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ARMED NON-STATE ACTORS AND DISPLACEMENT IN ARMED CONFLICT



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Executive summary

This report was stimulated by a conference on armed non-State actors (ANSAs) and the protection of internally displaced people organized in 2011 jointly by Geneva Call and the Internal Displacement Monitoring Centre. The conference itself followed on from a special edition of *Forced Migration Review* magazine on ‘Armed non-state actors and displacement’.

ANSAs have many different modes of interaction with displaced people, ranging from being the causes — deliberately or otherwise — of the displacement through to actively taking protective action towards displaced people. People may choose to displace themselves or not partly dependent on the link they have with ANSAs. That relationship is not fixed but will change over time and as a result of factors internal or external to that relationship.

There exists a well-established legal and normative framework applicable to displacement contexts (international humanitarian law, human rights law, international criminal law, refugee law, and internal displacement norms), which however leaves gaps and unclear areas in relation to ANSAs. There are both challenges and opportunities for strengthening ANSAs’ compliance with those laws and norms.

ANSAs operate within a broader environment, locally and internationally, of those who would protect or assist displaced people and who would have opportunities to engage with ANSAs. Again, there are both limitations to the engagement with ANSAs by humanitarian organizations and opportunities in the various approaches taken on displacement-related issues both by these other stakeholders and by ANSAs.

A set of summarized key findings emerge from the examples offered in the analysis. These address how ANSAs operate in relation to displaced people and how the institutional, social, and political contexts must be understood in order to make engagement with ANSAs both feasible and positive for the sake of displaced people.

From these findings a set of recommendations is offered for States, the diaspora, the United Nations, a range of international and local civil society organizations and humanitarian and human rights actors, and research institutions.

Background and methodology

This study on **armed non-State actors (ANSAs) and displacement in armed conflict** was commissioned by Geneva Call with funding from the Human Security Division of the Swiss Federal Department of Foreign Affairs (FDFA).

The research builds on a two-day conference on ANSAs and the protection of internally displaced people (IDPs) organized in 2011 jointly by Geneva Call and the Internal Displacement Monitoring Centre (IDMC).¹ The conference provided an opportunity for academics and practitioners to present their work, including articles written for a special edition of *Forced Migration Review* (FMR) on ‘Armed non-state actors and displacement’.² Selected members (active and former) of ANSAs as well as representatives of donor governments were invited to share their perspectives and experiences with other participants. The event recognized the important role, both positive and negative, that ANSAs play in relation to displacement, and highlighted the need for further research on the dynamics at play in order to develop or refine strategies for engagement with ANSAs, with the ultimate goal of ensuring better protection and assistance to affected populations.

Despite the significance of the subject matter, there is limited existing research within the field of forced migration that specifically addresses the role of ANSAs. Research on ANSAs equally fails to engage in any depth with displacement. Besides the above mentioned conference and the special issue of FMR, exceptions include a 2005 article on ‘Engaging ANSAs on IDPs protection’, which gave an analysis of the character, motivations and actions of ANSAs and provided some policy suggestions to engage ANSAs on IDP rights.³ A 2012 book on ‘Armed Conflict and Displacement’ offers a review of the existing legal framework for the protection of refugees and displaced persons under International Humanitarian Law (IHL) and covers the legal and normative framework applicable to ANSAs.⁴

This study builds on the above endeavours; it seeks to deepen our understanding of the interplay between ANSAs and displacement, both internal and cross-border, through an analysis of secondary interdisciplinary literature. The research also draws upon geographically diverse case studies based on past and current armed conflicts, and makes suggestions on

ways forward to further improve the protection of displaced people.

Some 70 key informants (mainly researchers, policy-makers, United Nations (UN) staff and representatives of non-governmental organizations (NGOs) with diverse geographical and thematic expertise) were interviewed during the research and six experts reviewed the final draft, in addition to Geneva Call staff. A ten-day field trip to the Thai-Burma border offered an opportunity to test some of the hypotheses developed through the research. Interviews were conducted with senior members of four ANSAs, the Karenni National Progressive Party (KNPP), the Karen National Union (KNU), the Chin National Front (CNF) and the Pa-Oh National Liberation Organization (PNLO), displaced people living in Mae La refugee camp,⁵ analysts, donors, as well as staff of United Nations High Commissioner for Refugees (UNHCR), international NGOs and civil society organizations.

WHAT IS AN ARMED NON-STATE ACTOR (ANSA)?

There is no universally agreed definition of an ANSA. For the purposes of this study, the term ANSA is used to indicate organized armed entities that are primarily motivated by political goals, operate outside effective State control, and lack legal capacity to become party to relevant international treaties. This includes non-State armed groups, national liberation movements, *de facto* governing authorities, and States that are not or are only partially internationally recognized. ANSAs are usually engaged in armed struggle against State forces or other ANSAs in the context of non-international armed conflict or other situations of violence.*

** This definition was developed by Geneva Call for operational purposes. There may be other armed entities involved in armed conflict or other situations of violence which do not meet this operational definition: for instance, paramilitary groups and private military and security companies (PMSC) are not considered to fall within this definition.*

Introduction

According to the 2012 *World Disasters Report*, out of 73 million people who are forcibly displaced, 43 million are fleeing armed conflict and persecution, a category of displacement which has increased over the last decade.⁶ Of this number the majority, about 28 million are IDPs, many of them as a result of non-international armed conflicts. In 2010, ANSAs were reportedly the agents of displacement in a quarter of these conflict situations that generate displacement.⁷ A 2009 International Committee of the Red Cross (ICRC) survey over eight conflict-affected countries revealed that more than half of all people affected by armed hostilities had been displaced.⁸

In his book *Killing Civilians* Hugo Slim explains how in conflict situations people experience “dramatic change in their normal patterns of space and movement. Spatial suffering takes many forms and results either from people’s efforts to avoid the war or from a warring party’s determination to disperse civilians to break their link with a contested area of land or restrict their movement. In all these different experiences of relocation and spatial suffering, civilian populations have moved with varying degrees of force or voluntarism. Loss of control of one’s traditional space and one’s normal pattern of movement is central to most civilian experience in war and a major form of suffering.”⁹ Displacement should be conceptualized both as a response to a threat and/or as a protection strategy and so while displacement is commonly described as a negative outcome, moving away from a real or perceived threat is first and foremost a self-protective measure and may be the only way to avoid death and serious harm.¹⁰

Furthermore, the perception of displacement as a single, linear, short term event is also increasingly inaccurate. Instead, displacement often takes place in sequential waves and the reality of protracted displacement reflects a landscape of long-lasting conflicts and recurring crises. In short, people tend to be displaced more often, repeatedly, and over longer periods than previously.¹¹

Many analysts agree that contemporary conflicts have been characterized by the proliferation as well as the diversification of ANSAs, which some have attributed to generally weaker state institutions in the post-Cold

War context.¹² There are in addition multiple factors that influence the composition and behaviour of ANSAs. Some are intrinsic to the very ideology of the group which often includes military, political, economic, ethnic, religious, and socio-cultural components, while others relate to peripheral factors that are concerned with the broader evolution of the particular conflict and the influence of other stakeholders.

Civilians continue to be involved and affected: they can be the target of violence as well as sometimes its source, with phenomena such as popular uprisings leading to the formation of ANSAs. Both the urbanization of conflicts and their increasingly protracted nature have permeated displacement patterns. Combined, these trends contribute to blurring the distinction between civilians and combatants and are the cause of on-going challenges to laws and policies that have been developed based on those categories.

This research takes as its point of departure the close correlation between conflict and displacement and the well-established fact that the law prohibits unlawful displacement by all belligerents. Yet much less is known about what bearing the motivations and behaviours of ANSAs have on triggering displacement, about the diversity and complexity of the relations between ANSAs and displaced people, and about the role played by factors such as the course of conflict in triggering or sustaining displacement.

Part 1 outlines some of the dynamics at play between ANSAs and the phenomenon of displacement. It looks at the different phases of displacement, starting with scenarios where ANSAs are agents of displacement. It also looks at the role they play when displacement is induced by the other party or when conflict is not (or not the only) trigger of displacement, putting the emphasis on the displaced people’s own role in these processes. It then addresses the array of possible relations between ANSAs and displaced people during displacement and how these can fluctuate according to a range of factors pertaining to the ANSAs, the displaced people, or the evolution of the conflict.

Part 2 provides an overview of the legal and normative framework applicable to ANSAs in displacement contexts, also looking at the interplay that exists between the different bodies of international law (international humanitarian law, human rights law, international criminal law and refugee law). It then points to the gaps, challenges and opportunities for strengthening ANSAs’ compliance with those laws and norms.

Part 3 reviews the broader environment that ANSAs operate within. It describes how other stakeholders — especially the diaspora, States, and international

and local organizations — are likely to have an influence on the dynamics between ANSAs and displacement. It provides a mapping of current engagement efforts with ANSAs on displacement issues, reviewing some of the limitations as well as opportunities and comparative advantages of these different approaches.

Part 4 presents a set of conclusions on key findings that have emerged from the research. It uses these to then make concrete recommendations to various stakeholders for engaging ANSAs on displacement issues.



A Free Syrian Army soldier at Atme camp for internally displaced people on the Syrian side just over the border with Turkey.
© Jodi Hilton/IRIN (2012)

PART I

ANSAs and the dynamics of displacement

The interactions that ANSAs have with displaced populations are complex. At times ANSAs are motivated to trigger displacement while in other situations displacement is not directly intended by ANSAs. During the displacement phase itself, with the evolution of a conflict and when solutions to displacement are being considered, there is a diversity of relationships between the ANSAs and the displaced. The first section of this part outlines some of the dynamics at play. The second section addresses the variety of relationships between ANSAs and the displaced.

1] Triggers of displacement and the roles of ANSAs

There are various — often overlapping — factors that can lead an individual or a group of persons to become displaced, but displacement is essentially the result of a coercive removal from a habitual residence, the outcome of other factors which prompt the departure, or a combination of the two. The coercive factors may be direct or more often result from other violations, either temporary or longer term. The displacement (or the containment) may not be entirely coerced depending on whether the civilians have strong incentives to move with the group. These can range from a genuine allegiance to the fear of retaliation by the ANSA or punishment from state authorities or other ANSAs. The next sub-section explores situations where displacement coincides with deliberate intent on the part of the ANSAs.

a) Displacement as an intentional outcome by ANSAs

There is a plethora of motives behind deliberate, either direct or indirect removal of a population from a territory. Although one set of actions may be predominant, there can be several motives which may overlap with one another. While displacement may be pursued by authorities or agents of the State — such as paramilitaries or militias — this study is only concerned with the behaviour of ANSAs.

i) To uproot and punish

Beyond to the objective of territorial conquest and control, some ANSAs use the forced removal of civilians to dispossess and punish them. The intention may be to destroy or break the societal or cultural structure. The harmful acts are rarely fortuitous and

the grievances ANSAs or their constituencies may have against civilians often have historical roots and may be linked to a range of ethnic, religious or socio-economic dynamics. 'Ethnic cleansing' can manifest itself not only through deliberate violence towards a specific ethnic group but can seek its total dispossession through forced removal as took place in Bosnia following the dissolution of Yugoslavia in 1991. From 1992, Bosnian Serb paramilitary forces expelled Muslim populations from Eastern Bosnia and destroyed their homes or gave them to Serbs displaced from elsewhere, at least partly to ensure that the people expelled would not return in the future. While ethnic cleansing was overwhelmingly committed by Bosnian Serbs, it was adopted by Bosnian Croats and Muslims too.¹³



