

CHAPTER 6

The Guiding Principles on Internal Displacement: Judicial Incorporation and Subsequent Application in Colombia

Federico Guzmán Duque

The process by which the Guiding Principles on Internal Displacement (hereinafter the “Guiding Principles”) have been incorporated into the Colombian system for the assistance of internally displaced persons (IDPs) has both legal and socio-political dimensions.

Apart from their nature as a partial compilation of legal provisions that already form part of the Colombian legal system and its international obligations, the Guiding Principles have been through the following: a judicial incorporation into the Colombian constitutional order as mandatory criteria for interpreting the scope of IDPs’ fundamental rights; a judicial adoption of rules to determine minimum levels of satisfaction of IDPs’ rights; a general adoption of governmental reporting, evaluation and monitoring criteria; an application of decisive factors in the process of designing and adopting effective enjoyment indicators for the minimum rights of IDPs; and an application of key parameters for the adoption of new judicial decisions aimed at overcoming the existing humanitarian crisis, as well as new *tutela* judgments adopted to protect IDPs’ rights in specific cases.

In socio-political terms, after their formal incorporation into the Colombian legal system, the Guiding Principles have become the basis for IDPs’ claims before the State. They have also come to represent important standards for the development of public policy on IDP-related issues.

The Guiding Principles pose a remarkable example of the process by which international legal provisions and instruments can enter national legal systems via constitutional adjudication, and by which they progressively transcend the legal realm to permeate official administrative practices, social and political processes and, ultimately, State-civil society relations. In this short chapter, I intend to provide some telling examples of these different aspects of the process.

I. Legal aspects of the Guiding Principles' incorporation into the Colombian system

Binding nature of obligations codified by the Guiding Principles in Colombian Law

As stated in its, the Guiding Principles are largely a compilation of legal provisions pertaining to IDPs' basic rights, which are found in various international treaties and other legal instruments in the fields of human rights, international humanitarian law and, by analogy, refugee law. Many of these legal provisions have also attained the status of customary rules of international law, as proven by the recent study published by the International Committee of the Red Cross on customary international law.¹ These legal provisions have binding force within the Colombian legal system because of their nature as conventional and customary rules of international law. Therefore, the Guiding Principles are, for the most part, a statement of pre-existing international obligations of the Colombian State.

It is pertinent here to briefly sketch out the status of international law, particularly international human rights and international humanitarian law, within the Colombian constitutional order. This is relevant because the legal provisions comprising these two fields have a special rank in the overall legal system, which places them at the same level of the Constitution by way of (a) direct reference in constitutional clauses, and (b) incorporation through the "constitutionality block."

1. Direct incorporation through constitutional provisions

The 1991 Constitution contains several articles that establish the relationship between international law—particularly international human rights and international humanitarian law—and the system of domestic law. Article 9 of the Constitution establishes that the State's foreign relations are based on the recognition of the principles of international law accepted by Colombia. Article 93 states that the international treaties, which have been duly ratified by Colombia and which recognize human rights and prohibit their limitation during states of emergency, "prevail in the domestic legal system." Article 44 holds that children shall enjoy the rights expressly included in the international treaties ratified by Colombia.

¹ Jean-Marie Henckaerts and Louise Doswald-Beck, eds., *CUSTOMARY INTERNATIONAL LAW*, ICRC (Cambridge University Press, 2005)

Furthermore, Article 94 states that the guarantees and enunciation of rights set forth in the Constitution shall not be understood as an exclusion or denial of other rights, which inherently belong to the person and are not expressly included therein. Moreover, during states of emergency, Article 214 provides that the rules of international humanitarian law must be complied with in every aspect.

2. Incorporation through the “constitutionality block”

Since the early stages of its case law, the Constitutional Court has held that the constitutional judicial review of the legal provisions and situations subject to its scrutiny must be carried out with reference to different mandatory parameters including (i) the actual text of the Constitution; and (ii) a set of norms and principles that have constitutional hierarchy, even though they are not expressly included in the Constitution. The latter norms and principles are incorporated into the so-called “constitutionality block,” a French-inspired notion with rather specific traits in the Colombian legal system. By way of this legal device, all of the provisions included in human rights treaties to which Colombia is a party (as well as the human rights provisions customary in nature and, as a sub-chapter thereof, all the principles and rules of international humanitarian law) have become mandatory parameters for constitutional review in Colombia.

The Court has not been consistent in the way it incorporates international human rights and international humanitarian law into the constitutional order through its decisions. It has indistinctly resorted to the aforementioned channels (a) and (b) in its case law, although significant efforts have been made in recent years to elaborate and crystallize the notion of “constitutionality block” and its specific content and modes of application. This has not, however, precluded the Court from directly applying international treaty law or customary provisions and principles, giving direct application to the above-referenced reception clauses in the Constitution. Nonetheless, this fluctuation is not an obstacle to the effective incorporation and application of international human rights and humanitarian law in the Colombian legal system, but rather an example of the Constitutional Court’s willingness to apply binding international legal standards to the resolution of the cases brought to its jurisdiction. In practical terms, such an alternative recourse to the above channels (a) and (b) has translated to a broader and significantly stronger impact of international law within our legal system—an impact now shared by the Guiding Principles on Internal Displacement.

The provisions of international human rights law and international humanitarian law have been applied with different objectives by the Court, thereby fulfilling different functions in our legal system. The main functions are: (i) to aid in the determination of the content of constitutional provisions on human rights; (ii) to broaden the scope of the rights expressly included in the Constitution; (iii) to incorporate new rights that are not expressly protected by the constitutional text; and (iv) to establish the scope of any admissible limitations. As I shall illustrate in the following section, the Guiding Principles have, since their time of incorporation, fulfilled functions (i)-(iv) in the Colombian system.

Strengthened legal force of the Guiding Principles as a result of their judicial incorporation through constitutional adjudication

Even though most of the obligations codified in the Guiding Principles are in and of themselves binding within the Colombian system, their incorporation into the decisions adopted by the Constitutional Court in exercise of constitutional judicial review has granted them additional legal strength, reinforcing their significance for the interpretation of the scope of IDPs' rights. The importance of this judicial incorporation of the Guiding Principles is underpinned by three factors: (i) by mandate of Article 241 of the Constitution, the Constitutional Court is the authorized interpreter of the text of the Constitution, including the human rights provisions therein, which means that, when incorporating the Guiding Principles as necessary references for the interpretation of IDPs' fundamental rights, the Court binds all lower authorities to such an understanding of these rights' scope and content—while deciding on specific cases and providing assistance for their needs; (ii) as the highest *tutela* judge in the country, the Court is in charge of establishing the constitutional doctrine to be followed by each individual judge in the country when settling human rights cases through this procedural channel; and (iii) the Court is the authority that defines the elements that compose the “constitutionality block,” and therefore the inclusion of the Guiding Principles within the scope of this legal device formally confirms their high rank within our legal system.

