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GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT¹

ANNOTATIONS
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Introduction to the Guiding Principles: Scope and Purpose

Notation: The texts are presented first followed by the Annotations drawn from the *Compilation and Analysis of Legal Norms (Parts I and II)*.

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 (NGOs) when addressing internal displacement.
4. These Guiding Principles should be disseminated and applied as widely as possible.

Compilation² and Analysis of Legal Norms: paragraphs 6–46; 410–415

Paragraph 1 (of the introduction above): The Guiding Principles approach displacement from the perspective of the needs of internally displaced persons. These needs have been described in field 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; protection during displacement; the framework for humanitarian assistance; and protection during return, resettlement and reintegration.

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. 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 they, too, might in some cases become victims of discrimination and other human rights violations as a consequence of their displacement (e.g., because they have to move to an area where they constitute an ethnic minority). 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 paragraph 2 is not a legal definition of internally displaced persons. 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, say, becoming a refugee does. 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 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, including those that are of special importance 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.

Paragraph 3: These Guiding Principles are not a draft 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 discussed in the Compilation 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 gray 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) situations of tensions and disturbances that fall short of internal armed conflict or disaster—here, human rights law applies; (2) situations of noninternational armed conflict governed by some of the most important principles of humanitarian law and by many human rights guarantees; and (3) situations of 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 themselves in refugee-like situations, refugee law is not directly applicable to the situation of displaced persons, as international law defines refugees as persons who have fled across *international* borders. 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, thus, would 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 norms into clear principles and by highlighting those more concrete aspects of human rights and humanitarian law guarantees that are of special significance for the internally displaced. They will guide not only the Representative of the Secretary-General in carrying out his mandate but also states and intergovernmental and non-governmental organizations when dealing with internally displaced persons. As displacement today most 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. In such situations, armed groups are bound by international humanitarian law, and private persons, although not generally bound by human rights law, may be responsible for war crimes and crimes against humanity.

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 enjoyed by 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.

Compilation and Analysis of Legal Norms: paragraphs 47–65

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

The principles of equality and nondiscrimination 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(2) 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 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 Articles 2(1) and 4(1) Protocol II as well as in Article 27(3) Geneva Convention IV and Article 75 Protocol I.

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 CESCR, Articles 2 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 (and today applies, e.g., to disability), arguably covers the status of those who are internally displaced.

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, Pp. 466–67). 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 unbiased and, in particular, does not preclude special measures addressing, for example, the peculiar needs of displaced women and children (see, *infra*, Principle 4).

Paragraph 2: Paragraph 2 cautions that the Guiding Principles do not affect the operation of rules of international criminal responsibility. The purport of this paragraph 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 genocide, crimes against humanity and war crimes are still entitled to their basic human rights, although some of these rights may be limited. Thus, detention of internally displaced persons who have committed crimes against international law, for example, cannot be deemed arbitrary according to Principle 12(1).

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 sense of Principle 1(2). A person is recognised as a refugee because he or she meets certain legal criteria, and such recognition confers a legal status from which entitlement to refugee protection flows. The effect of exclusion is to disqualify the excluded person from being recognised as a refugee, even though he or she meets the legal criteria. By contrast, status as 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, although that person will continue, in principle, to be entitled to the rights and guarantees articulated in the Guiding Principles, his or her rights might be limited to a larger extent than is possible in the case of other displaced persons. Furthermore, and that is the point of Principle 1(2), 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 with-

out 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. However, certain human rights norms place such obligations upon non-state actors as well. 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.” Humanitarian law applicable in situations of noninternational 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, genocide or crimes against humanity.

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 the clauses found in common Article 3(4) Geneva Conventions and Article 4 Protocol I that were essential for the adoption of these provisions, as “it was necessary to indicate in the clearest possible way that the article is 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 and Article 29(b) ACHR. A different type of safeguard clause is found in Article 7 Geneva Convention IV, which states that “[n]o 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.

