

##### Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic

law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

### Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

### Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

SECTION II. – PRINCIPLES RELATING TO PROTECTION  
FROM DISPLACEMENT

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
  - (a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
  - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
  - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
  - (e) When it is used as a collective punishment.

3. Displacement shall last no longer than required by the circumstances.

#### Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

- (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
- (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
- (c) The free and informed consent of those to be displaced shall be sought;

- (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

#### Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

#### Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

### SECTION III. – PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

#### Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and

- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

#### Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

- (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific vio-

lence, forced prostitution and any form of indecent assault;

(b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and

(c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

#### Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.

3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.

4. In no case shall internally displaced persons be taken hostage.

#### Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.

2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

#### Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.

2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

#### Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

#### Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.

2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.

4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

#### Principle 17

1. Every human being has the right to respect of his or her family life.

2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.

3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

#### Principle 18

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (a) Essential food and potable water;
- (b) Basic shelter and housing;
- (c) Appropriate clothing; and
- (d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

#### Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

#### Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

#### Principle 21

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

- (a) Pillage;
- (b) Direct or indiscriminate attacks or other acts of violence;
- (c) Being used to shield military operations or objectives;
- (d) Being made the object of reprisal; and
- (e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

#### Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to

- have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

### Principle 23

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

### SECTION IV. – PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

### Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

#### Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

#### Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

### Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

#### SECTION V. – PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

### Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

### Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

### Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.