

The Guiding Principles on Internal Displacement

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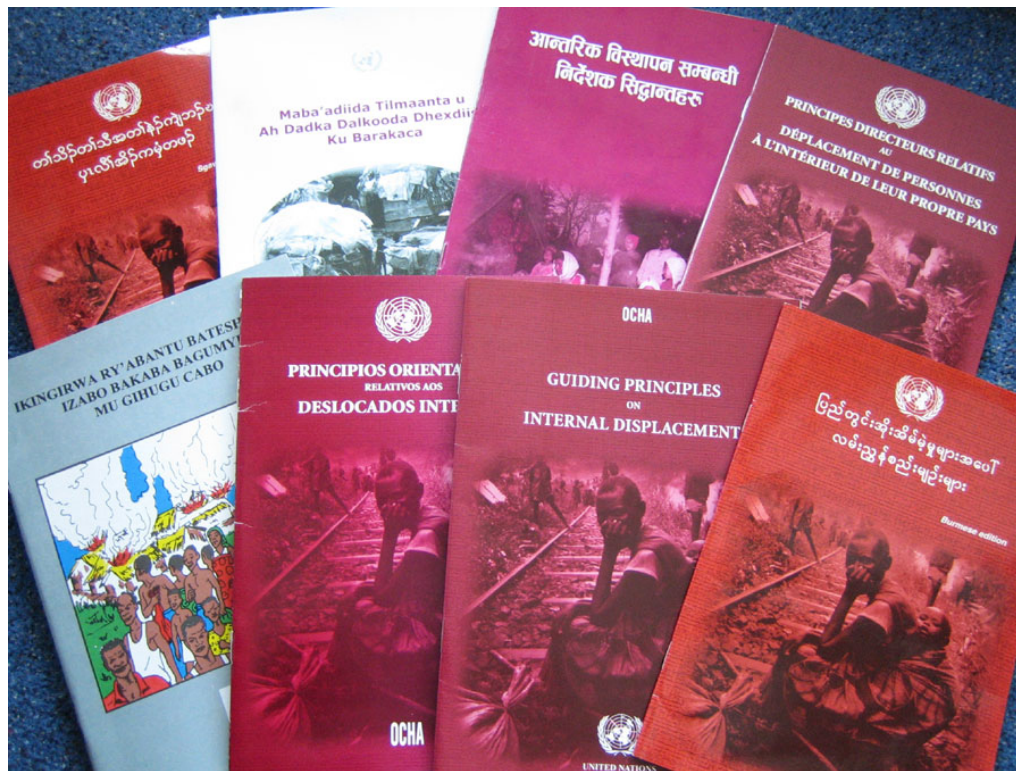
The Legal Origins and International Obligations



Objectives

- Describe the genesis of the Guiding Principles for Internal Displacement
- Outline the three pillars of international law, international human rights law, international humanitarian law and international refugee law
- Define who has a role and responsibilities in relation to IDPs' protection and assistance under international law
- Compare the international standards with national standards for IDPs

The Guiding Principles



The Genesis

- 1992** Special Representative on IDPs appointed by the UN Secretary General
- 1998** The ‘Guiding Principles’ presented to the UN Human Rights Commission
- 2005** The Commission expresses an “appreciation of the GPs as an important tool for dealing with situations of internal displacement”

Key features of the GP

- Address the specific needs of IDPs (« **needs-based approach** »)
- All phases of displacement
- Identify the rights and guarantees relevant to address these needs (« **rights-based approach** »)
- Facilitate the identification of relevant legal standards
- A clear and concise language
- A practical tool