Compilation: paragraphs 361–362

Paragraph 1: The wording of this paragraph is based on Principle 2(2) of the San Remo Principles. It reflects 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, co-ordination 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). In situations where national authorities, that is, the official authorities of the state, are too weak to fulfill this duty or are no longer operative 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.

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 provide protection and assistance to internally displaced persons. Paragraph 2 prohibits persecution or punishment of internally displaced persons who request protection and humanitarian assistance, and specifies further the responsibility of sovereign states to protect and assist their displaced persons.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as on the basis 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 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.

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 the nondiscrimination clause of paragraph 1 closely follows formulations of human rights and humanitarian law provisions that prohibit discrimination. Thus, Article 2(2) 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) CESC, Article

2(1) CRC, Article 14 ECHR, Article 1(1) ACHR 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 nondiscrimination 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 nonexhaustive 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 equality does not mean that the same treatment must be accorded to everyone. Rather, the principle of equality requires that objectively unequal situations not be treated equally. Thus, as some groups of internally displaced persons have special needs that require special attention, a different treatment must be accorded. This is recognized in international law. 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 and the CEDAW.

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.

Compilation and Analysis of Legal Norms: Part II,³ I.1

Principle 5 emphasizes the importance of compliance with international law for the prevention of internal displacement. If the relevant norms of international law, including human rights and humanitarian law provisions, are respected both by domestic and international actors, whether or not these actors are of a governmental nature (see, *supra*, Principle 2), there is less chance that situations conducive to internal displacement might develop. Thus, many situations of displacement could be avoided or minimized if international 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.

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

Paragraph 1: As explained in the 1998 Report of the Representative of the Secretary-General on Internally Displaced Persons,⁴ 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.” As the study found, “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. A.2). The guarantees mentioned in this statement include Article 12 UDHR, Articles 12(1) and 17 CCPR, Articles 11 and 22(1) ACHR, Article 8 ECHR and Article 2(1) of Protocol No. 4 to the ECHR, Article 12(1) AfCHPR, 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. 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. Thus, Article 12(3) CCPR states that the right to liberty of movement and freedom to choose one’s residence “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.” The guarantees regarding freedom from arbitrary interference with one’s home contain similar limitation clauses. Similarly, norms of humanitarian law that address the prohibition of forced movement of persons allow for certain exceptions. Article 17 Protocol II permits forced movement of civilians if “the security of the civilians involved or imperative military reasons so demand.” Article 4(3)(e) Protocol II allows evacuations of children during noninternational conflicts to safe areas with the consent of a parent or guardian, provided such removal takes place within the country and only temporarily. With respect to occupied territories, Article 49 Geneva Convention IV states that forced movements of persons are allowed, on an exceptional basis, if the security of the population or imperative military reasons so demand. Moreover, civilians may not be evacuated across the borders into the territory of the occupying power or any other country. Finally, this article stipulates that evacuated persons “shall be transferred back to their homes as soon as hostilities in the area in question have ceased.” For situations of international armed conflicts, Article 51(7) Protocol I contains an example of a clear violation of humanitarian law by outlawing acts of directing “the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.” With respect to the evacuation of children, 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.” Finally, Article 16 of ILO Convention No. 169 concerning Indigenous and Tribal Peoples expressly provides that “the peoples concerned shall not be removed from the lands which they occupy.” It clearly emerges from this survey that forced displacement of persons may be allowed in certain circumstances but that these 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). With respect to the CCPR, Nowak states in his Commentary that “the expression ‘arbitrary’ suggests a violation by State organs. In evaluating whether interference . . . by a State enforcement organ

represents a violation . . . , it must especially be reviewed whether, in addition to conformity with national law, the specific act of enforcement had a purpose that seems legitimate on the basis of the Covenant in its entirety, whether it was predictable in the sense of rule of law and, in particular, whether it was reasonable (proportional) in relation to the purpose to be achieved” (*id.*).