Prior to Decision T-025 of 2004, the Court had already resorted to specific provisions within the Guiding Principles as it had done in its case law. However, the judgments adopted before Decision T-025 of 2004 had not carried out an explicit incorporation of the entire set of principles into the national system for the protection of IDPs' rights.

Decision SU-1150 of 2000, in particular, marked a milestone in this process, holding that:

“...the Guiding Principles have not been approved by means of an international treaty. However, given that they fundamentally reflect and fill in the gaps of the provisions of international human rights treaties, which have received widespread acceptance by different international human rights bodies, this Court considers that they must be held as parameters for legal creation and interpretation in the field of the regulation of forced displacement and State assistance to IDPs. Needless to say this does not preclude the fact that all of the provisions [of the Guiding Principles] that reiterate norms already included in international human rights treaties and international humanitarian law treaties approved by Colombia have constitutional rank, as provided by article 93 of the Constitution.”

In spite of this general statement, the Court did not invoke or apply specific provisions included within the Guiding Principles in the actual resolution of this particular case. Moreover, the description of the Guiding Principles and their legal force was made in the context of a rather general presentation of the legal framework, which was in place at the time to respond to internal displacement.

Another decided step forward was taken in Decision T-327 of 2001, in which the Court examined the situation of an IDP who had been denied inclusion in the official registration system because of alleged contradictions in his declaration and a lack of documentary evidence to support his claim. Accordingly, the State refused to assist him and his family. In its legal reasoning, the Court resorted to several points in the Guiding Principles.

The Court started by explaining that situations of forced displacement are configured objectively or *de facto*, and not by means of a formal declaration by a State officer. To reach this conclusion, the Court invoked the definition of internal displacement included in the Guiding Principles, and pointed out that “nowhere is it mentioned, within the content of the [Guiding Principles], that the configuration of a situation of internal displacement requires a declaration by a public or private officer.” The Court also expressly included the Guiding Principles as the legal grounds to adopt such a course of reasoning when it held that, “...according to the notions of forced displacement established in the Guiding Principles on Internal Displacement, Law 387 of 1997, this Court’s case law and the concepts submitted by CODHES and the Colombian Commission of

Jurists, it is clear that forced displacement, being a factual situation, does not require for its configuration, nor as an indispensable condition to acquire the status of IDP, a formal declaration by any public or private entity.” In other words, the Court held that the governmental creation of a registration system is no more than a mechanism for recognizing a *de facto* situation.

The Court then expressly held that a reasonable constitutional interpretation of the domestic legal provisions governing the IDP registration process required making recourse to the Guiding Principles as binding international guidelines. This particular matter did not require the issuance of an official certification for the purposes of configuring a situation of forced displacement. It further held that in order to interpret the applicable legal provisions in a manner that produces the most favorable result for human rights, every competent public official in this field is bound to apply the Guiding Principles as follows:

“In order to carry out a reasonable interpretation of [the applicable legal provision], recourse must be made to the systematic and finalistic ... to those who are more favorable to protecting peoples’ human rights. This being so, in applying a systematic interpretation, it must be very clear that the decree in which the article at hand is contained is the legal development of a Law that recognizes forced displacement as a factual situation; in turn, this Law is the development of a constitutional system to which international provisions have been incorporated, such as the Guiding Principles on Internal Displacements, issued by the UN, and Article 17 of the Additional Protocol to the Geneva Conventions of August 12, 1949, which purport to protect IDPs and do not require a certification of such a factual phenomenon... Finally, according to the interpretative criterion of the most favorable interpretation for the protection of human rights... the provision at hand must be taken to be a series of guidelines to facilitate an organized protection of IDPs’ fundamental rights. The most favorable interpretation for the protection of IDPs’ human rights makes it necessary to apply the Guiding Principles on Internal Displacement contained in the Report of the Special Representative of the UN Secretary-General for the issue of Internal Displacements of Persons. This forms part of the international legal provisions that compose the constitutionality block relevant for this case. Consequently, all of the public officials involved in assisting IDPs... should act in accordance with the provisions, not only of the Constitution, but also of such Principles.”

Thereafter the Court, in enunciating the constitutional rights of IDPs to justice, truth, and reparation as victims of a crime, resorted to the relevant

Guiding Principles in order to delimit the exact scope of these legal entitlements—specifically to Principles 16.1, 16.2 and 29.2. On the grounds of these considerations, among other constitutional arguments, the Court concluded that IDPs who declare their situation before the authorities are covered by the constitutional presumption of good faith, and may not be the object of unreasonable requirements by the authorities in charge of their registration. For example, by the authorities demanding the provision of additional evidence, or by discarding declarations because they are incomplete or *prima facie* inconsistent.

Finally, the Court prompted the State authorities to train the public officials in charge of receiving IDPs' declarations about the content of the Guiding Principles:

“Given the serious situation of displacement experienced by our country, it is imminently urgent for all the public officials who, according to [the relevant legal provision] can receive or appraise declarations, have [the necessary forms] available and are trained to fill them out in the shortest possible time. Such training must include preparation in the criteria of dignified treatment, presumption of good faith, efficacy, expediency in the registration process and the Guiding Principles on Internal Displacement. In addition to being a direct application of the Constitution, this implies setting in motion the Declaration Appraisal Form and Filling-in Manual of the National Comprehensive Assistance System for the Displaced Population, which establishes as principles for information management, inter alia, the presumption of good faith, the benefit of doubt and the expediency of the process. Through the mandatory application of this set of principles, the Court intends to halt the obstacles for the reception, and particularly the appraisal of IDPs' testimonies, of which the case under review in the present proceedings is a manifestation.”

The writ of protection in question was consequently granted, and the competent registration authorities were ordered to include the plaintiff and his family group in the system, warning the State authorities not to perform this type of act in the future (a general order that has been manifestly and systematically disregarded as of the present date).

Similar to the above case, in Decision T-098 of 2002, the Court analyzed the *tutela* actions presented by 128 displaced families composed primarily of female heads of households, children, elderly persons and indigenous peoples. These plaintiffs' requests for assistance in the fields of healthcare, economic stabilization and relocation had not been

addressed by the relevant authorities. In the process of identifying the constitutional rights that had been disregarded, the Court made several references to the Guiding Principles, specifically in order to do the following: (i) highlight the State's obligation to respond to IDPs' lack of protection and defenselessness through effective measures aimed at giving effect to both their constitutional rights and the Guiding Principles; (ii) draw attention to authorities' duty to provide special assistance and protective measures for IDPs who belong to ethnic groups; and (iii) explain how the obligations derived from international humanitarian law in regard to the prohibition of forced displacement, particularly those included in Additional Protocol II to the Geneva Conventions of 1949, are developed and further clarified in the Guiding Principles—specifically Principles 19 on healthcare, 23 on education, 18 on adequate standards of living, and 26 on the primary responsibility of national authorities to provide for IDPs' rights.