Albanian Kosovars returning home after months of hiding from the Serb military who looted and burnt their homes. In retaliation the former refugees loot and burn the homes of ethnic Serbs who have fled with the military. © Anthony Suau (1999)

Revenge has been identified as one of the factors explaining ANSAs' violations of IHL. Referring to the concept of 'negative reciprocity', recourse to displacement can be used to reciprocate displacement (or other violations) caused by the adversary.¹⁴ It can be intended also to punish civilians suspected of collaboration. Mistreatment and human rights abuses committed by the Lord's Resistance Army (LRA) have been described as 'revenge attacks' or 'punitive actions'. Acts of extreme violence and terror have been perpetrated deliberately by the LRA against displaced people

in camps, whether in the form of large scale massacres, repeated attacks, or symbolic acts of cruelty such as mutilations.¹⁵ For Joseph Kony, the leader of the LRA, the reasons behind the attacks on displaced camps were both linked to a sense of betrayal by the Acholi community who left their villages to move to camps on the orders of the Government of Uganda, and were a means to prove to them their mistake by showing them the inability of the government to protect the camps from attack.¹⁶

In the Democratic Republic of Congo (DRC) as control of territory and populations fluctuates between armed groups, some ANSAs displace people or conduct reprisal attacks motivated by revenge. A group may, for instance, displace people because they have allowed another group to occupy a village, or in the case of the Democratic Forces for the Liberation of Rwanda (*Forces Démocratiques pour la Libération du Rwanda*, FDLR) some episodes of displacement have been in retaliation for military attacks against them. Testimonies of IDPs and of former combatants all agree that the FDLR attacked civilians whom it accused of collaborating with the Rwandan army. Military interventions against ANSAs in the DRC systematically and recurrently lead in this way to increases in the number of displaced people.¹⁷

In Colombia, the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, FARC) have used violent acts and threats, including forced displacement, as a means to punish individuals considered to be informers or collaborators with government forces.¹⁸



Children at the site for people displaced from the town of Tawargha during the 2011 Libyan civil war. "Airport Road/ Turkish compound" site in Tripoli. © Heba Aly/IRIN (2011)

Towards the end of the conflict in Libya, during the summer of 2011, ANSAs from Misrata have been involved in the systematic destruction of the city of Tawargha forcing its inhabitants to flee because they had allegedly supported the Qaddafi forces during the Misrata siege. Tawargha's IDPs attributed their displacement to the desire of revenge for the crimes and human rights abuses that Tawargha's fighters committed. Two years after the conflict, Tawargha is a ghost town and the inhabitants of Misrata remain bitterly opposed to the return of Tawarghans and continue to be the target of revenge crimes.¹⁹

ii) To control populations and maintain a support base

In some situations the intention of controlling the movement of the population may not necessarily have the objective of harming civilians (although that can be an unintended outcome.) The aim of ANSAs in this scenario can be to keep the civilian support base with them, through displacement or by preventing or restricting their movements, or to strengthen the support base by displacing those considered undesirable. This support base provides political support, material support, a source of recruitment, and intelligence, among other things.

The most significant episode of forceful displacement by the Liberation Tigers of Tamil Eelam (LTTE) — that of the Muslim community from the Jaffna Peninsula in Northern Sri Lanka in October 1990 — illustrates what has been described as the LTTE's strategy to maintain and strengthen the Tamil stronghold.²⁰ While of different faiths, historically Muslims and Tamils living in the North and East of Sri Lanka were integrated into local life as inter-dependent communities speaking the same language. However, the relationship became more difficult and segregated during the 1980s especially in the East and violence developed between Tamils and Muslims.²¹ While the LTTE did not officially release any clear reasons for the expulsion of the Muslims, it appears to have been a response by the LTTE leadership to the threat posed by an increasingly strong national Muslim political party and the formation of Muslim home guards which would undermine the LTTE's goal of a mono-ethnic Tamil state.

While the bulk of the attention to the phenomenon of displacement is on the actual transfer or movement

of populations (as it is the most visible effect and generally has significant humanitarian impact) it is also worth considering that the motives behind forced immobility — when movement and mobility are restricted — may be similar. As summed-up by Olivier Bangert, “forced displacement can be used either to force the ‘undesirables’ to flee to the enemy or the ‘desirables’ to remain in or move to the areas controlled by the ANSA, especially if the ANSA relies on their support.”²²

Understanding the reasons ANSAs may have for impeding populations from fleeing may be as important as understanding their motives for causing displacement. These might range from a desire to convey a semblance of normalcy to mask a humanitarian crisis to keeping a population under their control. For example, during the famine crisis of 2011 in Somalia, Al-Shabaab reportedly “stopped the displaced from moving to Mogadishu to reach humanitarian assistance, moving them instead to ‘K50’, a makeshift camp located south of the capital, because they didn’t want people to abandon their area of control and also because they didn’t want to be seen as unable to help the needy and their leaving [to be seen] as a vote of no-confidence in the group.”²³

Another argument often advanced as to why ANSAs would prevent people from leaving is to deter their adversary from targeting them, as it would also increase the risk of causing ‘collateral damage’ in heavily populated areas. This may have been a factor explaining why in Mali in 2013 there have been reports that armed groups have prevented people displaced in the North from seeking refuge in the South.²⁴ Another clear illustration of this was the strategy of the LTTE towards the end of the conflict in Sri Lanka in 2009; as military attacks from the government increased, the LTTE kept civilians closely around them in the hope that this would deter the army from attacking them. In this case the strategy failed as it did not stop the army from attacking despite the civilian costs.²⁵

While States, often with the support of international organizations and the involvement of civil society, play a more central role when return is taking place, less attention has been paid to the role of ANSAs and their motives for either deterring or encouraging

return. In Colombia, the FARC have prevented or controlled the return of the displaced where suspicion of collaboration with the State or associated paramilitary groups existed. Returnees had to seek permission to return and, if allowed, they were able to do so under specific conditions resulting in further restrictions on their movements.²⁶ In Burma/Myanmar, ANSAs’ cautious positions towards return appear to be at least in part based on humanitarian grounds. Burmese ANSAs believe that the security conditions in areas of return inside the country — including precarious ceasefires, the failure of the national army to withdraw, and the presence of landmines — are not yet conducive to the return of refugees, a view which is mostly shared by the refugees themselves.²⁷ The position of some of these groups towards return may also be based on more strategic and political considerations. It has recently been suggested that the KNU has a preference for the return of the displaced before the 2015 elections in order to enhance their electoral prospects.

iii) To control territory

Some ANSAs may clear the land of its inhabitants in order to access and exploit a specific territory for military or economic purposes (e.g. land rich in minerals, grazing or logging opportunities, access to the sea and fishing opportunities). These types of intentional displacements may or may not be combined with some degree of harmful intention towards civilians. For example, through looting and burning villages, attacking IDP camps, amputating, raping, and killing civilians living in government-held zones, the apparent aim of the Revolutionary United Front’s (RUF) practices in Sierra Leone was to drive away rural populations living on the fringes of rebel strongholds in order to create a protective no-man’s land for themselves.²⁸

In Eastern DRC where power dynamics between State and ANSAs have shifted several times and are linked to one or more of them forming temporary military and trading alliances to curtail the dominance of the other(s), the ethnic motivation for the displacement or containment of populations has at times been superseded by territorial considerations. The exploitation of mineral mines by various power-holders and arms-bearers has caused both displacement and migration; thousands of people have left their agricul-

tural livelihood to move closer to mineral extraction sites. In areas under the control of the FDLR, populations may either be coerced to leave their land or compelled to work in the mines controlled by the group. A member of a local Congolese NGO is quoted: “if a mine is discovered by the population, the FDLR come and take it over [...] No one can stop them. People just observe.” For another one: “people simply can’t refuse to work for them.”²⁹

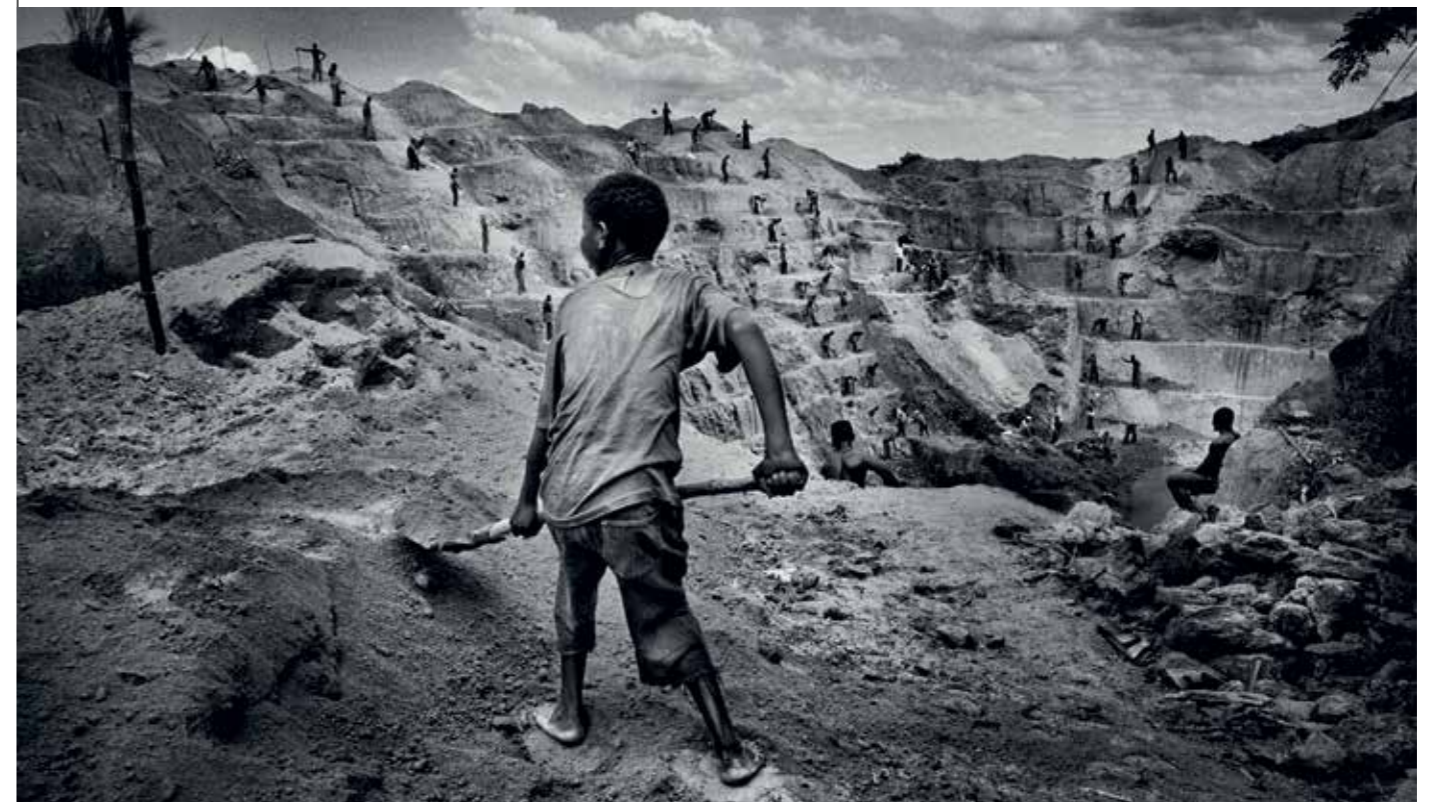
In Mindanao in the Philippines, the control of strategic territory (land and natural resources) constitutes one of the underlying structural causes of forced displacement as the means of asserting territorial control and political influence. “The confluence of armed conflict, corrupt politics, and the destruction [or] confiscation of rural IDP productive assets, especially fertile agricultural land ... is ... at the heart of the political economy of conflict-affected Mindanao.”³⁰

Such land grabbing and confiscation can be compared to development-induced displacement, a displacement process occurring mainly outside the context of conflict and led by State authorities (as it is within

the prerogative of the State to justify the forced removal of populations in the name of ‘development’). These types of displacement tend to be motivated by economic interests and are often to the detriment of rural and ethnic minorities who get little benefit or inadequate compensation as a result of their displacement. These practices are often connected to or may be the very cause of a conflict situation, hence blurring the lines over what the primary motivations for displacement were.