Paragraph 2: Paragraph 2 gives an illustrative and nonexhaustive 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 of a character similar to those referred to in paragraph 1, 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.” Furthermore, Article 18 of the ILC Draft Code of Crimes against the Peace and Security of Mankind provides that “[a] crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a Government or by any organization or group: . . . (f) institutionalized discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population.” In its Commentary, the ILC explains: “The prohibited act covered by the present subparagraph consists of three elements: a discriminatory act committed against individuals because of their membership in a racial, ethnic or religious group, which requires a degree of active participation; the denial of their human rights and fundamental freedoms, which requires sufficiently serious discrimination; and a consequential serious disadvantage to members of the group comprising a segment of the population. It is in fact the crime of apartheid under a more general denomination” (ILC Report 1996, Chapter II, Article 18, para. 12). “Ethnic cleansing” fulfills all 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, Article 4 of the Statute for the ICTY and Article 17 of the ILC Draft Code of Crimes against the Peace and Security of Mankind. Thus, forced population transfers for the purpose of “ethnic cleansing” 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. 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 human rights. Such projects might, however, lead to involuntary displacement and 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 this measure, 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 Directive 4.30 emphasizes that “[i]nvoluntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project designs. For example, realignment of roads or reductions in dam height may significantly reduce resettlement needs.” Similarly, the OECD’s 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.”

Subparagraph (d): Forced displacement in situations of 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 freedom of movement and of 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.

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. 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. . . . Responsibility is personal and it will no longer be possible to inflict penalties on persons who have themselves not committed the acts complained of” (p. 225). In the Commentary to Article 4(2)(b) Protocol II, it is emphasized 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 could 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, and 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, which states 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.” 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.” Since, according to humanitarian law, forced movements of civilians in cases of armed conflict are permissible only if the security of civilians or imperative military reasons so demand, return has to be allowed as soon as these reasons have ceased to exist. Similarly, human rights norms guaranteeing the right to freedom of movement and of residence allow for restrictions only if the measure meets the criteria of necessity and proportionality. Prolonged displacement in situations where the circumstances no longer require restrictions on freedom of movement and residence 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.

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

Paragraph 1: Principle 7 outlines the standards and modalities that must be observed when displacement is being undertaken. They are applicable to all instances of displacement.

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 freedom of movement and 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. 33). This principle is also embodied in the World Bank’s Operational Directive 4.30 and the OECD’s 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."

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." Furthermore, the World Bank's Operational Directive 4.30 and the OECD's 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 and the protection of families, as in Articles 10 and 11 CESCR and 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 as well as in the World Bank's Operational Directive 4.30 and the OECD Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects.

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, Commentary, Article 12, para. 25) 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, which provides 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 oppor-

tunity for effective representation of the peoples concerned.” 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(2)). Finally, the relocated persons “shall be fully compensated for any resulting loss or injury.” The World Bank and OECD guidelines emphasize the importance of planning the resettlement and including in this plan, *inter alia*, provisions about the legal framework, community participation and compensation.

Principle 8

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

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 that are prohibited by human rights guarantees. In particular, displacement shall not be carried out in a manner that violates the nonderogable 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.

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.” Thus, when relocation of such peoples is deemed necessary, Article 16(3) of ILO Convention No. 169 stipulate that the “peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.” 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) ILO Convention No. 169). 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 reflected also in the World Bank’s Operational Directive 4.30 and the OECD Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects.

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 land mines.

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 nonderogable by all human rights treaties. It prohibits, *inter alia*, summary or arbitrary exe-

cutions. Common Article 3 of 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.” 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 such acts is explicitly prohibited by international law in the case of genocide (Article III Genocide Convention and Article 25(3)(e) Rome Statute of the International Criminal Court).

In subparagraphs (a) to (d), paragraph 1 sets forth a nonexhaustive list of acts that threaten the right to life and to which internally displaced persons have fallen victim in recent years. 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 Rome Statute for the International Criminal Court gives in Article 7(2)(i) a definition of “enforced disappearance.” It states that “‘enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.” A similar definition is contained in the preamble of the Declaration on the Protection of All Persons from Enforced Disappearances of 18 December 1992 (UN General Assembly Resolution 47/133).