Decision T-025 of 2004, which has been extensively reviewed in the other chapters of this book, carried out three legal operations with regard to the Guiding Principles. First, it clarified their legal standing, explaining that the Guiding Principles “compile the provisions about internal displacement of international human rights law, international humanitarian law and—by analogy—international refugee law, and that they also contribute to the interpretation of the rules that form part of this protection system.” In doing so, the Decision drew attention to the fact that several international bodies have recommended the application of these principles by the different authorities of the States where the phenomenon of forced internal displacement is taking place (such as the Inter-American Commission on Human Rights, the UN Human Rights Commission, the UN Secretary General, the Organization for African Unity, the Organization for Security and Cooperation in Europe, and the Commonwealth Organization, as well as several individual States). For the purposes of clarity, the entire body of the Guiding Principles was included as an Annex to the Court's decision.

Second, when determining the constitutional rights, the Court made specific reference to different Principles that are threatened or violated during forced internal displacement. It also referred to the Principles in the process of ascertaining the specific content acquired by those rights as a consequence of IDPs' exposure to such situations. The Court enumerated the following rights that apply once forced displacement has taken place, citing the specific Guiding Principles that were relevant for the interpretation of their scope:

“1. The right to life in dignified conditions, given (i) the sub-human conditions associated to their mobilization and their stay at their provisional place of arrival, and (ii) the frequent risks that directly threaten their survival. The Guiding Principles on Forced Internal Displacement which contribute to the interpretation of this right in the context of forced internal displacement are Principles 1, 8, 10 and 13, which refer, inter alia, to protection against genocide, summary executions and practices that violate international humanitarian law which might place the life of the displaced population at risk.

2. The rights of children, women providers, persons with disabilities and elderly persons, and other specially protected groups, “on account of the precarious conditions that must be faced by those who are forced to displace themselves.”² The interpretation of these rights must be carried out in accordance with the content of Principles 2, 4 and 9, on special protection for certain groups of displaced persons.

3. The right to choose their place of residence, insofar as, in order to escape from the risk that threatens their life and personal integrity, displaced persons are forced to flee their habitual place of residence and work³. Principles 5, 6, 7, 14, and 15 contribute to the interpretation of this right, in particular to determine the practices which are forbidden by international law because they entail a coercion toward the displacement of persons, or their confinement in places which they cannot leave freely.

4. The rights to freely develop their personalities, to freedom of expression and association, “given the climate of intimidation that precedes displacements,”⁴ and the consequences borne by such migrations over the materialization of the affected persons’ life projects, which must necessarily adapt to their new circumstances of dispossession. Principles 1 and 8 are pertinent for the interpretation of these rights in the context of forced internal displacement.

5. Given the features of displacement, the economic, social and cultural rights of those who suffer it are strongly affected.⁵ The minimum scope of these rights has been interpreted in accordance with Principles 3, 18, 19, and 23 through 27, which refer to the conditions to secure dignified living standards, and access to education, healthcare, work, among other rights.

² See, for example, Colombian Constitutional Court, Decisions T-215 of 2002 and T-419 of 2003.

³ See, for example, Colombian Constitutional Court, Decision T-227 of 1997.

⁴ Colombian Constitutional Court, Decision SU-1150 of 2000.

⁵ See, for example, Colombian Constitutional Court, Decision T-098 of 2002.

6. In no few cases, displacement entails a separation of the affected families, thus violating their members' right to family unity⁶ and to comprehensive protection of the family.⁷ Principles 16 and 17 are aimed, among other purposes, at determining the scope of the right to family reunification.

7. The right to health, in connection with the right to life, not only because displaced persons' access to essential healthcare services is substantially hampered by the fact of displacement, but because the deplorable living conditions they are forced to accept bear a very high potential to undermine their state of health, or aggravate their pre-existing illnesses, wounds or ailments.⁸ Principles 1, 2 and 19 determine the scope of this right in the context of forced internal displacement.

8. The right to personal integrity,⁹ which is threatened both by the risks that threaten the health of displaced persons, and by the high risk of attacks to which they are exposed because of their condition of dispossession.¹⁰ Guiding Principles 5, 6 and 11 refer to this right.

9. The right to personal security,¹¹ given that displacement entails specific, individual, concrete, present, important, serious, clear, distinguishable, exceptional and disproportionate risks to several fundamental rights of the affected persons. Guiding Principles 8, 10, 12, 13 and 15 are pertinent for interpreting the scope of this right in the context of forced internal displacement.

10. Freedom of movement across the national territory¹² and the right to remain in the place chosen to live,¹³ given that the very definition of forced displacement presupposes the non-voluntary nature of the migration to another geographical location so as to establish a new place of residence therein. Principles 1, 2, 6, 7 and 14 are relevant for interpreting the scope of these rights in regards to the displaced population.

⁶ Colombian Constitutional Court, Decision SU-1150 of 2000

⁷ Colombian Constitutional Court, Decision T-1635 of 2000.

⁸ Colombian Constitutional Court, Decision T-645 of 2003.

⁹ Colombian Constitutional Court, Decisions T-1635 of 2000, T-327 of 2001 and T-1346 of 2001.

¹⁰ See, for example, Colombian Constitutional Court, Decision T-327 of 2001.

¹¹ See, for example, Colombian Constitutional Court, Decisions T-258 of 2001 and T-795 of 2003.

¹² Colombian Constitutional Court, Decisions T-1635 of 2000, T-327 of 2001, T-1346 of 2001 and T-268 of 2003.

¹³ Colombian Constitutional Court, Decision T-227 of 1997.

11. The right to work¹⁴ and the freedom to choose a profession or occupation, especially in the case of agricultural workers who are forced to migrate to the cities and, consequently, abandon their habitual activities. Principles 1 through 3, 18, 21, 24 and 25 are relevant for the interpretation of these rights, given that they establish criteria to secure the means for obtaining adequate livelihoods and protecting their property or possessions.

12. The right to a minimum level of nourishment,¹⁵ which is disregarded in a large number of cases on account of the levels of extreme poverty experienced by numerous displaced persons, which prevent them from satisfying their most essential biological needs and therefore bear an impact upon the adequate enjoyment of their remaining fundamental rights, in particular upon the rights to life, personal integrity and health. This is particularly serious when those affected are children. Principles 1 through 3, 18 and 24 through 27 are pertinent for interpreting the scope of this right, since they refer to the adequate living standards that must be secured for the displaced population, and to humanitarian assistance.

13. The right to education, in particular that of minors who suffer forced displacements and are thereby forced to interrupt their educational process.¹⁶ In regards to this right, Principles 13 and 23 are relevant.