IDMC has reported that Burma/Myanmar remains the country most affected by conflict-related forced evictions and confiscation of property, displacing millions of people inside the country and across its borders. While the government caused the majority of these displacements, some ANSAs, such as the Democratic Karen Buddhist Army (DKBA), have reportedly done so too. The pace of forcible acquisition of land intensified after the ceasefire agreements in 2012; various civil and military State authorities,

Artisanal mines in Wasta, Northeastern Congo. Most of these miners are ANSA combatants who have control over mineral rich areas and are profiting from their exploitation. © Marcus Bleasdale/VII (2003)



foreign and domestic companies and armed ethnic groups are involved in 'profiteering' from land grabbing and have undertaken or facilitated displacement. As long as the current dislocation of IDPs and refugees allows these practices to take place, the risk of future land-related conflicts only increases.

iv) To protect populations

While human rights abuses and displacement episodes triggered by ANSAs are recorded ever more systematically, there is still a gap over the reporting and monitoring of initiatives taken by ANSAs to evacuate and assist civilians with the explicit intention of protecting them. Several factors may explain this information gap; these include the absence of the actors who would typically monitor and report on the actions of ANSAs and the fact that such monitoring typically focuses on violations rather than positive actions. Furthermore, the international State-centric framework lets States respond to accusations of human rights abuses, including displacement, through mechanisms such as the Human Rights Council, whereas such forums do not exist for ANSAs. It could also be that ANSAs may opt for these actions to remain discreet for the very same purpose of preventing follow-up targeted attacks on civilians in the new locations or reprisals against the ANSA itself. Because of the above and the diversity of behaviour, it is not easy to determine what the factors or circumstances are that would lead an ANSA to protect populations from displacement or protect them by facilitating their flight and relocation. In general, however, the closer the group is to its constituency, the more inclined it will be to improve rather than impair civilians' lives. Organic links may exist such as a common ethnicity, but also the members of the ANSAs may be from the community and share political objectives.

In the Philippines, displacement has been cyclical and chronic (taking place over short time periods and distances), with people generally going back to their villages after a month or two in displacement. While civilians may have moved by themselves, the Moro Islamic Liberation Front (MILF) have in some instances facilitated their movements. The MILF women's wing in particular has reportedly played a role in providing warning to the population in advance of government attacks and facilitating evacuations. This type of inten-

tional displacement is lawful according to IHL, justified by an imperative military reason as well as the intention to protect civilians.

In the Burmese context, ANSAs had ethnic and religious ties with civilians and these communities faced violence or persecution committed by the army especially in the areas close to the border which remained under the ANSAs' control. As the Burmese army's campaigns intensified and entire villages were destroyed, some people benefited from the support of ANSAs which provided safe passage through the jungle and secured their safe crossing into Thailand.

After the invasion of Western Sahara by Morocco in 1975, thousands of Sahrawis fled to Algeria. They were reportedly provided safe passage by the Polisario Front, which helped set up the camps.

b) Displacement as a by-product of conflict and of other drivers, such as natural disasters

There are instances when ANSAs have no direct or deliberate intention to cause displacement. In many situations the trigger for displacement is not the forced physical removal of civilians but the civilians themselves making the decision to flee (or to stay); it is important to note the diversity and variability in people's responses as conflict impinges on their everyday lives. Indeed the reasons that would prompt the decision to flee are diverse — with economic, social and psychological dimensions — and often cumulative, notwithstanding the fact that one specific event may be the proximate triggering factor.

In contexts where civilians are suffering from generalized violence triggered by conflict, rather than displacement being a planned strategy by the belligerents, populations may spontaneously flee into the hands of ANSAs in search of protection; or, having weighed up all the evils, conclude that protection by an ANSA is preferable to either chaos or 'protection' by the government side.

While ANSAs operating in Somalia have reportedly deliberately caused displacement, the large-scale displacement that took place in the country over 2007 and 2008 was not entirely the result of ANSAs' actions. Some two-thirds of the population of Mogadishu

left the city in the context of violence between the Transitional Federal Government (TFG) and Islamic militant groups. Loss of physical and financial assets and the collapse of socio-political protection were among the key factors that explain their decision to move. Moving was also gradual, with testimonies of people first relocating within Mogadishu before deciding to leave the city.³¹

Natural disasters can also trigger large-scale displacement and may be combined with pre-existing conflict-induced displacement. In such instances the belligerents find themselves with the responsibility to address new or increased episodes of displacement, as in Mindanao where the 2011 floods affected the return areas of those displaced by the conflict between the government and the MILF in 2008, or in Sri Lanka when both the LTTE and the government responded to the effects of the 2004 Indian Ocean tsunami.

There are also situations where ANSAs play a role in preventing or addressing displacement induced by their enemy. In 2010 IDMC reported that about half the situations of displacement took place in contexts where the agents of displacement were either government forces or armed groups associated with the government.³² The assimilation of minorities, especially of Kurds, has been a recurring pattern of Turkish nationalism. Over several decades the Turkish authorities forcibly removed thousands of Kurds by demolishing Kurdish dwellings and deporting the population.³³ The Kurdistan Workers' Party (*Partia Karkaren Kurdistan*, PKK) emerged in Ankara in the early 1970s in reaction to Turkey's move-and-assimilation strategy. Between 1993 and 1995 the Turkish military reportedly expelled Kurdish villagers in the country's South-East as a punishment for refusal to join the village guards (state-sponsored paramilitary civil-defense forces made up of local Kurds, armed and paid to fight the PKK on their own turf), or on suspicion of supporting the PKK. While most displacement has been caused by the Turkish army and its security forces, including the village guards, the PKK has also been directly responsible for significant internal displacement of Kurds by targeting village guards and their families and local political figures.³³

2] The diversity of relationships between ANSAs and displaced people

Most narratives tend to emphasize the dissociation between ANSAs and displaced people. This is in line with the IHL principle of distinction between combatants and non-combatants and might more simply be linked to the tendency to fit people into the categories of perpetrator or victim. The risk with these over-simplified narratives is that they present a partial and often inaccurate account of the range of interactions that may exist between ANSAs and civilian populations and the specific interplay that exists between ANSAs and displaced people.

a) Role and behaviour of ANSAs

Below are some scenarios and examples which highlight the diversity and sometimes ambiguity of these relationships, ranging from being mainly exploitative and predatory through more nuanced ones of tolerance and acceptance to ones of mutual support, solidarity, and protection. Specific examples may help to identify the factors in whether the relationship is primarily driven by coercion or by choice and reciprocity. Although there are no traceable consistent or systematic behavioural patterns given the multiple factors and actors that can affect these dynamics, it is possible to highlight some trends and show how relations may vary from being abusive to protective or neutral, keeping in mind that while one set of behaviours may be predominant it can overlap with others.

i) Abusive and exploitative behaviour

The poor human rights record of some ANSAs, combined with the fact that ANSAs often depend on civilian populations for essential resources such as fighters and revenue, has led to a characterization of ANSA's behaviour as predominantly exploitative and predatory. In a 2012 policy briefing about the DRC, Oxfam describes how "communities have increasingly become commodities of war, fought over by armed groups and by authorities seeking to control lucrative opportunities to extort their money and possessions".³⁴ While some Congolese or foreign ANSAs may refer to improving civilian lives in their political speeches, the translation of these policies into action tends inexorably to result in a spiral of suffering and protracted and multiple displacements that have eroded resilience and heightened vulnerabilities.

Notwithstanding the range of factors that may account for ANSAs' behaviour — notably the agenda of the group, its internal structure, resources, and relationships with the international system — instances of particularly brutal abuses, such as 'ethnic cleansing' or reprisal attacks, are more commonly found when displaced people (and local communities) are dealing with a foreign ANSA or a group which is heavily reliant on foreign elements or on those of a different ethnicity. This was the case during the series of conflicts in West Africa, for instance with Charles Taylor's National Patriotic Forces of Liberia (NPFL) which brought together individuals from different nationalities and ethnicities, or more recently in Mali with the Movement for Unity and Jihad in West Africa (MUJAO), and Al-Qaeda in the Islamic Maghreb (AQIM). The lack of ethnic bonds and cultural connections can be a barrier for the displaced to negotiate with the group and seek improvement of their situation.

Although the LRA committed countless abuses against displaced Ugandan nationals (of the same Acholi tribe), some subtle but potentially relevant distinctions of behaviour can be observed from the moment the LRA moved out of Uganda and spread its presence between Sudan, Central African Republic (CAR) and the DRC. While sexual violence is a constant feature of the LRA's behaviour, when the bulk of the troops were still operating in Uganda it was framed as 'forced marriage' (and called 'sexual slavery' by some UN organizations and NGOs), a non-consensual act whereby a female abductee would become the wife of an LRA soldier or commander. Aside from this, there were very few accounts of 'extra-marital' rapes, and especially the gang rapes which are common in other conflict contexts. Patterns of LRA sexual violence shifted, however, once the war was exported from Uganda, with reports of systematic rape by LRA members.³⁵ The pre-existing links with displaced indigenous communities are, however, only one element of a more complex network of factors which may explain shifts in the behaviour of the LRA.

The presence of ANSAs amongst the displaced or in their vicinity, whether in camps or other settings, (often referred to as 'militarization') can compromise their personal safety. This can be due to cumulative factors including the circulation and potential use of

weapons in camps, the risk of military recruitment, the risk of diversion of aid, and the risk of sexual abuses. For example, the largest camp of Palestine refugees in Lebanon, Ein el-Hilwe, is especially dangerous for refugees because of the large number of weapons in circulation in the camp and the presence of various Islamist militant groups engaging in internecine fighting. The greatest danger, however, is placing what is intended to be a humanitarian and civilian space into the heart of the conflict and the battlefield, including by using camps as bases for armed attacks and therefore at risk of being attacked in return. Another camp of Palestine refugees in Lebanon, Nahr el-Bared, was the scene of fighting between the Lebanese army and the Fatah al-Islam group in May 2007, causing its almost complete demolition and the displacement of its 30,000 residents.³⁶

In Darfur, displacement sites — whether government-controlled urban centres, areas controlled by armed factions, or camps on the Chad-Sudan border — all showed signs of militarization. However the areas under Sudan Liberation Movement/Army-Minni Minnawi (SLM/A-MM) control showed a lack of distinction between civilian and military space, between policing and military functions, and a lack of civilian infrastructure which indicated that the camps were not so much militarized as under the military control of an ANSA.³⁷

While the militarization of camps is problematic in itself, the responses to address the militarization have also often been harmful to the displaced. For example, the alleged infiltration of the refugee camps in Kenya by Al-Shabaab led to the withdrawal of many humanitarians workers, who feared attacks on their staff in the camps, the imposition of a curfew by the Kenyan authorities, episodes of mass arrests and beatings of refugees by the police (in an attempt to catch Al-Shabaab fighters), and threats of deportation back to Somalia.³⁸

ii) Governance role

Where there is no State presence in a territory or if State institutions are weak and no or few humanitarian organizations are involved, ANSAs are likely to fill the power-vacuum. They may *de facto* be the alternative or, if some level of State presence remains, the additional providers of some form of safety and security and

provide variable access to services including health and education systems, police forces, and courts. It is quite rare for the ANSA to hold a monopoly of power.