Paragraph 2: The second paragraph addresses the right to life of internally displaced persons who find themselves in situations of armed conflict. It reflects several provisions of Geneva Convention IV and the Protocols according to which attacks or acts of violence against persons

who do not participate in hostilities are prohibited. Even though common Article 3 Geneva Conventions does not explicitly prohibit attacks against civilians in noninternational conflicts, indiscriminate attacks against the civilian population are prohibited by customary law. Furthermore, according to Articles 13 and 14 Protocol II, civilians shall enjoy general protection against the dangers arising from military operations, unless and for such time as they take a direct part in hostilities, and they shall, *inter alia*, not be the object of attacks or acts of violence intended to spread terror; nor shall they be subjected to starvation as a method of combat.

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. Although Article 13 Protocol II sets forth that civilians shall not be the object of attacks, Article 51 Protocol I expressly protects civilians against indiscriminate or disproportionate attacks. Furthermore, 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.” “Indiscriminate attacks” are, according to Article 51(4) Protocol I, “(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.”

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 civilian 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). Human rights law likewise prohibits starvation as a method of combat. Thus, 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. Aside from the protection provided by the nonderogable 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. Therefore, the Committee on Economic, Social and Cultural Rights has stated in its general comment 3 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).

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. 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, disturbances or non-international conflict. By setting forth that internally displaced persons shall not be used as human 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 and humanitarian law provisions applicable in situations of tension or internal conflict. Arguably, using civilians as human shields is, thus, at least implicitly prohibited by existing rules of international law.

Subparagraph (d) explicitly prohibits attacks against settlements or camps of internally displaced persons. This prohibition is covered by those provisions of Geneva Convention IV and the Protocols prohibiting 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 condemned 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 land mines and thus reflects the evolving

ban on the use of such devices. The various efforts to ban anti-personnel land mines 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]nti-personnel 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.”

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.

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. Moreover, both Article 4(2)(a) Protocol II and Article 75(2)(a) Protocol I prohibit, *inter alia*, violence to the physical or mental well-being of

persons. 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 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).

Paragraph 2: This paragraph takes up the general principle stated in paragraph 1 and gives a nonexhaustive list of prohibited violations of this right to which internally displaced persons 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 absolute, under no circumstances and in no situations are derogations permissible. 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. Furthermore, 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 (see Compilation, para. 125). 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. Similar to Article 76(2) 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.” Rape can be punished as a war crime or a crime against humanity (Statutes of the War Crimes Tribunals for the Former Yugoslavia and Rwanda, Article 5(g) and Articles 3(g) and 4(e) respectively; and 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. In humanitarian law, slavery in all its forms is explicitly prohibited by Article 4(2)(f) Protocol II and is 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., summary executions in public) are prohibited by Article 51(2) of Protocol I and Article 13(2) of Protocol II.

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.

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 5(1) ECHR, Article 7 ACHR and Article 6 AfCHPR. 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 noninternational conflicts does not explicitly prohibit arbitrary detention of civilians but addresses 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 to host large numbers of such persons. 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 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 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. Whereas common Articles 3 Geneva Conventions and 4(2)(c) Protocol II prohibit the taking of

civilians as hostages during noninternational 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 as well as the right to life.

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

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.” Article 8(2)(e) of the Rome Statute of the International Criminal Court lists among punishable war crimes “serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: (vii) [c]onscripting or enlisting 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 the 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). Taking “direct part” in hostilities not only covers 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).

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.” ILO Convention 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour, adopted 17 June 1999, obliges states to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency” (Article 1). Article 3(a) states that “forced or compulsory recruitment of children for use in armed conflict” belongs to the prohibited forms of child labour, and Article 2 stresses that the term “child” applies to all persons under the age of 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 protect, however, only the civilian population of an occupied territory. By contrast, human rights treaties do not explicitly address the issue of recruitment; rather, Article 8(3) CCPR sets forth that an obligation to perform military service does not constitute forced or compulsory labor. Similar provisions are found in Articles 4 ECHR and 6 ACHR. However, all human rights treaties

prohibit discrimination as well as 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.