The Guiding Principles

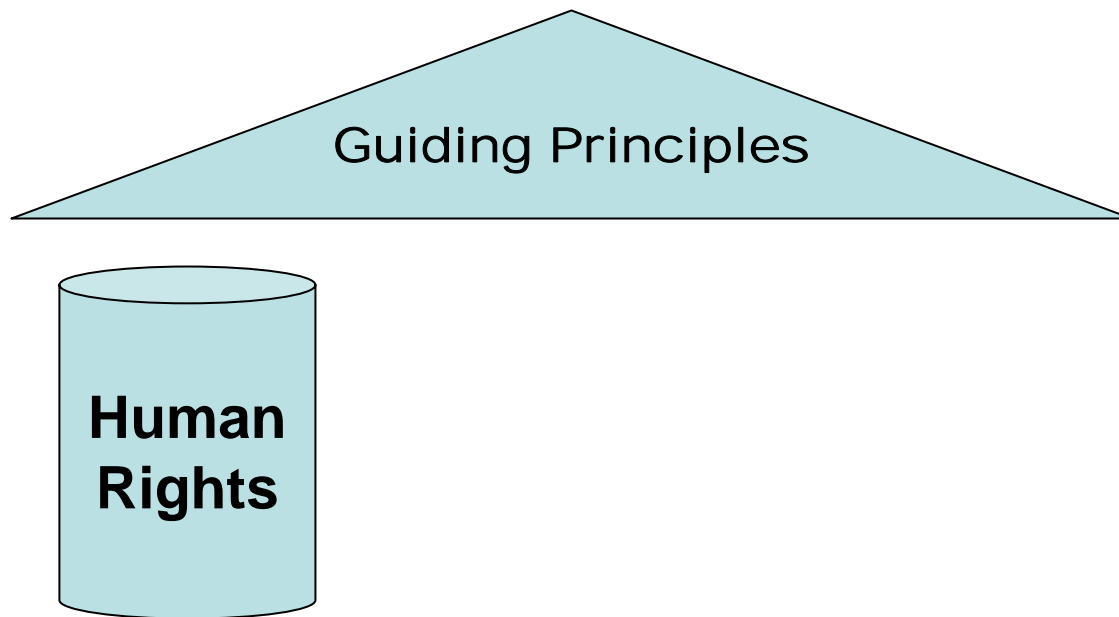
Not binding as such but reflect international law

International Human Rights Law

International Humanitarian Law

International Refugee Law (by analogy)

International Human Rights Law



The Universal Declaration of Human Rights

- **An interpretation of the human rights articles in the UN Charter (Articles 55 - 56)**
- **Should be considered binding on UN member states**

Sources of HR Law

- **Universal Declaration of Human Rights (UDHR)**
- **International Covenant on Economic, Social and Cultural Rights (ICESCR)**
- **International Covenant on Civil and Political Rights (ICCPR)**

Sources of HR Law (cont...)

- **Convention on the Elimination of All Forms of Racial Discrimination (CERD)**
- **Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)**
- **Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment (CAT)**
- **Convention on the Rights of the Child (CRC)**
- **Regional conventions providing important sources for the GPs**

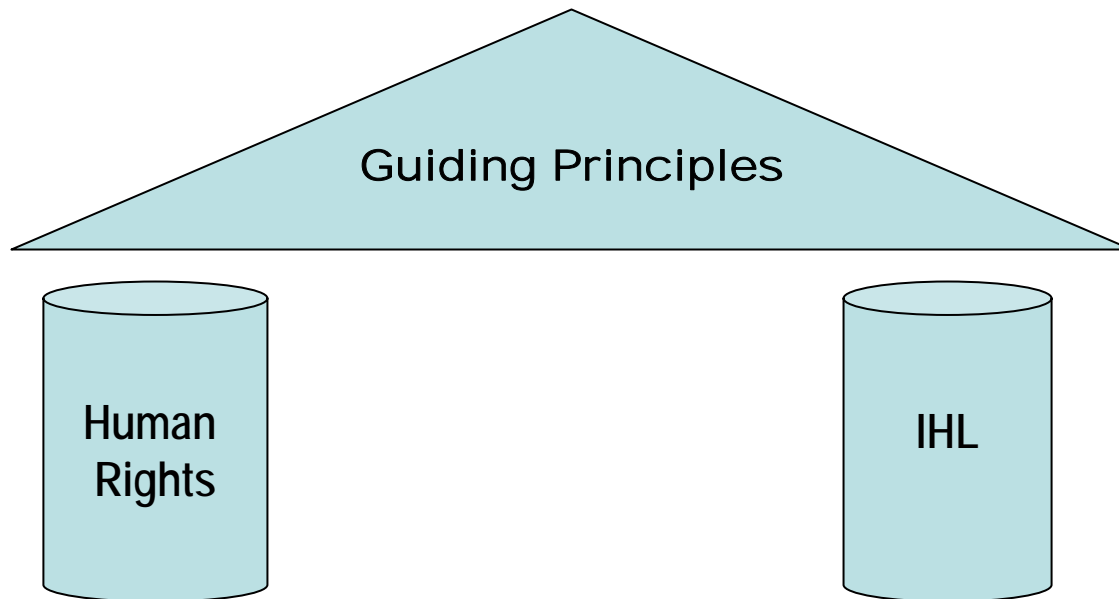
Who does International Human Rights Law apply to?