14. The right to dignified housing,¹⁷ given that persons in conditions of displacement have to abandon their own homes or habitual places of residence, and undergo inappropriate lodging conditions at the places where they are displaced to, whenever they are able to obtain them and are not forced to live outdoors. In regards to this right, Principles 18 and 21 establish minimum criteria which must be secured to the displaced population so as to provide them basic housing and lodging conditions.

15. The right to peace,¹⁸ whose essential nucleus includes the personal guarantee not to suffer, insofar as possible, the effects of war, especially when conflict disregards the limits set by international humanitarian law, in particular the prohibition of attacking the civilian population.¹⁹ Principles 6, 7, 11, 13 and 21 are pertinent to interpret this right, given that they prohibit disregarding

¹⁴ See, for example, Colombian Constitutional Court, Decision T-669 of 2003.

¹⁵ Colombian Constitutional Court, Decision T-098 of 2002.

¹⁶ Colombian Constitutional Court, Decision T-215 of 2002.

¹⁷ See, for example, Colombian Constitutional Court, Decision T-602 of 2003.

¹⁸ See, for example, Colombian Constitutional Court, Decision T-721 of 2003.

¹⁹ Colombian Constitutional Court, Decision C-328 of 2000.

the rules of international humanitarian law that protect non-combatants.

16. The right to legal personality, because on account of the displacement, the loss of identity documents poses obstacles to the registration of these persons as displaced individuals, as well as access to the different types of aid, and the identification of the legal guardians of minors who are separated from their families.²⁰ The scope of this right in the context of forced internal displacement is expressly regulated in Guiding Principle 20.

17. The right to equality,²¹ given that (i) even though the only circumstance which differentiates the displaced population from the remaining inhabitants of Colombian territory is precisely their situation of displacement, by virtue of this condition they are exposed to the aforementioned violations of their fundamental rights, as well as discrimination, and (ii) in no few cases, displacement is produced because of the affected person's affiliation to a specific group of the community, to which a given orientation in regards to the actors of the armed conflict is attributed, or because of their political opinion, all of which are differentiation factors proscribed by article 13 of the Constitution. This does not exclude, as it has already been said, the adoption of affirmative action measures in favor of persons in conditions of displacement, which is in fact one of the main obligations of the State, as recognized by constitutional case-law.²² The scope of this right has been defined by Principles 1 through 4, 6, 9 and 22, which prohibit discrimination of the displaced population, recommend the adoption of affirmative measures in favor of special groups within the displaced population, and highlight the importance of securing equal treatment for displaced persons."

Third, the Court concluded that, because of the multiplicity of constitutional rights affected by forced internal displacement, IDPs are entitled to urgent preferential treatment by the State. Immediately thereafter, the Court expressly held that "the scope of the measures that authorities are bound to adopt is determined in accordance [with] three basic parameters, which were clarified in Decision T-268 of 2003, as follows: (i) the principle of favorability in the interpretation of the provisions that protect the displaced population, (ii) the Guiding Principles on Internal Displacement, and (iii) the principle of prevalence of

²⁰ Colombian Constitutional Court, Decision T-215 of 2002.

²¹ Colombian Constitutional Court, Decision T-268 of 2003.

²² See, for example, Colombian Constitutional Court, Decision T-602 of 2003.

substantial law in the context of a social State grounded in the rule of law” (*Estado Social de Derecho*). Hence, the Guiding Principles were held not only to be key interpretative criteria for establishing the scope of IDPs’ rights, but also as guidelines in determining the scope of State authorities’ duties and obligations in relation to IDPs.

Judicial translation of the Guiding Principles into minimum levels of satisfaction of IDPs’ constitutional rights

Decision T-025 of 2004 went further still, in the sense of establishing the Guiding Principles as mandatory interpretation guidelines at the moment of defining the “minimum levels of satisfaction” of IDPs’ constitutional rights. The Court explained in section 9 of the judgment that, given the limited resources available to the Colombian State, it is materially impossible to satisfy the entire set of IDPs’ constitutional rights. This impossibility makes it necessary for the authorities to establish priority areas upon which they are to focus their efforts, so as to progressively advance in the guarantee of their effective enjoyment, and eventually fulfill the complete series of obligations that bind them.

“...given the current dimension of the problem of displacement in Colombia, as well as the limited nature of the resources available to the State to comply with this goal, it must be accepted that at the moment of designing and implementing a given public policy for the protection of the displaced population, the competent authorities must carry out a balancing exercise, and establish priority areas in which timely and effective assistance shall be provided to these persons. Therefore, it will not always be possible to satisfy, in a simultaneous manner and to the maximum possible level, the positive obligations imposed by all the constitutional rights of the entire displaced population, given the material restrictions at hand and the real dimensions of the evolution of the phenomenon of displacement.”

Nevertheless, the Court specifically warned that “there exist certain minimum rights of the displaced population, which must be satisfied under all circumstances by the authorities, given that the dignified subsistence of the people in this situation depends on it.” These minimum rights (or minimum mandatory levels of satisfaction of the State’s obligations towards IDPs), which include duties with a positive content that bind the authorities to materially provide necessary goods and services, were defined by the Court (taking into account the relevant Guiding Principles as obligatory interpretative parameters) as follows:

“When a group of persons, which has been defined—and is definable—by the State for a long time, is unable to enjoy its fundamental rights because of an unconstitutional state of affairs, the competent authorities may not admit the fact that those persons die, nor that they continue living under conditions which are evidently harmful to their human dignity, to such a degree that their stable physical subsistence is at serious risk, and that they lack the minimum opportunities to act as distinct and autonomous human beings. On the grounds of this criterion, and of the international obligations acquired by Colombia in the field of human rights and international humanitarian law, as well as the compilation of criteria for the interpretation and application of measures to assist the displaced population which is contained in the Guiding Principles, the Chamber considers that the following minimum rights fit this definition, and therefore, comprise the minimum positive obligations that must always be satisfied by the State:

1. The right to life, in the sense of article 11 of the Constitution and Principle 10.
2. The rights to dignity and to physical, psychological and moral integrity (articles 1 and 12 of the Constitution), as clarified in Principle 11.
3. The right to a family and to family unity, enshrined in articles 42 and 44 of the Constitution, and clarified for these cases in Principle 17, especially—although not exclusively—in cases of families that include persons who are specially protected by the Constitution—children, elderly persons, persons with disabilities or women providers-, who have the right to be reunited with their families.
4. The right to a basic subsistence, as an expression of the fundamental right to a minimum subsistence income and clarified in Principle 18, which means that “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”. Authorities must also make special efforts to secure the full participation of displaced women in the planning and distribution of these basic supplies. This right must also be read in the light of Principles 24 through 27... given that it is through the provision of humanitarian assistance that the authorities satisfy this minimum duty in regards to the dignified subsistence of displaced persons.
5. The right to health (article 49 of the Constitution), whenever the provision of the corresponding healthcare service is urgent and

indispensable to preserve the life and integrity of the person, in cases of illness or wounds that threaten them directly, or to prevent contagious or infectious diseases, in accordance with Principle 19. On the other hand, in the case of children, article 44 shall apply,²³ and in cases of infants under one year of age, article 50 of the Constitution shall apply.²⁴

6. The right to protection (article 13 of the Constitution) from discriminatory practices based on the condition of displacement, in particular when such practices affect the exercise of the rights enunciated in Principle 22.