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 IV to the ECHR, Article 22(1) ACHR and Article 12(1) AfCHPR. 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 freedom 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 question 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.

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 freedom of movement (see, *supra*, annotation to Principle 14(1)). Freedom of movement "means the right to move freely about the entire territory of a State Party" (Nowak, CCPR Commentary, Article 12, para. 11). 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 IV 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 a country (see, however, Article 35 Geneva Convention IV granting such a right to aliens who find themselves in the territory of a party to the conflict and Article 48

Geneva Convention IV conferring the same right upon civilians who are not nationals of the power whose territory is occupied).

By stating that internally displaced persons should have the right to leave their country, the Guiding Principles can be based on human rights law: Even in times of armed conflict, the human rights guarantee of the right to leave one's own country may still be applicable, as derogation may not be permissible in the light of the principle of proportionality or, as is often the case, has not been declared by the country concerned.

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 Vienna Declaration and Program 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 I(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 a novel principle with no direct antecedent in existing instruments. 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 sense of 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) of the 1951 Refugee Convention 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. In one case, the European Court of Human Rights derived the prohibition of return from Article 3 ECHR and Article 7 CCPR, 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.”⁵ 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.

Compilation and Analysis of Legal Norms: paragraphs 102–108

Paragraph 1: By setting forth that all internally displaced persons have the right to know the fate and whereabouts of missing relatives, this paragraph reproduces the language of Article 32 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, therefore, not directly applicable to internally displaced persons. In contrast, humanitarian law applicable to noninternational 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.” At least implicitly, these provisions lay down a duty to transmit information about missing persons to their relatives regardless of their nationality.

By guaranteeing an express right of internally displaced persons to know the whereabouts of their relatives, paragraph 1 fills a gap in the existing rules of international law. 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 noninternational 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). However, it must be noted that even though a right to know the whereabouts of relatives of internally displaced persons is expressly recognized in international humanitarian law, “the content of the obligation imposed on States, on other Parties to the conflict, and on the organizations concerned, is not easy to determine. In 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).

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 applicable to internally displaced persons.

Paragraph 3: Paragraph 3 repeats the guarantees set forth in Articles 33(4) and 34 Protocol I and Article 16 Geneva Convention IV. 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. 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.”

Paragraph 4: The wording of paragraph 4 follows closely the provisions of Article 34 Protocol I. 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.

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, 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 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, 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.

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 Convention 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 nongovernmental 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.” In its Conclusion 84(XLVIII) on Refugee Children and Adolescents, the UNHCR Executive Committee stressed that the best interest of the child constitutes a guiding principle of decisionmaking. Therefore, states are urged to prevent separation of refugee children from their parents and to promote family reunification efforts.

The reluctance evident in international law instruments to guarantee a right to family reunification is due mainly to the fact that the cases addressed in the relevant provisions involve reunification of family members across international borders. Unlike refugees or families seeking reunification as defined in Article 10(1) CRC, internally displaced persons have not crossed international borders but remain in their own country. Thus, traditional arguments in favor of limiting the right to family reunification in situations of forced movement cannot justify limitations in the case of internally displaced persons.

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.” Furthermore, 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.”

The content of paragraph 4 has a wider scope than the rules of humanitarian law, since its applicability is not limited to international armed conflicts. However, international law implicitly recognizes 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.

Compilation and Analysis of Legal Norms: paragraphs 180–194

Paragraph 1: The wording of paragraph 1 corresponds to Article 11(1) CESCR, 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 well-being 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, however, are 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) CESCR, 27(3) CRC and 25(1) UDHR state that the right to an adequate standard of living includes essential food. Furthermore, Articles 14 Protocol II and 54 Protocol I protect those objects that are indispensable to the survival of the civilian population and expressly outlaw starvation of civilians as a method of combat. According to the provision of Protocol I, “[i]t is prohibited 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.”

In references that implicitly include displaced persons, 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.