- **State parties to the UN Conventions have the obligation to respect, protect and fulfill the rights of individuals, as defined in the human rights conventions and in the UDHR**

Human Rights: Scope

- **Impose direct obligations on states and state actors**
- **Can be subject to restrictions and derogations**
- **Non-derogable rights**
 - **Right to life, freedom from torture and slavery, freedom of thought, conscience and religion, prohibition of retroactive application of penal law**

International Humanitarian Law



Sources of IHL

- **The Geneva Conventions and the two Additional protocols**
- **Both the Fourth Geneva Convention, the two protocols (specifically dedicated to the protection of civilians) and Common Article 3 provide important protection provisions applicable to IDPs**

The Geneva Conventions

- **Apply in times of conflict**
- **Addressed to states - impose duties on states and warring parties**
 - **IHL applies to the contracting parties to the Geneva Conventions and the additional protocols**
 - **In addition the Geneva Conventions impose duties on armed opposition groups**

IHL and the GPs

- **Because internal displacement often occurs in times of conflict the Geneva Conventions and their additional Protocols have been an important source for the the UN GPs**

Responsibility of individuals

- **IHL: States must prosecute persons suspected of grave breaches of the Geneva Convention**
- **Article IV Genocide Convention**
- **Ad hoc international criminal tribunals**
- **International Criminal Court**
 - **Codification of war crimes, crimes against humanity, genocide**
 - **Displacement can be a war crime or a crime against humanity**
 - **International mechanism to prosecute criminals**

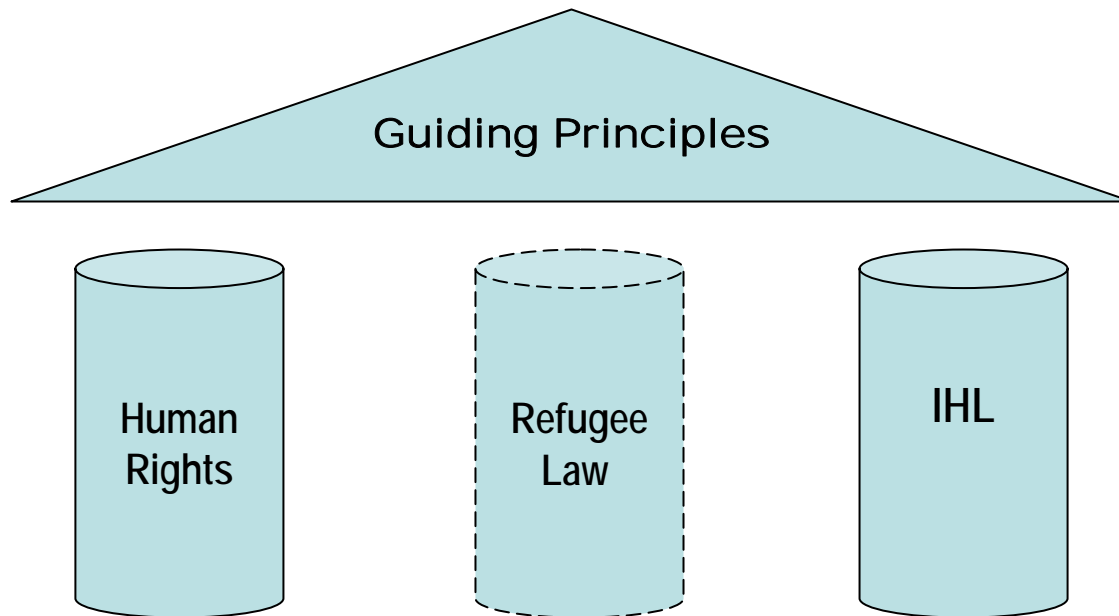
Who do the GP apply to?

- **States**
- **Other authorities (e.g.
armed insurgent groups)**
- **Intergovernmental
organisations (UN etc.)**
- **Non governmental organisations**
- **Groups and individuals**

Applicable law by type of situations

Types of situations	Relevant Bodies of Law
Peacetime	Human Rights (HR) law
Tensions, civil disturbances, riots, demonstrations, or disasters	HR law is applicable; Rarely justifies derogation
Public emergency	Certain rights in HR law may be suspended - core body of rights can NEVER be suspended
Non-International armed conflicts (civil disturbances within a country; marked by prolonged use of force) either between the govt forces & organised armed groups or between two or more organised groups.	IHL applicable in non-international conflicts, no derogation allowed HR law also applicable but may be possible to suspend certain rights
International armed conflicts between two or more states, including wars of national liberation	IHL applicable in international armed conflicts no derogation allowed. HR law still applicable domestically but possible to suspend certain HR.