In the case of the CAR, the presence of indigenous ANSAs in the country is a result of decades of weak governance, impunity for human rights violations committed by government forces, and a failed Disarmament, Demobilization, and Reintegration (DDR) process plagued by failings and corruption. These groups, mainly composed of frustrated youth, operate in large parts of the country where State authorities have no presence or only marginal visibility. Most ANSAs are said to generally control people's movements. According to a UN official, "the State is not present because of rebel groups... rebel groups are present because of the absence of the State. Some seek to profit, but many are there to protect the population".³⁹ Similarly, foreign ANSAs such as the LRA have benefited from the power-vacuum to establish a base in CAR.

Filling a power gap is not in itself an indicator that ANSAs would adopt a protective role towards civilians but equally it should not be assumed that groups would be abusive towards them. In Somalia, both the Islamic Courts Union (ICU) and even Al-Shabaab have to some extent filled a security vacuum and performed a governance role. The ICU provided education and health care and their popular support extended beyond the borders among refugees who desired to return to a stable Somalia. After Ethiopia invaded Somalia and toppled the ICU, Al-Shabaab, although less popular than their predecessors, built on the legacy of the ICU by providing law and order with mobile *shari'a* courts to settle local disputes. They also did infrastructure work that included the clearing of roadblocks, repairing roads, and organizing markets. This, together with the nationalistic support Al-Shabaab was able to count on while Ethiopian forces remained inside Somalia, gave it some popular support among the Somali population despite the abuses it perpetrated.⁴⁰

The phenomenon of filling a power-vacuum is common in border zones where State presence is often weaker, allowing ANSAs to assume governance functions in the territories they control. In some of the rural areas of Colombia a form of 'shadow citizen security' has

emerged whereby the FARC and the National Liberation Army (*Ejército de Liberación Nacional*, ELN) provide public goods such as roads and health centres. By filling the void left by the government and providing social services, the groups are often able to win the communities' respect. If the ANSA benefits from popular support, there is in turn little need for it to coerce the population. However if its authority is contested that authority tends to be maintained by coercion. Thus while at times citizens approve of the ANSAs' substitution of State functions, at others they simply do not have any choice but to accept it.⁴¹

Many insurgencies have taken over large territories for extended periods of time, set up elaborate governance structures, and established extensive quasi-governmental structures mirroring the apparatus of State institutions through which they rule the civilian population, derive support for their political authority, and achieve some form of legitimacy. Sri Lanka is an interesting case as the government continued to provide certain public services such as education and health in LTTE-controlled territory; the LTTE monitored these services while retaining exclusive control of other sectors such as the judiciary and defence. This strange scenario of complementarity enabled the Government of Sri Lanka to maintain some connection with the areas outside its control and relieved the Tigers of providing all public goods to the civilians. This shared control was maintained in the handling of the 2004 Indian Ocean tsunami crisis when the LTTE's Planning and Development Secretariat worked with its government counterpart.

Contrary to a commonly held view ANSAs may play a protective role. Certain factors including shared ethnicity, the shared experience of suffering, and a common ideology may forge long-lasting and strong bonds between an ANSA and its (displaced) constituency. Furthermore, the members of the ANSA may come from the very communities and their family members may still be there.

In the context of the displacement of Burmese to Thailand, in the absence of international organizations from the mid-1970s throughout the 1980s, ANSAs played a leading role in setting up informal settlements and in negotiating with the Thai authorities

so that people would not be forced back into Burma/Myanmar. They also actively supported the development of Refugee Committees and the creation of local community-based organizations (CBOs), and were instrumental in liaising with missionaries and faith-based organizations to obtain additional assistance as the refugee population increased. While various factors and influences — especially of the Thai government and the international community — have contributed to loosening the ties between the ANSAs and the refugees, their shared ethnicity and the experience of persecution in Burma/Myanmar has enabled the connection to persist. Talking about the displaced people, a leader of the KNPP stressed how they are “interrelated with the people and feel obligations and responsibilities towards them”.⁴²



School run by the Polisario Front in Smara refugee camp, Algeria.
© Sahrawi Campaign to Ban Landmines (2013)

A mostly protective behaviour is also found in ‘States in exile’ situations. A long-standing example is that of the Polisario Front or ‘Sahrawi Arab Democratic Republic’ (SADR) that has since the mid-1970s “asserted control over some 155,000 ‘refugee-citizens’ living across four major camps through the development of its own constitution, camp-based police force (and prisons), army, and parallel State and religious legal system”.⁴³ The Polisario Front has found a balance between promoting self-sufficiency and strategically relying on external aid. It showed its commitment to social welfare by creating a Ministry of Education, Health and Social Affairs at the time the camps were established in 1976 and by establishing schools, including a university in Tifariti. It also set up camp-based medical institutions that have primarily been

run by Sahrawi doctors and nurses who trained in Cuba or, more recently, in Spain. One of the characteristics of the Polisario Front has been to put forward Sahrawi refugees as representatives and camp-managers thus feeding into the generally positive perception of the Sahrawi camps as model camps. At the same time the maintenance of its refugee constituency is essential for the Polisario Front to be able to continue to justify one of the world’s longest protracted conflict and displacement situations.

*b) Other dimensions of the relations
between ANSAs and displaced people*

i) A reciprocal more than a unilateral relationship

The relationship between ANSAs and displaced communities is often portrayed as one-sided, with those bearing arms holding ultimate power over non-combatants. It is true that ANSAs may have much to gain from proximity to or control over a displaced population, for example by keeping some link with their support base or having the possibility of accessing human or material resources through the displaced communities. Nevertheless the presence of the displaced can also be a burden or a disturbance for ANSAs. The movement of people or their presence in a given place, as well as the intervention of other stakeholders, is able to disrupt or pre-empt the military strategy of ANSAs but may not prevent the fighting. The impact on civilians is likely to be especially severe in urban conflicts where the demarcation between civilians and combatants is voluntarily or *de facto* blurred, on all sides. ANSAs can find themselves in a situation of *de facto* responsibility towards the displaced while having limited means to provide actual protection. In some parts of Syria in 2012-13 the insurgents have had to handle the arrival of displaced civilians in their area of control at the same time as they are pursuing combat and sustaining attacks by the army.

In the words of Zachariah Mampilly, “an assumption of unconstrained agency of the rebel leadership does not hold in the face of actual evidence on the ground that demonstrates that insurgent leaders are far more restricted in their actions”. He points out that “like governments, rebel leaders must negotiate with civilians in exchange for their loyalty — no easy task as

civilian demands frequently involve a variety of different and often competing perspectives”. As we have seen, in many contexts “groups do seek the support of the civilian population in the territories they come to control, establishing governance systems that provide collective goods in exchange for civilian consent to rebel rule”.⁴⁴

It is clear that ANSAs may have a multi-layered and at times protective and constructive role towards displaced people. Different types of behaviour can be at play simultaneously; relations are complex and nuanced and will be driven by important variables such as the nature of the group itself and the influence of other stakeholders. It may therefore be more useful to think of the relationships in broader terms of power dynamics which can take the form of mutual dependence and reciprocity having social, security, and economic dimensions that often require continual adjustment and negotiation.

ii) Gender and kinship dimensions

While humanitarian situation reports tend to explain the infiltration of ANSAs in refugee or IDP camps as a military strategy to hide amongst civilians, ANSA members often use camps as a kind of ‘family strategy’ for collective survival. The fact that combatants and non-combatants are related by kinship is a reality in many displacement contexts. For instance, in the Philippines military operations frequently result in internal displacements, especially of families of MILF members who constitute the majority of IDPs. Some ANSA members have deliberately taken their families to displaced camps before joining the fight, with the intention of protecting them. Once they are in displacement, however, the family links can be broken leaving family members vulnerable to abuses within camp settings. According to the Norwegian Refugee Council (NRC), in the DRC the FDLR’s dependents — families that travel with them, sometimes against their will — are considered by all to be extremely vulnerable, challenging how the FDLR is perceived by the general populace and the other armed groups.⁴⁵

The combination of a conflict situation and the experience of displacement shifts gender relations for reasons including the separation of family members, the deaths of potentially large numbers of male combatants, and

the military role women may come to play contrary to the traditional culture. Another major factor is the scale of sexual violence either committed by the group and/or by other military or civilian actors, itself the result of factors such as the breakdown of social, family and cultural safeguards, the loss of intimate space especially in camp settings, as well as the more deliberate military intention to harm through sexual violence. While the hardship faced by displaced women is recognized, in many contexts women have chosen to improve their social position during displacement by joining ANSAs. Their apparent motivations include to avoid poverty and the difficulty of living conditions in camps, in the hope of moving away from constraining traditional gender roles, to escape domestic violence (expecting that the ANSA will provide protection), or to learn how to use weapons to protect themselves. For others, there is no choice as they are forced into association with ANSAs.

In Sri Lanka, the effect of displacement reportedly created instability in young women’s lives and played a significant role in encouraging them to regain control and a sense of empowerment by joining the LTTE, with the group representing a form of alternative family unit. The LTTE succeeded in constructing a sustainable fictive kinship and fostered friendship among women combatants who came from various socio-economic, religious, and caste backgrounds.⁴⁶

While the ability for women to move up the military or political ladder can vary according to the group in question, and some women do hold positions of command and authority, they would commonly find themselves tied to combat or support roles. The gender equality that is often an ideological precept put forward by some groups has little resonance with what takes place in reality; possible exceptions include leftist ANSAs.

Women also tend to be given no role or only a marginal role during peace negotiations, and once the disarmament of combatants is implemented they often find themselves excluded or sidelined from these processes, although this trend may be slowly changing. This exclusion and marginalization has been acknowledged by women members of ANSAs coming from a range of different conflict situations.⁴⁷ The DDR framework remains a gendered process where the

focus is on disarming men.⁴⁸ Many female ex-members of ANSAs do not participate in or benefit from these programmes because they do not fit the classic ‘man with a gun’ profile and so are not identified as combatants. Paradoxically, one of the reasons female fighters choose not to disarm is precisely because they would be identified as former fighters. They are thus left with the alternatives either of remaining in the armed group or of self-demobilizing in the hope that, by quietly drifting back to their families or communities as other displaced people return to their communities, they will alleviate the risk of social stigma and community exclusion or retaliation. Unlike male combatants, they are often excluded from the new army and from new political structures and in many contexts are likely to be deprived of their land rights.

So despite potentially having gained some valuable skills during their time with the group through the variety of roles they may have performed, upon return they are likely to face economic hardship like other displaced civilian women.