Subparagraph (b): For the survival of internally displaced persons, the availability of “basic shelter and housing” is essential. The right to shelter and housing is explicitly guaranteed by Article 11(1) CESCR, Article 27(3) CRC and Article 25(1) UDHR as an aspect of the right to an adequate standard of living. 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 Article 54(2) 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) CESCR 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 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. 64 (XLI) on Refugee Women and International Protection, the UNHCR Executive Committee urged states, *inter alia*, to “provide all refugee women and girls with effective and equitable access to basic services, including food, water and relief supplies, health and sanitation” Finally, even if humanitarian law does not explicitly recognise such a right, the principle that all protected persons are to receive the same standard of treatment on a nondiscriminatory basis is firmly rooted in the Geneva Conventions (see, e.g., Article 27(3) Geneva Convention IV). 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 (to include access to female health care providers and services), such as reproductive health care, and appropriate counseling 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.

Compilation and Analysis of Legal Norms: paragraphs 195–220

Paragraph 1: Paragraph 1 reflects the wording of Article 10 Protocol I and Article 7 Protocol II. Furthermore, 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.”

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 immediately 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. Paragraph 3 reflects Article 12(2)(c)

CESCR, 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.

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 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, nonderogable (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.” However, 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.” Finally, in cases in which children will be evacuated to a foreign country, “the authorities of the receiving country shall establish for each child a card with photographs, which they shall send to the Central Tracing Agency of the International Committee of the Red Cross” (Article 78(3) Protocol I).

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.

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.”

These general principles are reflected in some UNHCR Executive Committee Conclusions. Thus, in Conclusion No. 64 (XLI), the Committee urges states *inter alia* to “(viii) issue individual identification and/or registration documents to all refugee women.” Furthermore, the Committee calls “upon States and the UNHCR to ensure the equal access of women and men to refugee status determination procedures and to all forms of personal documentation relevant to refugees’ freedom of movement, welfare and civil status . . .” (Conclusion No. 73 (XLIV), para. (c)). It follows that even if only very few international documents affirm the right of women to obtain documents in their own name on an equal basis with men, any differences in treatment would be incompatible with the prohibition of discrimination on grounds of sex and with the right to recognition of legal personality. Thus, paragraph 3 highlights an issue of primary importance for internally displaced women which is implicitly addressed by present international law.

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.

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) [e]veryone 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 on the regional level where Article

21 ACHR, Article 1 Protocol I to the ECHR and Article 14 AfCHPR all recognize a right to property which, however, can be restricted. Furthermore, it does not belong to those rights which are nonderogable. 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.

Paragraph 2: This paragraph sets forth in subparagraphs (a) to (e) a nonexhaustive 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 human rights law at least at the regional level.

Subparagraph (a): Pillage is proscribed by Articles 33(2) Geneva Convention IV and 4(2)(g) Protocol II. In its commentary on Article 33(2), 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. The High Contracting Parties prohibit the ordering as well as the authorization of pillage. They pledge themselves furthermore to prevent or, if it has commenced, to stop individual pillage. Consequently, they must take all the necessary legislative steps. The prohibition of pillage is applicable to the territory of a party to the conflict as well as to occupied territories. It guarantees all types of property, whether they belong to private persons or to communities or the State” (Pp. 226–27). 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. Finally, Article 8 of the Rome Statute for the International Criminal Court extends the jurisdiction of the Court to war crimes and, *inter alia*, pillage (para. 2(b)(xvi)).

Subparagraph (b) prohibits “direct or indiscriminate attacks or other acts of violence” 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 objec-

tives 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.

The protection against being used to shield military operations or objectives as embodied in subparagraph (c) is based on 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 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.”

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 growing trend in present international law toward deducing from human rights guarantees the duty of authorities not only to refrain from violations but to provide protection against violations by others.

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.

Compilation and Analysis of Legal Norms: paragraphs 302–332; 344–358

A general nondiscrimination 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 Convention on the Elimination of All Forms of Racial Discrimination.