7. For the case of displaced children, the right to basic education until fifteen years of age (article 67, paragraph 3, of the Constitution). The Chamber clarifies that, even though Principle 23 establishes the State duty to provide basic primary education to the displaced population, the scope of the international obligation described therein is broadened by article 67 of the Constitution, by virtue of which education shall be mandatory between five and fifteen years of age, and it must comprise at least one pre-school year and nine years of basic education... the State is bound, at the minimum to secure the provision of a school seat for each displaced child within the age of mandatory education, in a public educational institution. That is to say, the State's minimum duty in regards to the education of displaced children is to secure their access to education, through the provision of the seats that are necessary in public or private entities of the area.²⁵

8. In regards to the provision of support for self-sufficiency (article 16 of the Constitution) by way of the socio-economic stabilization of persons in conditions of displacement—a State obligation established in Law 387 of 1998 and which can be deduced from a joint reading of the Guiding Principles, in particular Principles 1, 3, 4, 11 and 18-, the Court considers that the State's minimum duty is that of identifying, with the full participation of the interested

²³ Article 44 of the Constitution protects children's fundamental right to health.

²⁴ Article 50 of the Constitution establishes that children under one year of age shall have the right to free and mandatory healthcare in all public institutions.

²⁵ This was the order issued by the Court in Colombian Constitutional Court, Decision T-215 of 2002 to the respondent Municipal Education Secretariat to secure access to the educational system by the plaintiff children, using the available places in the schools of the area. This preferential treatment for displaced children is justified, not only because education is one of their fundamental rights—as happens with all the other children in the national territory— but for the reason that they are especially vulnerable. Accordingly, they receive reinforced constitutional protection, which in the educational field means that if at least their basic education is not secured, the effects of displacement upon their personal autonomy and the exercise of their rights will be worsened.

person, the specific circumstances of his/her individual and family situation, immediate place of origin, particular needs, skills and knowledge, and the possible alternatives for dignified and autonomous subsistence to which he/she can have access in the short and mid term, in order to define his/her concrete possibilities of undertaking a reasonable individual economic stabilization project, of participating in a productive manner in a collective project, or entering the work market, as well as to use the information provided by the displaced population in order to identify income-generation alternatives for displaced persons.

It is important to note that this minimum right of displaced persons does not bind the authorities to provide, in an immediate manner, the material support required to begin the productive projects which are formulated, or to secure access to the labor market on the grounds of the individual evaluation at hand; even though such support must necessarily materialize through the programs and projects designed and implemented by the authorities for the purpose, the minimum and immediately enforceable duty imposed by this right upon the State is that of gathering the information which can allow it to provide the necessary attention and consideration to the specific conditions of each displaced person or family, identifying with the highest possible accuracy and diligence their personal capacities, so as to extract from such evaluation solid conclusions that can facilitate the creation of stabilization opportunities that respond to the real conditions of each displaced persons, and which can, in turn, be incorporated into the national or territorial development plans.

9. Finally, in regards to the right to return and re-establishment, authorities are in the obligations of (i) abstaining from applying coercive measures to force persons to return to their places of origin, or to re-establish themselves elsewhere; (ii) not preventing displaced persons from returning to their habitual place of residence, or from re-establishing themselves in another part of the territory, although it must be noted that whenever there exist public order conditions which make it possible to foresee a risk for the security of the displaced person or his/her family at their places of return or re-establishment, authorities must warn in a clear, precise and timely manner about this risk to those who inform them about their purpose of returning or moving elsewhere; (iii) providing the necessary information about the security conditions at the place of return, as well as about the State's commitment in the fields of security and socio-economic assistance to secure a safe and dignified return; (iv) abstaining from promoting return or re-establishment, whenever such decision implies exposing displaced persons to a risk for their

lives or personal integrity, because of the conditions of the route and of the place of destination, for which reason every State decision to promote the individual or collective return of displaced persons to their places of origin, or their re-establishment at another geographical location, must be preceded by an assessment of the public order conditions at the place to which they will return, the conclusions of which must be communicated to the interested parties before the act of return or re-establishment.”

A. General adoption of the Guiding Principles as governmental reporting, evaluation and monitoring criteria

The incorporation of the Guiding Principles as necessary references for the delimitation of IDPs’ minimum constitutional rights has proven to be critical because in practice, it is this set of basic minimum rights that has framed authorities’ efforts to comply with the orders issued in Decision T-025 of 2004. In effect, the recipients of the Court’s orders have strived to fulfill their obligations within the nine basic areas of assistance that relate to these minimum rights as a matter of priority and to different degrees of effectiveness. These basic areas of assistance are their effort to adopt a rights-based approach in compliance with the Court’s orders. This is reflected both in their reporting structures, which usually make express reference to the satisfaction of authorities’ obligations in regards to each of the minimum rights pointed out by the Court, and also in the monitoring and evaluation parameters applied by the external controlling bodies to determine whether the Government has complied with its constitutional obligations.

The government entities that have reported to the Court throughout the T-025 follow-up process have invoked the Guiding Principles on a number of occasions. They have done so in order to prove that they have complied with the orders issued to them in the judgment at hand.

On the other hand, the Guiding Principles have been adopted by the Colombian State’s controlling entities (fundamentally the Public Prosecutor’s Office) as central criteria to evaluate the Government’s compliance with the orders issued by the Constitutional Court, and to assess the general implementation of the national policy for assisting the displaced population.

In its evaluation of the common compliance report submitted by the Government, the Prosecutor referred to the Guiding Principles as criteria

to determine whether IDPs' fundamental rights were being fulfilled, as follows:

(i) With regard to the prevention of displacement, the Prosecutor concluded that:

“...the national Government has failed to adopt measures that are fit to prevent the operations of the Armed Forces from causing forced displacements, and to apply, in the cases in which such displacements could have been foreseen, measures to secure that the least possible damage be caused upon the victim population, like those established in Principle 7.3. of the Guiding Principles on Internal Displacement.”