International Refugee Law



International Refugee Law

- **Internally displaced people have not crossed an international border**
- **Therefore refugee law is not directly applicable to IDPs**
- **However given similarities in causes for flight, living conditions during displacement and the challenges of return refugee law provided useful guidance for when the GPs were elaborated**

Sources of International Refugee Law

- **The 1951 Convention on the Status of Refugees +**
 - **The 1967 Protocol**
 - **UNHCR Policy**
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- ➔ **« non-refoulement » applicable by analogy to IDPs**
 - ➔ **IDPs have the right to seek asylum in third countries**

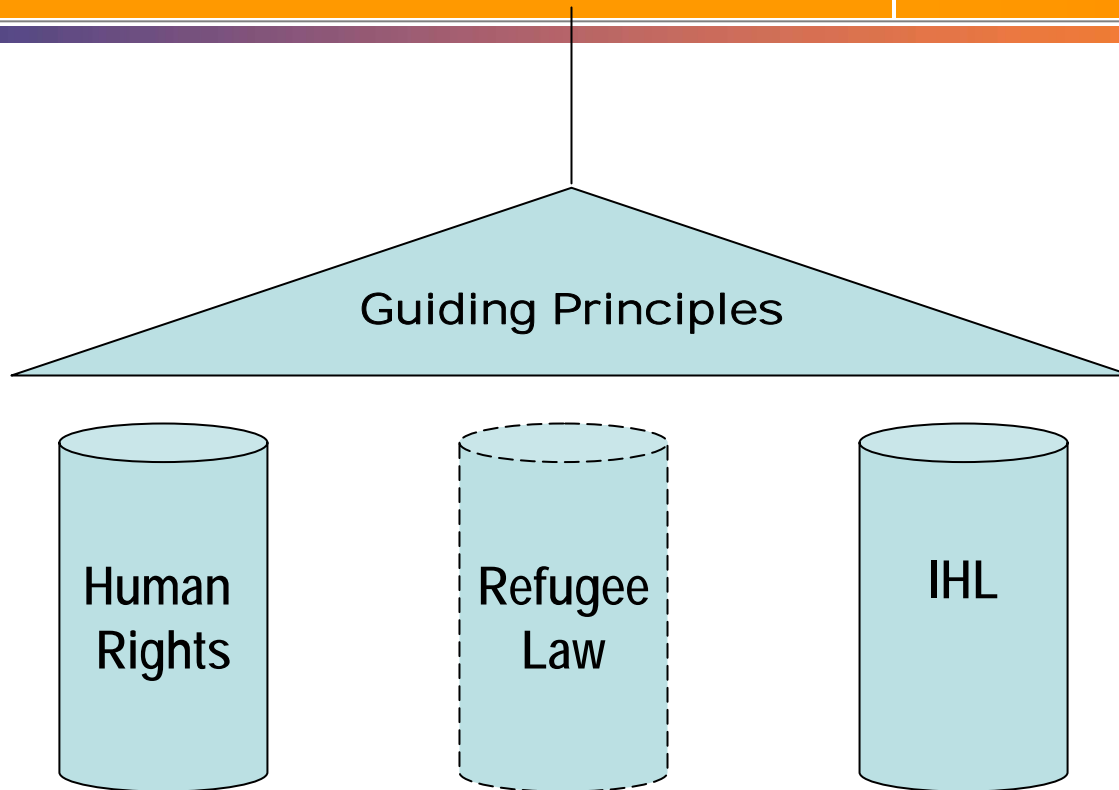
What is applicable in your country?

Insert conventions that have been ratified by the country you are in - check the following examples:

- ICCPR and the ICESCR
- CEDAW
- CERD
- CAT
- CRC
- The Geneva Conventions

+ obligations under International customary law

The Guiding Principles in your country



Status of the The Guiding Principles

- **UN Security Council has referred to the GP in statements and resolutions**
- **UN General Assembly ‘encourages the further dissemination and application of the GP’**
- **UNSG urged states to accept the GP as the « basic norm for protection » of IDPs and « commit themselves to promote the adoption of these principles through national legislation » (2005)**
- **Treaty bodies**
- **Regional organisations have taken note of and disseminate the GP**
- **International organisations endorse the GP and encourage their members to use them in the field (UNHCR, Red Cross, international NGOs)**
- **National authorities rely on the GP as a useful tool for development of law and policy (Angola, Peru, Colombia)**

The GP as a Protection Tool

- **A monitoring tool**
- **An tool for advocacy and empowerment to protect IDPs' rights**
- **A framework for developing protection strategies and policies**
- **An educational tool**

In Summary

- **The GP are derived from binding, existing human rights, humanitarian and refugee law**
- **The GPs apply to both state and non-state actors**
- **The GP enjoy a considerable support from international actors, including individual states**

Structure of a Guiding Principle

Principle 12

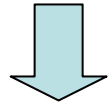
- 1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention**

Derived from:

UDHR articles 3 and 9

CCPR article 9(1)

General

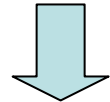


Structure of a Guiding Principle

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.**

General



Applicable
to IDPs

Applicable
to IDPs

Applicable
to IDPs