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 9 and 10 ECHR, Articles 12 and 13 ACHR 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 nondiscrimination 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, Articles 1 and 2 ESC and Article 15 AfCHPR. 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 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 11 ECHR and Article 16 ACHR, as well as Article 11 AfCHPR, 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.

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 3 Protocol I to the ECHR, Article 23 ACHR and Article 13 AfCHPR. Whereas restrictions on the right to political participation are permissible under all these provisions, the ACHR declares it to be nonderogable. Unlike human rights law, humanitarian law does not address the issue of political participation. Therefore, at least in situations of internal or international 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 nondiscrimination 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).

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 nondiscrimination clauses include language as a nonpermissible ground for distinction, linguistic rights are addressed explicitly by only a few international documents. Thus, Article 27 CCPR states 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. Furthermore, regional instruments such as the European Charter for Regional or Minority Languages and the Council of Europe Framework Convention for the Protection of National Minorities recognize a right of minorities to use

their own language. However, even if 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 that is free and compulsory at the primary level. Education should respect its recipients' 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.

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 2 Protocol I to the ECHR, Article XII of the American Declaration and Article 17(1) AfCHPR. 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)). The Beijing Platform for Action stated with respect to education that actions should be taken to “[f]acilitate the availability of educational materials 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]henver 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.

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 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 and Article XII(4) of the American Declaration 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 urged in its Conclusion No. 64 (XLI) on Refugee Women and International Protection that states should “[p]rovide all refugee women and girls with effective and equitable access to . . . education and skills training.”

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 “[i]f 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 “if the provision of ‘humanitarian assistance’ is to escape condemnation as an intervention in the internal affairs of Nicaragua, 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.”

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 undertake positive measures. 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 if resources necessary for survival are not available to internally displaced persons. 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 nondiscrimination.

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.

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, in the Annex to GA Resolution 46/182 on the Strengthening of Coordination of Humanitarian Emergency Assistance of the United Nations, it is emphasized 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 sentence 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.

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.

Finally, in recent years the UN Security Council 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.”

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.” 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). In a number of resolutions, the Security Council has insisted on free passage of humanitarian assistance and unimpeded access to displaced persons by international humanitarian organizations. *Inter alia*, in Resolution 1199

of 23 September 1998 on the situation in Kosovo, the Security Council demanded that the Federal Republic of Yugoslavia “allow free and unimpeded access for humanitarian organizations and supplies to Kosovo.” Another example is Resolution 1216 (1998) on the crisis in Guinea-Bissau, quoted in the preceding paragraph, in which the Security Council called upon not only the legitimate government but the authorities of the insurgent forces.

Principle 26

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

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 does, however, protect only 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 personnel of humanitarian organizations.

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.

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 separately 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 decision to link assistance and protection is a judicious one indeed, for no operation strictly limited to the delivery of relief supplies can be fully effective. This confirms the ICRC’s long-standing view that the concepts of assistance and protection are closely linked, if not virtually indissociable. In practice, assistance very often serves as a means of protecting the population concerned” (Jean-Philippe Lavoyer, *Guiding Principles on Internal Displacement*, 38 INTERNATIONAL REVIEW OF THE RED CROSS, NO. 324, p. 477).

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 1993 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.”

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 noninternational 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 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.” Many other intergovernmental and nongovernmental organizations are also mandated to address 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, to 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.

Compilation and Analysis of Legal Norms: paragraphs 242–257

Paragraph 1: Human rights law recognizes the right of an individual, outside of 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 the Fourth Protocol to the ECHR. In contrast, there is no general rule in present international law that 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. Only ILO Convention No. 169 concerning Indigenous and Tribal Peoples states explicitly 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” (Article 16(3)). At least a duty of the competent authorities to allow for the return of internally displaced persons can, however, be based on freedom of movement and the right to choose one’s residence (see, *supra*, Principle 14). Freedom of movement and the right to choose one’s residence, however, can be limited (see Article 12(3) CCPR).

Most relevant to the return of internally displaced persons is Article 49 Geneva Convention IV, applicable during interstate armed conflicts.