Funeral of a Karen General at a KNLA camp just across the Moie River, Burma/Myanmar. © John Hulme (2001)



iii) Displaced people’s self-protection strategies

Even if the population feels resentment towards an ANSA which in their view bears some responsibility for their displacement or other abuses, or if they more generally do not adhere to the group’s motivations, in practice communities are likely to choose to avoid or engage with the group for pragmatic reasons of self-preservation and survival. They may attempt to remain neutral to the extent possible in their acts and use of language to avoid harm. A second option involves being ready to flee at short notice, and a third some form of accommodation with the group. These patterns of behaviour can be found in Uganda and in Colombia, for example.⁴⁹

In Burma/Myanmar, some people chose to accept relocation to government-controlled areas or opted to move to areas under the control of ethnic armed groups. This provided them with some protection from either the army or the armed groups, and in some cases enabled them to stay in or close to their villages. As the military presence or the capacity of the ANSAs became depleted, displaced villagers who might have been expecting the groups to ensure their

protection have also gradually been developing their own systems of individual or collective self-protection, such as ‘home guards’, independently of the ANSAs. Their degree of autonomy from ANSAs may however vary as home guards would often cooperate with the groups and call on their support, making local protection efforts not unproblematic solutions to the protection concerns of displaced civilian communities. For instance, while displaced villagers emphasized the utility of using landmines, they recognized the risk they create of people being killed or injured in planting, stepping on or removing the mines.⁵⁰

iv) An evolving or dynamic relationship

Factors intrinsic to the ANSAs and the displaced communities with whom they interact play a key role in shaping the relationship between these two constituencies. Yet these local relationships between ANSAs and the displaced are not static and will also be affected by macro-level dynamics, especially the larger evolution of the conflict and the related role and degree of involvement of other stakeholders (as will be seen in greater detail in Part III).

Some ANSAs formed and disappeared over short time periods (due to the rapid resolution of the conflict, or the death of their leader(s), for example) but many insurgencies have been in existence for decades. The reasons for this might be linked to the absence of a determining political or military outcome and the spread of ‘no peace no war’ situations where the ANSA is likely to go through phases of intense fighting, recuperation, and recruitment. Then variations in patterns of displacement and shaping or shifting of the relations between ANSAs and displaced communities also occur. As the conflict is prolonged increasing demands from and reliance on communities, combined with the heavy hardship faced by civilians in displacement contexts, can push the displaced to dissociate themselves from ANSAs. This is, however, not inevitable and some ANSAs have identified sources of income in addition to or as an alternative to the taxation of populations; this has for instance been the case for the FARC through drug-trafficking.

When links between displaced communities and ANSAs have been close and a complete or definitive separation is not sought, the displaced may opt for

a gradual or temporary process of distancing, as observed in the case of some Sahrawi refugees for whom a durable solution to their displacement is improbable as long as the political impasse remains. One manner for the Sahrawi refugees to seek some independence from the camp structure and the Polisario Front — as well as being a means to diversify livelihoods — has been the departure of refugee children to Spain for a few months and the longer-term migration of educated youth there, through the Spanish solidarity groups. In pursuit of some autonomy from the Polisario Front, some families have relocated to the fringes of the camps in Algeria or to the open desert of the eastern region of Western Sahara. The Polisario Front has, however, continuously asserted its ‘authority’ over this region and intends to establish a permanent settlement for the displaced in Tifariti identifying it as ‘SADR’s new capital’, thus reaffirming its intention to retain the displaced within their close control.⁵¹

The other factors that would prompt changes in the relations between ANSAs and displaced civilians relate more directly to the evolution of the conflict itself. Signs of approaching military defeat or on the contrary the likelihood of the conflict moving towards a political or military victory for the group, or some form of settlement with the other belligerent are especially likely to trigger changes in behaviour from the ANSA or the displaced population. In Sri Lanka through the 1980s-90s, the LTTE became a strong popular movement with high levels of voluntary recruitment recorded. As the resumption of the conflict became imminent in 2006-2007, after several relatively stable years of peace negotiations, violent scenes of forcible recruitment which flouted cultural practices engendered civilian mistrust and resentment towards the LTTE. A former humanitarian worker reported that “the increased presence of aid organizations gradually discharged both the State and the ANSA from social and humanitarian responsibilities that they would have had towards civilians”. The LTTE ultimately prevented civilians who were still with them at the stage of the final battle with the army from leaving, using them — unsuccessfully — as ‘human shields’. This former humanitarian worker described the final bloody battle as at best a “collective suicide” by the LTTE, and at worst a “mass sacrifice”.⁵²

PART II

Legal and normative framework

International law imposes obligations primarily on States. However, since the adoption of the Geneva Conventions of 1949 more and more legal obligations have been extended to ANSAs, and further normative improvements in the protection of civilians have also addressed their conduct, including in relation to displacement.

The first section of this part gives an overview of the international legal and normative framework related to displacement in situations where ANSAs operate, i.e. during armed conflict and otherwise. It looks at the extent to which each legal and normative regime imposes obligations on ANSAs and, where relevant, gives some insight into how the regimes provide for protection from displacement, the rights of the displaced, and their rights to or upon return. The second section assesses some of the gaps and challenges of the existing framework. It also identifies the emergence of new opportunities to strengthen ANSAs' compliance with their obligations.

1] Legal and normative framework for ANSAs' compliance: scope and limitations

a) International humanitarian law

International humanitarian law (IHL) creates obligations for both State and non-State parties to armed conflict. While the law of international armed conflict governs conflicts between States, the law of non-international armed conflicts (NIAC) governs situations in which ANSAs are in conflict with governments and/or other ANSAs.⁵³ A NIAC may take place exclusively on the territory of one state, or as many commentators now agree, may be transnational.⁵⁴ The main sources of the law of NIACs relevant to displacement and ANSAs are Common Article 3 to the Geneva Conventions, its Additional Protocol II (APII), and customary IHL.

In all cases the existence of an armed conflict is an objective determination which has generally been interpreted to require: i) a certain degree of organization of the ANSA and ii) protracted hostilities, "protracted" having been interpreted to also mean of a certain intensity. While the Geneva Conventions are universally ratified and customary IHL applies to all State and non-State parties to conflict, APII has not been ratified

by several States which are parties to non-international armed conflicts.

Prior to 1977, there was no specific reference to displacement in the law of NIAC. Common Article 3 to the Geneva Conventions of 1949, however, contains prohibitions providing fundamental protections to all persons not participating in conflict — including displaced persons who fit such criteria — from acts such as violence to life and person, torture and other ill treatment, hostage-taking, and summary punishment. It has also been noted that forced displacement could in fact amount to a violation of one of the expressed prohibitions of Common Article 3.⁵⁵

i) Explicit protection from displacement

IHL prohibits the parties to a NIAC from ordering the displacement of civilian populations unless the security of civilians is involved or imperative military reasons so demand (see Box 1). Interpretations of this prohibition have downplayed the significance of the requirement that displacement be ordered, suggesting that the term should be interpreted to include any deliberate action which results in forced displacement.⁵⁶ Voluntary movement of civilian populations, on the other hand, is not prohibited by IHL, although voluntariness in circumstances of armed conflict is often difficult to determine.

The exception for the security of civilian populations is self-evident in that it would be inconsistent with the purpose of IHL if its rules resulted in greater suffering for civilians. It goes without saying that this exception, like all of IHL, must be implemented in good faith.⁵⁷

The exception for imperative military reasons is potentially more problematic. Generally, a balance between IHL and military necessity is already built into IHL, leaving no room to justify contrary conduct. This difficult balancing act recognizes that if the rules of IHL put too many limitations on the ability of warring parties to conduct warfare they will not be respected. In a few specific instances — such as forced displacement — IHL allows for additional considerations of imperative military necessity. The parameters of imperative military necessity are somewhat elusive: the exception should only occur in minimal circumstances, the determination should be "meticulous" and

civilians may not be forcibly displaced for political reasons. One example put forward as a legitimate exception is clearing a combat zone for essential military operations. Other examples and conditions may be derived by analogy to rules governing displacement under the law of international armed conflict as well as other areas of IHL where imperative military necessity exceptions are expressly permitted. An example is to prevent the presence of civilians from blocking lines of communication and disorganizing transport, while conditions put forward include: where no feasible alternative exists to gain the same military advantage; harm must not be excessive to the military advantage; displacement must be temporary; the decision must be taken by a commander of a certain rank; and advance warning should be given where circumstances permit.

The protection of civilian populations from being compelled by ANSAs to leave their own country for reasons related to the conflict is not clearly established under customary international law. In conflicts governed by APII, civilians are protected from forced deportation without exception. However, Rule 129 in the ICRC study on Customary IHL (the ICRC Customary Study) does not differentiate between forced displacement and deportation.⁵⁸ Therefore, it seems that, at least in the ICRC interpretation, the two exceptions discussed above remain as legitimate grounds for deportation in NIACs not governed by APII.

ii) Protection and treatment of displaced persons

IHL mandates that all feasible measures must be taken to ensure that displaced populations are treated under satisfactory conditions of shelter, hygiene, health, safety, and nutrition. The ICRC Customary Study adds the obligation that members of the same family not be separated, and indicates that the needs of particularly vulnerable persons must be taken into account.⁵⁹ The reference to feasible measures may indicate that *de facto* ANSAs are likely to be held to a lower standard than States as they are likely to have less means and capacity. In addition, IDPs who do not take part in hostilities are granted the same protection as all civilians under IHL. For example, they are afforded fundamental guarantees and are protected from attack. The law of NIAC does not extend protection to persons who are displaced across borders unless the conflict is also taking place in such areas.

iii) Return of displaced persons

The ICRC Customary Study finds that displaced persons have a right to voluntarily return in safety as soon as the reason for displacement ceases to exist. While APII is silent on the issue, an implied right to return under conventional law has been suggested.⁶⁰ This right implies the obligation for ANSAs to at the least not obstruct, and possibly to actively facilitate, the return process. Suggested facilitation measures include mine clearance, provision of basic needs, agricultural equipment, rehabilitation of schools, skills training, etc. Facilitation, as with treatment above, would also depend on the means and capacity of the ANSA, particularly where facilitation is interpreted as provision of services normally provided by State authorities.⁶¹ In the event of unlawful displacement, ensuring return would be part of the remedial process necessary to bring an end to the violation.

b) Human rights framework

Human rights law (HRL) covers a comprehensive set of rights of persons irrespective of whether they are displaced or not.⁶² Further substantive elements of human rights relevant to displacement are addressed in the displacement law and norms sub-section below too. HRL has been built on the general premise that States are the custodians of individual human rights. Human rights bodies have at times highlighted that only States have human rights obligations; non-compliance by ANSAs is often referred to as "abuses" while similar actions by States would be qualified as "violations". This interpretation has been increasingly challenged by legal commentators who argue that it is ineffective simply to rely on a State's duty to protect human rights from the actions of non-State actors, and that ANSAs also have human rights obligations, particularly when they control territory.