(ii) With regard to the State duty to protect the abandoned assets of IDPs, the Prosecutor relied upon the Guiding Principles in order to establish the scope of authorities' obligations, clarifying that:

“...in light of the provisions of Law 387 of 1997 (article 19.1) and the Guiding Principles of Internal Displacement (principles 21.3 and 29.2), the State's obligation in relation to IDPs' assets includes not only the protection of rural immovable assets, but in general of all types of assets which have been left abandoned as a consequence of displacement.”

The Prosecutor concluded that “up to this date, nine years after the issuance of Law 387 of 1997, only rural immovable properties are protected, which means that IDPs are not protected in their rights over urban and rural movable assets, and urban immovable properties, without any enunciation by the authorities of the adoption of corrective measures.”

(iii) With regard to the State's obligation to protect IDPs' right to return, the Prosecutor asserted that “...according to the Guiding Principles on Internal Displacement, Law 387 of 1997, Decree 2569 of 2000 and Decree 250 of 2005, returns must be secured by respect for the principles of voluntariness, security and dignity, which according to what [the *Procuraduría*] and the Constitutional Court have repeatedly stated, are not being followed in the return processes which have taken place.” The Prosecutor also expressed its concern over the fact that *Acción Social* had not reported measures to protect certain communities that had returned to their places of origin and were under threat, quoting the text of Principle 28 in order to illustrate the State's failure to comply with its duties:

“The *Procuraduría* is concerned that in relation to these threats... [*Acción Social*]... has not specified whether actions have been taken to

protect the community against said threats, which constitutes a grave failure of the entities in charge of providing security, bearing in mind that both Decree 250 of 2005, and the Guiding Principles on Internal Displacement provide that the ‘competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.’”

Moreover, with regard to the right to return, the Prosecutor explained:

“...in light of the Guiding Principles on Internal Displacement (Principle 7.3.), in cases of operations that can place communities at a risk [of such magnitude] that displacement is imminent, the State must adopt all the necessary measures to mitigate its effects and not only to assist the population when displacement takes place. In this sense, the provision of shelters is a measure for the stage after displacement, but it is insufficient whenever displacement can be foreseen.”

The impact of these external concepts for the adoption of new judicial decisions is significant. Indeed, in the follow-up awards adopted by the Court thus far, the State’s controlling entities’ opinion has been held in very high regard and has proven to be decisive in the actual formulation of the Court’s orders on several occasions. Thus, through a different channel, the Guiding Principles have had a strong effect upon the overall system for the protection of IDPs in Colombia.

Translation of IDPs’ minimum rights into effective enjoyment indicators for human rights

As mentioned in the other chapters of this book, one of the most recent and significant decisions adopted by the Constitutional Court in the process of following up on compliance with Decision T-025 of 2004, was that of adopting a set of indicators to measure the effective enjoyment of IDPs’ fundamental rights. This was achieved after a thorough technical-judicial procedure, which resulted in Award 109 of 2007. During the process of designing and adopting these indicators, different organizations submitted their own observations to the Court, many of which were based on their interpretation of the Guiding Principles’ scope in relation to a given right. In doing so, these organizations pointed out the manner by which indicators should be crafted in order to be consistent with the Guiding Principles.

In this way, the Civil Society Commission for the Follow-up of Compliance with Decision T-025 of 2004 (an inter-institutional body created by representatives of IDP organizations, NGOs, civil society and academia for the purpose of monitoring the resolution of the unconstitutional state of affairs in the field of internal displacement) expressed to the Court on January 11 2007, among its observations on the various indicators proposed by the Government, that in relation to the process of registration and characterization of the displaced population, any proposed indicator should follow the criteria of the Guiding Principles. For example, the above body stated:

“...[t]he process of registration and characterization of the displaced population constitutes the baseline for the institutional response. However, as pointed out by different evaluations, these processes still present important deficiencies that bear a negative impact upon the processes of resource allocation and institutional policy projection. In the country’s current situation, characterization must be aimed at comprehensively establishing the universe of victims of displacement and identifying the differential needs of the affected groups, taking into account the rights protected by the Guiding principles on Internal Displacements adopted by the United Nations and the Colombian State’s internal legislation.”

Likewise, the same Civil Society Commission, in its set of observations on the indicators presented by the Government during a public hearing held on March 15, 2007 and in relation to the indicator proposed for the right to dignified housing, expressed:

“It is understood that in other cases, for example, in relation to housing, access to the right may only be materialized through an initial investment. But this hypothesis is only valid when such initial investment secures access to the ownership of such housing, or when, in cases of support for rent payment, these supports are objectively linked to solutions aimed at returning with all the safeguards established by the Law and the Guiding Principles on Internal Displacement. But the assumptions of the governmental documents only respond very partially to these criteria.”

What is most significant is that many of these observations were effectively taken into account by the Court and had a direct impact on the content of its final decision in relation to the indicators. This was the case of the indicators submitted by the Government for the purpose of measuring (i) IDPs’ rights to life, integrity, security and liberty (measured

jointly through one proposed indicator), and (ii) IDPs' right to reparation as victims of crime.

In response to the indicator proposed by the Government to measure the effective enjoyment of IDPs' rights to life, integrity, security and liberty, the UNHCR office stated:

“By definition, persons have to displace themselves because they are in situations of extraordinary risk, which leads them to seek protection in other parts of the country, where the causes of risk often follow them. For this reason, authorities are bound to adopt special protection measures, as indicated by Guiding Principles 10, 11 and 12.”

In its final decision on the matter, the Court decided to reject the indicator at hand because the indicator left out fundamental aspects of the essential nucleus of the measured rights. This was “pointed out by the different entities and organizations that participated in the indicators' discussion process.” Along this line, the UNHCR office stated that the indicator proposed by the Government to measure the right to reparation was insufficient. The indicator was insufficient given that the effective enjoyment of this right transcended the limited scope of securing access to justice and protection of assets, and that the above right had to include elements such as equality and non-discrimination, among others. UNHCR stated:

“...[t]he first element that should be the object of follow-up and evaluation is the equal treatment for the victims of displacement vis-à-vis other victims of equally serious crimes--especially, given the context in which there is no clarity about reparation mechanisms for the victims of the crime of displacement. IDPs may not be the object of discrimination because of being displaced. Unequal treatment in the field of reparation could come to constitute a violation of the principle of equality included in the Guiding Principles on Internal Displacement.”

The Court, in attending to these observations, rejected the indicators submitted by the Government to measure the right to reparation. It stated:

“...given that they only refer to the right of access to justice, and not to essential aspects of reparation, and they do not present a complete panorama of all of the rights of the victims of forced displacement. They are inadequate, because they do not help to provide relevant information to the Court in order to evaluate the situation of the displaced population in relation to the satisfaction of their rights as victims of crimes. They are also insufficient, because they leave out of the measurement fundamental

aspects of the right to reparation. They also fail to include all of victims' rights (truth, justice, reparation and non-repetition), differentiating the essential elements which are specifically relevant from the standpoint of the effective enjoyment of these rights by IDPs."