This provision, in paragraph 2, 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. Accordingly, such a right during internal armed conflict must be wholly inferred from human rights law and the few inferences available from law applicable to certain situations in interstate armed conflict. However, as states have a duty not only to avoid but to redress violations of international human rights and humanitarian law, the party responsible for illegal displacement is obliged to allow and facilitate the return of displaced persons in all situations.

In line with this conclusion, the UN Security Council, at least in one case, “[a]ffirme[d] the right of refugees and displaced persons to return to their homes” (Security Council Resolution 876 of 19 October 1993 on the situation in Abkhazia). In a similar vein, the 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).

Annex 7 of the Dayton Peace Agreement for Bosnia and Herzegovina (DPA) of 14 December 1995 explicitly provides for the right of more than 2 million refugees and internally displaced persons to “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). The DPA was endorsed by UN Security Council Resolution 1031 of 15 December 1995.

Voluntary return of internally displaced persons is the preferable solution in such situations. The principle of the voluntary nature of return 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. The UNHCR has repeatedly emphasized the desirability of voluntary repatriation, which it views as the most desirable solution to refugee problems, particularly those occurring on a large scale (e.g., Executive Committee Conclusions No. 46 (XXXVIII/1987), No. 58 (XL/1989) and No. 67 (XLII/1991)).

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. Regarding 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)).

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 or resettled internally displaced persons with recovery, to the extent possible, of the property and possessions they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall assist these persons in obtaining appropriate compensation or other forms of just reparation or shall themselves provide such recompense.

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.

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 much of 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 occupied by other people; therefore, this raises 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 (see, e.g., Article 8 UDHR and Article 10 ACHR). Regional human rights tribunals have consistently ordered compensation for victims of human rights violations in the European and Inter-American systems (e.g., Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: Final report submitted by Mr. Theo van Boven, Special Rapporteur, U.N. Doc. E/CN.4/Sub.2/1993/8, Paragraphs 80-92; Interamerican 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). The rules of the War Crimes Tribunal for the former Yugoslavia (ICTY) allow the Tribunal, in conjunction with a judgment of conviction, to award the restitution of property or its proceeds to victims, even property in the hands of third parties not otherwise connected with the crime of which the convicted person has been found guilty (Article 105 of the Rules of Procedure and Evidence, adopted Feb. 11, 1994 by the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of Humanitarian Law committed in the Territory of the Former Yugoslavia since 1991, U.N. Doc. IT/32, 14 March 1994).

More specifically, the Inter-American Commission on Human Rights has recommended payment of just compensation to returning internally 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). Similarly, the Operational Directive on Involuntary Resettlement of the World Bank provides for compensation for losses at full replacement cost for persons displaced involuntarily as a result of development projects that give rise to severe economic, social, and environmental problems (World Bank Operational Manual, OD 4.30. June 1990).

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.

The Dayton Peace Agreement for Bosnia and Herzegovina (DPA) established 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. Claims may be for return of the property or for just compensation in lieu of return. As of 21 May 1999, the Commission has collected 143,000 claims relating to more than 183,000 properties, and has made more than 35,000 decisions. In addition, the Human Rights Chamber for Bosnia and Herzegovina, which is 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. The respondent parties (the Federation of Bosnia-Herzegovina or the Republika Srpska) were ordered to take the appropriate legislative or administrative measures to remedy the situation or to pay compensation to the victims (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; *Kevesević 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).

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.

Compilation and Analysis of Legal Norms: paragraphs 359–381

This principle specifies the need of 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.** The following annotations indicate the legal sources that provide the basis of these Guiding Principles. They are not intended to be a legal commentary.
- 2.** 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].
- 3.** 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 Part II].
- 4.** Compilation Part II.
- 5.** European Court of Human Rights, Cruz Varas Case, Judgment of 20 March 1991, Series A, No. 201, para. 69. For a similar consideration within the framework of Article 7 CCPR, see Human Rights Committee, Charles Chitat Ng v. Canada, Communication 469/1991, Views adopted on 5 November 1993, para. 16.1.