This approach has at times been followed by the UN Security Council (UNSC) and other UN bodies and Special Rapporteurs who have been explicitly calling upon ANSAs to respect human rights. For instance, the combined report of nine Special Rapporteurs and Representatives on the situation in Gaza concluded with respect to Hamas that: "non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the

individuals under their control”.⁶³ However others express concern that imposing international HRL obligations on ANSAs will detract from States’ obligations to respect, protect, and provide for human rights. Human Rights Watch (HRW) offered a compromise between these two opposing views in the context of Western Sahara by arguing that while “Algeria remains ultimately responsible...the Polisario [Front] needs to be accountable for how it treats the people under its administration”.⁶⁴

c) International criminal law

International criminal law (ICL) — unlike most of the other legal regimes discussed — addresses the responsibility of the individual rather than that of the entity (i.e. State or ANSAs). That said, individual members of ANSAs are subject to criminal liability for war crimes, crimes against humanity, and genocide. Crimes are established through conventional and customary law, but a court must have jurisdiction over both the crimes and the individual in order to carry out proceedings. International crimes (arguably of both State and ANSAs in situations of armed conflict) can be tried in domestic courts, through *ad hoc* international or quasi-international tribunals, or through the International Criminal Court (ICC).

Under the Rome Statute of the ICC, forced displacement may amount to a crime against humanity or a war crime (see Box 1). Crimes against humanity may take place in the context of armed conflict or outside it, but in all cases must be part of a widespread or systematic attack on a civilian population.⁶⁵ Perpetrators throughout the chain of command may be criminally liable. While there is no specific international criminal provision addressing the treatment of forcibly displaced persons, general provisions regarding treatment of civilians or persons no longer participating in hostilities do apply. Preventing return is not a crime *per se*.

The war crime of forced displacement differs from the IHL provision in that the security and necessity exceptions apply both to internal displacement and deportations. It is unclear as to what extent the crime against humanity maintains the distinction.

d) Displacement law and norms (refugees and IDPs)

The refugee regime is inherently based on a state-centric model wherein international conventional mechanisms create no obligations on ANSAs. There is no clear consensus whether the principle of *non-refoulement* — which precludes the transfer of persons by one State to another if they face a risk of violations of certain fundamental rights there — is also applicable to ANSAs. Some lawyers take the view that *non-refoulement* is limited to States as made explicit in Article 33 (1) of the 1951 Refugee Convention.⁶⁶ Others extend the protection of refugees from forced repatriation to their country of origin to ANSAs and call for the principle to be binding upon all parties to the conflict.⁶⁷ No such provision seems to apply internally where an ANSA controls territory, in terms of an obligation not to send back a person to territory controlled by another ANSA or the State; thus internally displaced people are not protected from forced return.⁶⁸

Under the 1951 Convention, grounds for refugee status are limited to a person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”.⁶⁹ The flight from conflict *per se* is therefore not a recognized ground. In Africa and in Central America there is an enlarged refugee definition which would encompass flight caused by conflict or generalized violence.⁷⁰ In 1995, “acknowledging the fact that serious violations of human rights and threats to life, liberty and security of person that constitute persecution are not perpetrated solely by agents of the State or with the State’s complicity”, UNHCR adopted a position paper on the ‘agent of persecution’ which includes ANSAs.⁷¹ In refugee law, the essential element is the absence of national protection rather than the source of persecution or the type of persecutor.

The issue of who may provide protection, and in particular whether refugees can be expected to avail themselves of the protection of a non-State entity, raises controversy. Under refugee law, there is a clear expectation that protection must be primarily provided by the State and its organs. There are however

situations where a non-State entity takes on the responsibilities of the State in all or in part of the State’s territory. In such situations, UNHCR has been reluctant to accept non-State entities as protectors but has not categorically ruled out that possibility, calling for the careful examination of the durability of the situation and the ability of the controlling entity to provide protection and stability.⁷²

For the internal displacement regime, there are no international conventions on IDPs. *The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (the Kampala Convention) is a unique treaty in the way it addresses ANSAs. Armed groups are defined distinctly as “dissident armed forces or other organized armed groups that are distinct from the armed forces of the state”, while non-State actors are defined as “other private actors whose acts cannot be attributed to the State”.⁷³ However its wording seems ambivalent in terms of whether it creates direct obligations on ANSAs, although the primary responsibility for providing protection and humanitarian assistance rests with States Parties.

The 1998 UN *Guiding Principles on Internal Displacement* (GPID) are not legally binding but rather both purport to restate existing norms and seek to clarify grey areas and fill in the gaps. Authority of the GPID is further enhanced through recognition in the World Summit, the UN General Assembly and the Inter-Agency Standing Committee (IASC). The GPID constitute a milestone in normative development as they “identify the rights and guarantees relevant to the protection of IDPs in all phases of displacement to be observed by all authorities, groups, and persons irrespective of their legal status.”⁷⁴ As with the Kampala Convention, the primary responsibility to provide protection and humanitarian assistance to IDPs rests with national authorities and IDPs have the right to request and receive protection and humanitarian assistance only from national authorities, i.e. that right does not extend to protection and assistance from ANSAs.

i) Explicit protection from displacement

Both the Kampala Convention (in its reference to members of armed groups) and the GPID prohibit arbitrary displacement. The notion of arbitrariness is not defined as such, but prohibited categories of

displacement are enumerated and go beyond the exceptions of forced displacement under IHL, including by covering situations of displacement caused by violence which may not amount to an armed conflict.⁷⁵ The enumerated categories have common provisions but each also contains distinct prohibitions. The Kampala Convention explicitly prohibits displacement caused by generalized violence and violations of human rights, while the GPID prohibit displacement caused by large scale development projects. The GPID also require that authorities explore all feasible alternatives to displacement. The IHL exceptions for displacement for the security of civilians and imperative military reasons are mentioned in both documents but are only listed under the ‘Obligations of States Parties relating to Protection from Internal Displacement’ in the Kampala Convention.⁷⁶ In the GPID, only the State has a particular obligation to protect against displacement of persons with special dependency on or attachment to their land.⁷⁷

ii) Protection and treatment of displaced persons

The Kampala Convention does not explicitly create positive obligations applicable to ANSAs. It only lists actions that ANSAs are prohibited from doing. The GPID take a different approach, in some circumstances at least. For example, “the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level.”⁷⁸ In both instruments, displaced children must not be recruited, required, or permitted to take part in hostilities under any circumstances.⁷⁹ Sexual violence perpetrated by ANSAs or their members is addressed more comprehensively in the GPID, as the Kampala Convention only prohibits sexual slavery and trafficking but not sexual violence in general.⁸⁰ On the other hand, the Kampala Convention does prohibit members of armed groups from infiltrating places where IDPs are sheltered. The GPID state that IDPs shall particularly be protected from the use of anti-personnel landmines. This standard goes beyond the IHL obligations of ANSAs. While the GPID mention the prevention of arbitrary arrest or detention, the Kampala Convention only has a reference to arbitrary detention which is limited to States. Furthermore the Kampala Convention, unlike the GPID, makes no reference to

internment or confinement of IDPs in camps.⁸¹ Both the GPID and the Kampala Convention address the question of documentation and identity documents, something which is absent from IHL treaty law and only marginally explicitly addressed in human rights instruments.⁸² While the GPID mention that the “authorities concerned” shall issue such documents, thus not excluding that these may be provided by ANSAs, the Kampala Convention clearly identifies this as an obligation for States Parties.⁸³

iii) Right to return

The Kampala Convention creates obligations relating to sustainable return, local integration, relocation, and the provision of effective remedies only for States.⁸⁴ It does however prohibit members of armed groups from restricting the movement of IDPs, which could be construed as a prohibition on impeding return.⁸⁵ Under the GPID, displacement shall last no longer than the circumstances require. IDPs are also protected from being forcibly returned if their life, safety, liberty, or health would be at risk. Positive obligations relating to return are restricted to “competent” authorities while access for humanitarian actors vis-à-vis return shall be granted by “all authorities concerned”.⁸⁶ Neither the GPID nor its commentary provide any clarity on the distinction between these terms. The existing framework does not address whether ANSAs who control territory have an obligation to refrain from sending back a person to territory controlled by another ANSA or the State.⁸⁷

The 2005 UN *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (known as the Pinheiro Principles), which articulate the right of refugees and displaced persons to repossess property lost as the result of armed conflict, adopt a more state-centric approach and make no direct reference to the role and obligations of ANSAs.⁸⁸

e) Protection of civilians

Since 1999 the UN Secretary-General (UNSG) has prepared regular reports with recommendations for how the UNSC could improve the physical and legal protection of civilians in situations of armed conflict. The UNSG’s 2009 report highlighted the direct correlation between ANSAs and the protection of civilians, “urging for the development of a comprehensive

approach towards improving compliance by all these groups with the law, encompassing actions that range from engagement to enforcement”.⁸⁹ All three subsequent reports (2010, 2011 and 2012) have included provisions applicable to “enhancing compliance by non-State armed groups” as one of five core challenges, citing the need for consistent engagement with ANSAs to seek improved compliance with international humanitarian and human rights law. The reports highlight the impact the lack of compliance by ANSAs has in terms of causing displacement, increasing its scale, and preventing assistance from reaching IDPs. In the 2012 report the UNSG emphasized that displacement should not be “accepted too readily as an inevitable consequence of conflict”, that “short of preventing conflict, more must be done to prevent the circumstances that lead to displacement”, and that “parties to conflict must refrain from the use of forced displacement as a deliberate tactic”.⁹⁰ There is not, however, a widespread emphasis on displacement.

f) ANSAs’ humanitarian commitments

While greater attention (and recognition) is now given to the commitments made by the ANSAs themselves, no consensus has yet been reached over whether this creates legally binding obligations for them. Commitments can be unilateral; they can be part of peace agreements between one or more ANSAs and the government, or be part of agreements with States or with humanitarian organizations. Common Article 3(4) provides that “[t]he Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention”.

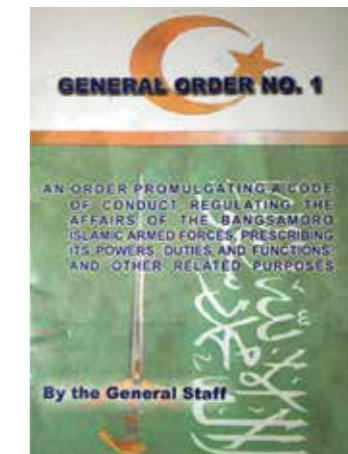
A review of 44 commitments made by ANSAs related to displacement conducted as part of this study shows that the bulk of these commitments are included in agreements concluded between ANSAs and States.⁹¹ A second common feature is that reference is made to both IDPs and refugees, at times referring to the precise definitions of each term, at other times without an explicit distinction between the two categories and using the more generic term “displaced people”, or terms specific to the context like “uprooted populations” (Guatemala) and “dispersed persons” (Burundi).⁹² While the different phases of displacement tend to be mentioned, there is limited reference to the prohibition of

forcible displacement itself and there are only a few references to the need to respect and protect the rights of the displaced, their freedom of movement and the provision of humanitarian assistance. For instance, as part of the 2004 N’Djamena Humanitarian Ceasefire Agreement between the Government of the Republic of Sudan, the Justice and Equality Movement (JEM) and the Sudan Liberation Movement/Army (SLM/SLA), “[t]he parties undertake to facilitate the delivery of humanitarian assistance and the creation of conditions favourable to supplying emergency relief to the displaced persons and other civilian victims”.⁹³

The bulk of the commitments are concerned with issues of return and reintegration. These are often focused on the need to restore the socio-political and economic links between the displaced and their area of origin, including through the provision of identity cards, the restitution and rehabilitation of land and property rights, and other compensation mechanisms for the losses suffered. For example, in the 2006 agreement between the Communist Party of Nepal (Maoist) (CPN (M)) and the Nepalese government, “both sides express commitment to allow without any political prejudice the people displaced during the armed conflict to return voluntarily to their respective places of ancestral or former residence, to reconstruct the infrastructure destroyed as a result of the conflict and to honourably rehabilitate and reintegrate the displaced people into the society ... and express their commitments to respect the right of individuals and families displaced during the conflict to return to their original places of residence or to settle in any other places of their choice”.⁹⁴

A smaller number of unilateral declarations by ANSAs as well as their internal rules and regulations express their intention to comply with the existing legal and normative framework related to displacement. An example is the statement of the JEM and Sudan Liberation Movement-Unity (SLM-Unity)⁹⁵ which reaffirmed in 2008 their commitment to “refrain from ... forcibly displacing civilian populations. ...and to curtail the militarization of IDP/ refugee camps”.⁹⁶ In 1998 the LTTE made a commitment in relation to return, that “the movement of displaced populations who wanted to return to areas now under government control would not be impeded”.⁹⁷ They did not, how-

ever, abide by this commitment in the final stages of the conflict. In a 2010 standing order, the MILF stated that “[i]nternally displaced persons shall be protected against discriminatory practices of recruitment into the [Bangsamoro Islamic Armed Forces] BIAF or other groups as a result of their displacement”.⁹⁸ The prevention of military recruitment of IDPs in such an internal regulation goes beyond legal or normative standards.