Given that it is these indicators that will be used to measure and evaluate authorities' compliance with their obligations to protect the fundamental rights of IDPs in the future, it may be said that the Guiding Principles have borne one of their strongest impacts within the overall system for the assistance of the displaced population in this field. On the other hand, these are also centered on the set of IDPs' minimum rights as defined by the Court on the grounds of the Guiding Principles. The impact of the Guiding Principles upon the process of refining the Colombian policy is therefore remarkable.

B. Overcoming the existing humanitarian crisis: applying the Guiding Principles in the adoption of new judicial decisions

Since the adoption of Award 218 in August 2006, various sources have provided the Constitutional Court with substantial and highly detailed information on the state of implementation of the public policy for assisting IDPs, and on the effective enjoyment of their fundamental rights. The sources of this detailed information include the governmental reports submitted in September, their evaluation reports by State controlling entities, NGOs and IDP organizations across the country, as well as the UNHCR office in Colombia. Additional sources include assessments and claims by individual petitioners who have raised their concerns before the Court, thereby demanding the satisfaction of their rights. In response, the Court has now started to issue a new, strong set of follow-up decisions in relation to different aspects of the policy and specific IDPs' rights. This action by the Court serves to continue the fulfillment of its role as the maximum guarantor of IDPs' fundamental rights.

The first one of the above new series of decisions, Award 200 of 2007, was adopted on August 13, 2007. It purports to protect the rights to life and security of the leaders and representatives of IDP organizations, and of other IDPs who are exposed to extraordinary risks against their lives and the integrity of their families. Having identified a number of serious flaws in the existing protection program that has resulted in an overwhelming number of murders and persecutions across the country, the Court has issued detailed orders to public officials. These orders mandate

the above officials to correct said flaws within a short period of time, and also to attend to the situation of ten specific people or groups of people who have proven to be at serious risk. In this Decision, the delimitation of the scope of the protected right to personal security has been carried out by the Court with express reference to the Guiding Principles. Thus, in paragraph 3 of the Award's considerations, the Court recalled that such a right's extent should be interpreted in accordance with Guiding Principles 8, 10, 12, 13 and 15, the text of which was explicitly cited in the Decision.

It is clear that this trend shall be followed in upcoming follow-up awards, for which extensive protective measures shall be adopted in relation, *inter alia*, to displaced children, women, indigenous people, Afro-Colombian communities, people with disabilities and elderly people.

Application of the Guiding Principles in new tutela decisions by the Court

After the adoption of Decision T-025 of 2004, and in parallel to the issuance of the aforementioned follow-up awards, the Court has continued to study and decide *tutela* actions presented by IDPs seeking protection for their entire range of fundamental rights. Reference to the Guiding Principles has been made throughout these subsequent judicial decisions, partly as a consequence of their formal incorporation in Decision T-025. For example, in Decision T-1144 of 2005, which referred to a case of refusal of inclusion of an IDP in the official registration system, the Court began by stating in general terms:

“Law 387 of 1997 and Decree 2569 of 2000, on the grounds of an internal migratory phenomenon in situations of conflict, clearly determined and particularly defined by the UN Guiding Principles on Internal Displacements and Article 17 of the Additional Protocol to the Geneva Conventions of August 12, 1949, establish the parameters for the authorities of the National Comprehensive Assistance System for the Displaced Population to evaluate, based on their prior knowledge of particular situations of displacement, the plaintiffs' specific requirements in terms of housing, healthcare, education, nutrition, recreation and work.”

The Court thereafter reiterated its prior doctrine on the conditions for registration of IDPs and the applicable safeguards in order to grant the writ of protection and order the inclusion of the petitioner and his family in the system.

Likewise, in Decision T-468 of 2006, in solving a case related to the requirement of a certification by the authorities in order to gain access to assistance services for IDPs, the Court explained, "...the most favorable interpretation for the best protection of displaced persons must also include the consideration of the Guiding Principles on Internal Displacement... which are part of the international legal provisions that form part of the constitutionality block for this case." On these grounds the Court concluded that "a certification of the status of displaced person may not be held as a condition sine qua non for the exercise of the fundamental rights of IDPs; in other words, it may not be considered that persons who argue that they are IDPs only have a right to special protection insofar as the competent public officials regard them as such."

Following the trend of these two *tutela* judgments, it may be expected that the Court will carry on deciding individual *tutela* cases by interpreting the rights of IDPs in light of the provisions codified in the Guiding Principles.

II. Socio-political aspects of incorporating the Guiding Principles

In socio-political terms, after their formal incorporation into the Colombian legal system, the Guiding Principles have become grounds for the claims of IDPs and their rights advocates before the State. This has led the Guiding Principles to gain not only a strong legal force within the discourses of IDPs and their advocates, but also a rhetorical force. Thus, the Guiding Principles have been incorporated as significant communicative elements within overall social and political communication processes related to internal displacement. This social process deserves detailed study in itself as a very interesting example of the incorporation of legal instruments into social practices within societies at war. I will provide just a few examples of how the Guiding Principles have been included in IDPs' and in their advocates' claims before the Constitutional Court within the follow-up process of Decision T-025 of 2004.

IDP organizations and NGOs that advocate on behalf of IDPs' rights have referenced the Guiding Principles in their reports to the Court in the form of (i) legal support to substantiate their claims as sufficient legal grounds in themselves and alongside the clauses of the Constitution; and in the form of (ii) instruments to identify flaws in the existing system of protection, just like the State-controlling entities have applied them in their reports. For example, in its general report to the Court on September

13, 2006, the Forum for the Strengthening of Displaced Population's Organizations (*Mesa Nacional de Fortalecimiento a Organizaciones de Población Desplazada*)—one of the formal fora where IDP organizations coordinate their national activities—held, in relation to healthcare, that “although the Guiding Principles on Internal Displacement and the national legislation clearly determine the State's responsibilities in this matter, and though communication channels and collaboration networks have been created between the healthcare entities of the different levels, the health care provided to the displaced population is deficient.” In this same fashion, in its October 27, 2006 report to the Court, the National Solidarity Association for the Defense of Displaced Women and Families made the following legal-formal statement:

“The National Solidarity Association for the Defense of Displaced Women and Families, ANSPALMUFAD, in representation of the persons and/or families worthy of special constitutional protection—women heads of household, children, elderly persons, persons with disabilities—in condition of victims of internal displacement due to the armed conflict in Colombia, and invoking the Guiding Principles of Displacement, the National Constitution, Law 387 of 1997, the different judgments of the Court including Decision T-025/04 and its 5 Awards, where it is ordered that the unconstitutional state of affairs be solved; the different international agreements and covenants signed by Colombia for this purpose, represented by our President, Diana Marcela Caicedo, present the following report.”