General Order 1 of the MILF, Philippines.
@ Geneva Call

Box 1: Legal and normative provisions addressing ANSAs

1] INTERNATIONAL HUMANITARIAN LAW

• **Additional Protocol II to the Geneva Conventions (1977)¹**

Article 17 — Prohibition of forced movement of civilians

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should 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.
2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

• **Customary international humanitarian law²**

Rule 129

Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians or imperative military reasons so demand.

Rule 131

In case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.

Rule 132

Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.

Rule 133

The property rights of displaced persons must be respected.

2] INTERNATIONAL CRIMINAL LAW

• **International Criminal Court Rome Statute³**

War Crime: Article 8(2) (e)(viii)

Ordering the displacement of the civilian population for reasons related to the armed conflict, unless the security of the civilians involved or imperative military reasons so demand' constitutes a war crime in non-international armed conflicts.

Crime Against Humanity: Article 7(1)(d)&(2)(d)

The following constitutes a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

Deportation or forcible transfer of population — meaning forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.

3] INTERNAL DISPLACEMENT LAWS AND NORMS

• **The Kampala Convention (2009)⁴**

Article 7 — Protection and Assistance to Internally Displaced Persons in Situations of Armed Conflict

1. The provisions of this Article shall not, in any way whatsoever, be construed as affording legal status or legitimizing or recognizing armed groups and are without prejudice to the individual criminal responsibility of the members of such groups under domestic or international criminal law.
2. Nothing in this Convention shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.
3. The protection and assistance to internally displaced persons under this Article shall be governed by international law and in particular international humanitarian law.
4. Members of Armed groups shall be held criminally responsible for their acts which violate the rights of internally displaced persons under international law and national law.
5. Members of armed groups shall be prohibited from:
 - a. Carrying out arbitrary displacement;
 - b. Hampering the provision of protection and assistance to internally displaced persons under any circumstances;
 - c. Denying internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter; and separating members of the same family;
 - d. Restricting the freedom of movement of internally displaced persons within and outside their areas of residence;
 - e. Recruiting children or requiring or permitting them to take part in hostilities under any circumstances;
 - f. Forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children;
 - g. Impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons
 - h. Attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons and shall not destroy, confiscate or divert such materials; and
 - i. Violating the civilian and humanitarian character of the places where internally displaced persons are sheltered and shall not infiltrate such violations.

• **The Guiding Principles on Internal Displacement (1998)⁵**

The entire GPID is to be observed by "all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction"(Principle 2.1). The principles of the GPID generally refer to the 'authorities concerned', the 'competent' or the 'responsible authorities' except for the following, which qualify specific authorities addressed: 'National authorities' (Principles 3 and 25.1); 'States' (Principle 9); 'State authority empowered by law' (Principle 7.3 (a)); 'Legal authorities' (Principle 7.3 (e)); 'Appropriate judicial authorities' (Principle 7.3 (f)); 'Competent authorities' (Principles 18.2, 28 and 29.2).

¹ <www.icrc.org/ihl/INTRO/475?OpenDocument>.

² Henckaerts, Jean-Marie and Doswald-Beck Louise. 2005. Customary International Humanitarian Law, ICRC and Cambridge University Press

<www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>.

³ The Rome Statute can be downloaded at <www.icc-cpi.int/nr/rdonlyres/ea9a6ff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf>.

⁴ Only open to signature by African Union member States. The full text of the Convention can be downloaded at <[www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/0541BB5F1E5A133BC12576B900547976/\\$file/Convention\(En\).pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/0541BB5F1E5A133BC12576B900547976/$file/Convention(En).pdf)>.

⁵ <www.idpguidingprinciples.org/>.

PART II
Legal and normative framework

Box 2: Scenarios of displacement and legal pathways

These scenarios are based on several legal and normative frameworks: IHL, ICL, HRL, and internal displacement laws and norms. They provide a visual summary of the legal pathway and displacement trajectory:

1. Displacement;
2. Treatment;
3. Return.

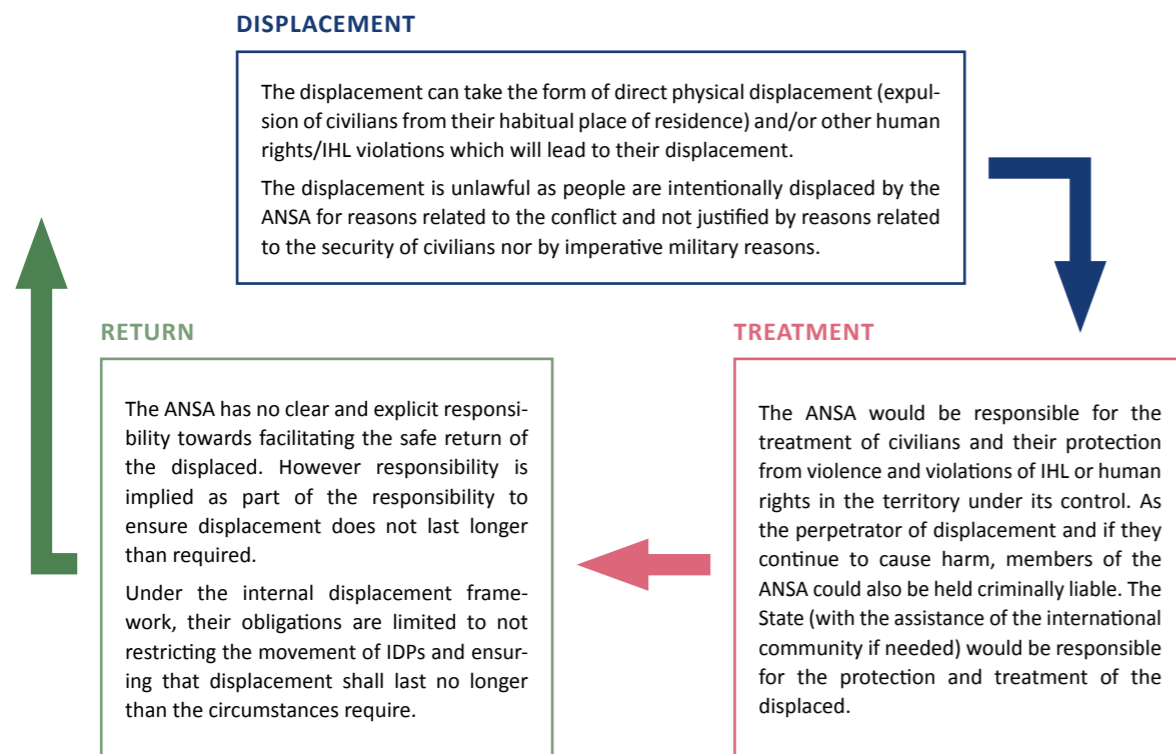
These scenarios do not necessarily solve inherent dilemmas:

- The difficulty of interpreting the prohibition to displace ‘for reasons related to the conflict’ with its two exceptions whereby displacement is lawful and justified by reasons “related to the security of civilians or because the imperative military reasons so demand”.
- In some instances the difficulty of ascertaining who or what triggers displacement and of determining when the agency of the displaced comes into play.

Scenario 1: Intended unlawful displacement

TRAJECTORY

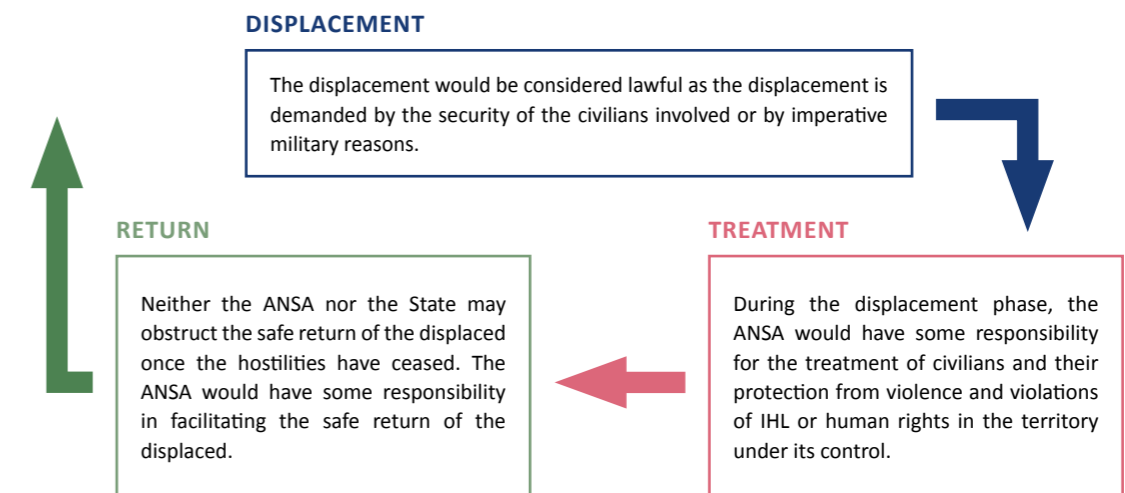
Scenario of mass displacement with the bulk of the population moving away from the area where the ANSA operates.