This same report by the National Solidarity Association for the Defense of Displaced Women and Families follows a pattern by which the rules included in the Guiding Principles and the Constitution are first invoked in order to present vocal claims to the Court in regards to their actual materialization in practice:

“The Constitution, the Guiding Principles on Displacement, the international agreements signed by Colombia, in regards to persons who are under special constitutional protection, all order the adoption of priorities and special programs. And they hold that abuses committed against IDPs will be punished. And if you see, or request the institutions to present the functions they have fulfilled for this population, at most they will be able to say that they have given them the stacks of insect-infested food, expired and of the worst quality, but needless to say endorsed by very high amounts of money, violating with this even our right to decide how we shall feed our families and ourselves, violating our customs, our tastes and our right to feed our children in coherent conditions.”

In the same line of argument, the Forum for the Strengthening of Displaced Population's Organizations of the township of Girón in the Department of Santander, submitted a report to the Court on October 31, 2006, explaining that when drafting the report, constant background was provided by Decision T-025 of 2004 and the Guiding Principles on Internal Displacement:

“As inputs for this report we can enlist, in addition to the ones included in the chapter of Annexes: the declarations of leaders and members of the different associations; direct dialogue with the displaced population; the memoirs of the weekly meetings of the Strengthening Forum (Mesa de Fortalecimiento) where each case of non-compliance by the municipal administration and other State entities with their obligations is exposed; memoirs of the municipal meetings; answers to the petitions presented to the authorities; the participation of the leaders in the departmental thematic forums and in the municipal and departmental committees; as well as direct exchanges with the authorities, the testimonies gathered in the assemblies of each one of the associations, and always as a theoretical referential framework, the text of Decision T-025 of 2004 and the Guiding Principles on Internal Displacement.”

Following the same line, the Civil Society Commission for the Follow-Up of Compliance with Decision T-025 of 2004, in its October 27, 2006, report to the Court included the following observations in the chapter on lands:

“In the first place, it must be noted that actions in relation to the subcomponent on lands must be framed within the protection and materialization of the human right to property and possession, established in the international and national instruments, including the Guiding Principles on Internal Displacements. In its doctrine on forced displacement the Constitutional Court has reiterated the importance of the Guiding Principles, it has even come to consider that some of the provisions contained in the principles form part of the constitutionality block, clarifying that they compile the international obligations of the Colombian State by virtue of different treaties in the fields of Human Rights and international humanitarian law, but it has also been explicit in considering them as parameters for normative creation and interpretation in the field of regulation of forced displacement and assistance of IDPs by the State. On the issue of lands for the displaced population, the Court has referred in relation to its minimum scope to Principle 21 of the Guiding Principles, which expresses the protection that must be granted to IDPs' properties and possessions, in every place and circumstance, and especially from deprivation, expropriation, destruction, occupation, direct

and indiscriminate attacks, and reprisals, among other violations. Likewise they state that the properties and possessions abandoned by IDPs must be protected.”

In the chapter concerning indigenous groups, this same report by the Civil Society Commission for the Follow-Up of Compliance with Decision T-025 of 2004 stated: “The differential focus of the public policy to assist members of indigenous peoples is grounded on the Guiding Principles on Internal Displacement, which clearly state the obligation of taking measures of protection against the displacement of indigenous peoples.” And in the different public hearings held in the past months by the Constitutional Court on different aspects of the system for assisting IDPs, the representatives of IDP organizations and human rights NGOs invoked the Guiding Principles on several occasions during their interventions, citing them as the “Guiding Principles,” the “Deng Principles,” or the “UN Principles” as a means to substantiate the observations and claims posed before the Court. Similarly, individual IDPs who have submitted petitions to the Court asking for the protection of their rights have frequently invoked the Guiding Principles in general terms as the basis for their requests of assistance.

Given the scope of IDPs’ generally limited knowledge of their rights under domestic and international law, it may be concluded that the Guiding Principles have caused a very high impact in the Colombian case. The Guiding Principles have managed to transcend the legal realm, permeate the language used by the victims of forced displacement when resorting to the authorities responsible for their protection, and to structure the discourse used in their overall organizational processes. Regardless of its legal precision, this socio-political and rhetorical use of the Guiding Principles is remarkable.

III. A preliminary appraisal of the Guiding Principles’ impact in Colombia

I believe that three short observations are pertinent in relation to the process behind how the Guiding Principles became incorporated and applied in the Colombian context.

First, even though the Guiding Principles have come to play an important part in the State’s process of assisting IDPs, of protecting their fundamental rights, and overcoming a massive humanitarian crisis (which now affects roughly 4 million people in the country), there is still a long

way to go before they are effectively implemented in practice. An ideal scenario would be one in which the Guiding Principles were no longer relevant because internal displacement in Colombia has ceased. But as the armed conflict persists, and as future prospects for peace become blurred, this scenario may be discarded as merely ideal. For the time being, it is the Colombian State authorities' legal duty, strengthened by Constitutional Court's decisions, to follow the criteria and obligations compiled in the Guiding Principles in order to alleviate, as much as possible, the plight of IDPs in the context of Colombia's armed conflict.

Second, although the practice of one State is insufficient for generating a rule of customary international law, and also bearing in mind the fact that the Colombian case is hardly representative of the general practice of States experiencing internal displacement problems, it can nevertheless be held that the process described in this chapter could be invoked in the future to ascertain the emergence of new rules of customary international law. That is, the process described herein could act as one of the many elements required for the formation of a rule of customary international law among the different cases of State practice in the implementation of obligations appertaining to the assistance and protection of IDPs worldwide.

Third, when it comes to determining whether the Guiding Principles' stated purpose has been fulfilled in the case of Colombia, I should say it has been fulfilled, very broadly speaking. The Principles have certainly provided guidance to authorities at all levels and in all branches of public power in terms of complying with their duties vis-à-vis IDPs. It has moreover come to provide, in both legal and socio-political terms, the grounds and justification for IDPs' claims for protection, and for authorities' orders and acts of protection. In this sense, the Guiding Principles have indeed contributed to the effective enjoyment of the fundamental rights of internally displaced persons. The Colombian case is, in this sense, a success story—as far as success can be held to take place within a human tragedy of these proportions. Furthermore, the progress made to dates provides a solid basis for additional achievements in the

field of judicial protection of the rights of the internally displaced, as will be illustrated by upcoming Constitutional Court Awards.²⁶

²⁶ In the months that followed the drafting of this paper, the Constitutional Court adopted two new Awards concerning the rights of specific groups within the internally displaced population: Award 092 of 2008, which relates to women affected by the armed conflict and by forced displacement, and Award 251 of 2008, which refers to children and adolescents affected by the armed conflict and forced displacement. Upcoming Awards are expected with regard to indigenous peoples, Afro-Colombian communities and persons with disabilities.