Scenario 2: Intended lawful displacement

TRAJECTORY

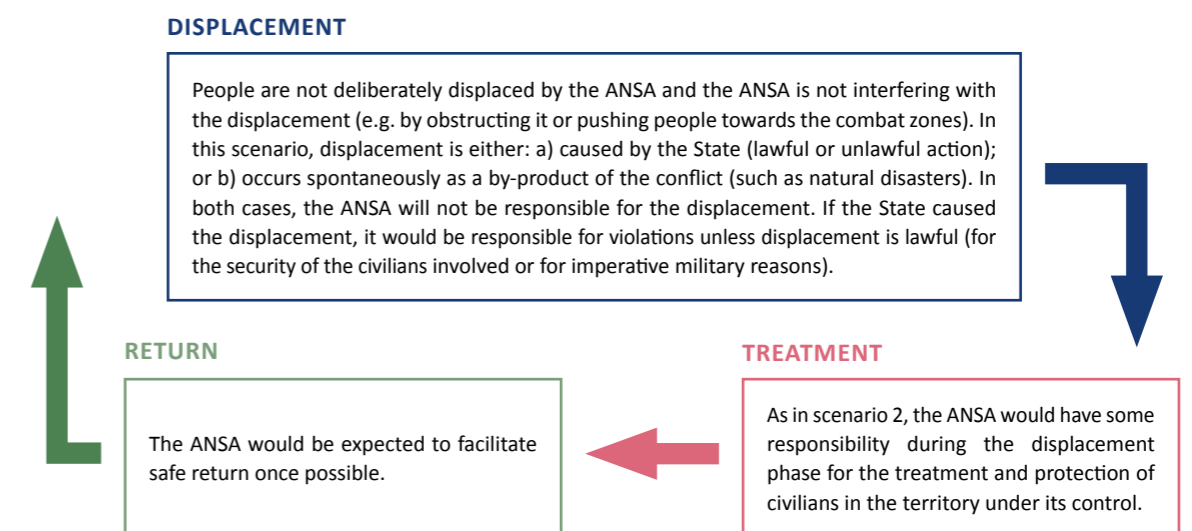
The population displaced is likely to remain in areas under the general control of the ANSA (especially if the State’s violence is the cause of violations and displacement). Some people may spontaneously move to State-controlled areas (if fighting is less intense and assuming they won’t be persecuted by the State) or to another State.



Scenario 3 (a & b): Unintended lawful displacement

TRAJECTORY

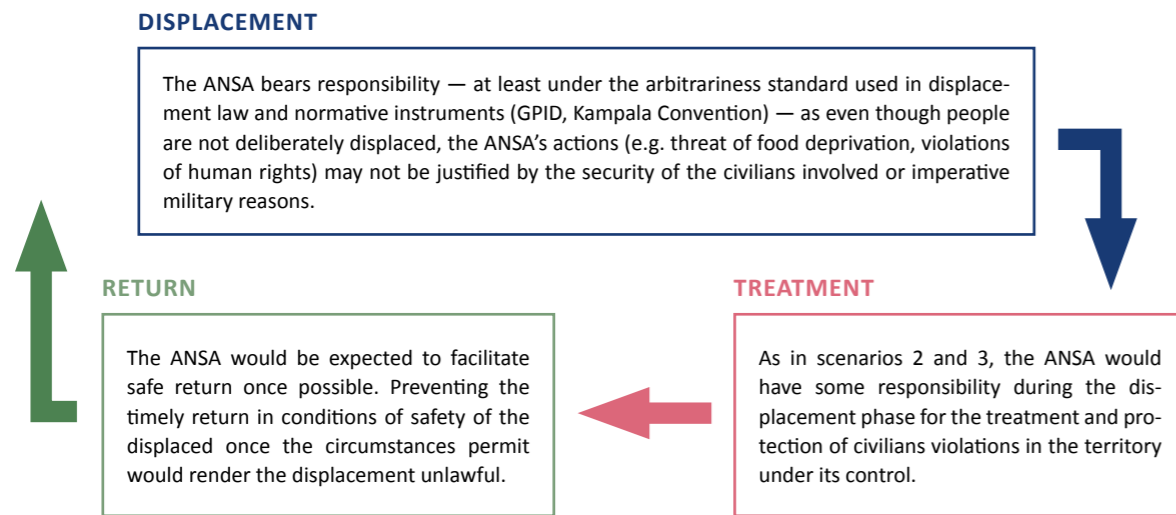
The trajectory of displacement will depend on the circumstances and on the capacity of civilians to move. For State-triggered displacement, people might be pushed to areas under the control of the ANSA unless the State’s policy is to move people to areas under their control. Other people may flee to another State.



Scenario 4: Unintended unlawful displacement

TRAJECTORY

The trajectory of the population may initially be similar to scenario 3 as the possibility of greater cross-border displacement as displacement becomes protracted.



2] Challenges and opportunities to strengthen ANSAs' compliance

The legal and normative framework on displacement is both complex and still evolving. The development of new laws and norms provides greater clarity in relation to ANSAs. However some gaps and inconsistencies persist. And the potential to enhance the protection of the displaced in practice will only materialize by grasping the impact these laws and norms have on ANSAs' own understanding of their obligations.

a) Legal and normative challenges

i) Gaps in coverage

There are some gaps in each of the legal regimes above in respect of their applicability to ANSAs in displacement contexts. First and foremost, the obligations of ANSAs are only partially addressed. Second, IHL does not cover all circumstances of displacement even though displacement is likely to be significant, recurrent, and persistent in situations of internal disturbance or post-conflict. Third, apart from

in IHL, the positive obligations of ANSAs in particular are less robust than those of States.

ICRC has identified specific gaps in IHL that should be addressed through the development of law if adequate protection for IDPs is to be achieved. ICRC highlights that "[i]nternational humanitarian law does not contain a general right to "freedom of movement" as the prohibition on forced displacement set down in Article 17 of Protocol II additional to the Geneva Conventions concentrates on the right *not to be compelled* without justification to leave one's place of residence or one's country. It does not contain a right to leave one's place of residence or to move to another part of the country, and yet that right is essential to allow people to flee combat zones. Furthermore, there are no provisions guaranteeing the right to freely enter and leave camps or other restricted areas." ICRC also points out that "there is no mention of a positive duty on the part of the parties to conflict to take all feasible measures to facilitate voluntary, dignified and safe return. Depending on the circumstances and the capacities of the parties to the conflict, such measures

could include mine-clearance, restoration of essential services, aid to meet urgent needs (shelter, food, water, medical care), the provision of construction tools, household items, farm implements and seeds, the repair of schools, health care facilities and markets, occupational training programmes and allowing visits prior to return." Although some of these gaps have been filled by the GPID, the ICRC notes their 'non-binding' nature.⁹⁹

Refugee law does not impose direct obligations on ANSAs. Furthermore, on the territory of a (supposedly non-belligerent) country of asylum, ANSAs are assumed not to control any part of the population and, if they act in contravention of refugee or human rights law standards, it is the host State that is accountable. This assumption does not reflect situations that can be found on the ground; there is therefore a gap in refugee law not addressing this. Another gap which remains unaddressed relates to the lack of consensus on whether the principle of *non-refoulement* also applies to ANSAs.

ii) Lack of clarity and consistency

It is difficult for lawyers — let alone ANSAs — to navigate their way through the international legal and normative framework. The GPID have been a significant improvement in terms of providing a consolidated set of guidance based on existing standards, but ambiguity remains in terms of the qualification of "authorities" for certain obligations. Normative IHR bodies especially have been inconsistent in their characterization of the realm of actions by ANSAs, creating a grey area in the definition of the nature of the violations and the level of obligations of ANSAs. Analysis of UNSC Resolutions also highlights discrepancies in their coverage of displacement and protection of civilians. There is, for example, little reference to these issues in UNSC Resolutions on Somalia despite large scale displacement both inside and outside the country, while Colombia and Turkey that both have massive conflict displacement have not even been on the UNSC's agenda.¹⁰⁰ Furthermore, its resolutions have made hardly any reference to the GPID or to the Kampala Convention.

Those who challenge the dominant conceptualization of human rights as still falling exclusively under the

remit of States usually do so on the following grounds: i) it ignores the reality of failing or failed states which effectively do not control portions of their territory, and States that are unable and/or unwilling to protect their citizens and refugees; ii) it leaves abuses by ANSAs largely unaddressed because of the limited capacity of national jurisdictions, the risk of bias in them, and the limited scope of IHL and ICL; and iii) it does not take into account that some armed groups have the capacity to provide some protection to civilians and ensure that their human rights are respected.¹⁰¹

iii) Lack of efficacy

The militarization of sites of displacement and the targeting of these sites through military means present ongoing acute challenges. The civilian and humanitarian character of displacement sites may be blurred by the presence of persons who periodically participate in hostilities. Under IHL, IDP camps are protected as civilian objects so long as they are not used for military purposes, and persons are protected during times in which they do not participate in hostilities — such as when present in a displacement camp. However there is a growing consensus that those who fight regularly will be deemed to have a continuous combat function, lose their right to be treated as non-combatants, and may be targeted at any time.¹⁰² The infiltration of displacement camps or their use as temporary sanctuaries may in fact bring the fighting to displacement camps, despite the obligations on parties to the conflict to take feasible measures to avoid locating military objectives (i.e. fighters) in densely populated areas such as displacement camps.¹⁰³ Under refugee law, civilians in a host country who have been displaced from a locality controlled by ANSAs should never take a direct part in hostilities; if they do, they lose their civilian status and are to be considered as combatants.¹⁰⁴ This strict interpretation contrasts with the lack of normative clarity over the civilian character of camps in internal conflicts. ICRC has highlighted the need to "set out more specific rules or standards to safeguard the civilian character of IDP camps".¹⁰⁵

As far as the criminalization of displacement is concerned, while in principle the ICL framework has the potential to address impunity for the crime of

displacement perpetrated by ANSAs, “many international courts and domestic legal systems have concentrated only on the violations ... that prompt displacement, instead of also addressing the abuse of forced migration itself”, even when it is clear that “displacement is integral to the conduct of a conflict”.¹⁰⁶ Indeed, while a number of individuals — leaders or members of ANSAs — have been charged for crimes against displaced civilians, to date no-one has yet been convicted for the crime of displacement *per se* by the ICC or by a Special Court or by national jurisdictions. The ICC has, however, confirmed charges against two prominent Kenyan politicians and one journalist for the crime of deportation or forcible transfer of population under the Rome Statute.¹⁰⁷ Colombia, which incorporated the crime of forced displacement into domestic legislation in 2000, has a poor record of convictions overall and those convicted have to date only been members of paramilitary groups. With thousands of investigations for the crime of collective forced displacement of communities in progress, however, members of ANSAs are likely to be prosecuted there in the future.¹⁰⁸

Although the agenda for criminal accountability is now stronger and international judicial institutions are beginning to hold some of the perpetrators of crimes — including ANSAs — to account, there is as yet no clear evidence that they have so far prevented the commission of crimes. Human rights and humanitarian actors have mixed views when it comes to assessing whether the threat of prosecution has the potential to deter displacement and other abuses from occurring. For instance in the case of Uganda some have argued that the ICC warrants against LRA commanders in 2005 contributed to bringing the LRA to the negotiating table and helped push along the peace negotiations. Others hold the opposite opinion, that the LRA retaliated against civilians following the indictment, and claim that the threat of prosecution was an obstacle to the eventual signing of a peace agreement. This punitive approach only concerns very few countries and individuals and does not provide civilians with guarantees of protection from retaliatory actions. While research on the deterrent effect of the ICC is emerging,¹⁰⁹ the global deterrence effect remains to be seen; it is unlikely to have much impact in the short- to medium-term.

b) Opportunities

i) Increased attention of norms to ANSAs

The development of norms which also address ANSAs and the simultaneous reference to the different bodies of law applicable to all parties to conflict is a positive development which confirms the objective of putting the protection of civilians at the forefront of the international agenda. In UNSC Resolution 1894, marking the tenth anniversary of the consideration by the UNSC of the protection of civilians as a thematic issue, the Council proposed a distinction between “respect for human rights” for which “States bear the primary responsibility” and the “protection of civilians” for which “parties to armed conflict bear the primary responsibility”.¹¹⁰ This language — which has been repeated in other UNSC thematic resolutions such as Resolution 2106 on sexual violence in armed conflict — is significant in that the UNSC recognizes ANSAs as having obligations to protect, although the extent to which this may extend beyond IHL is unclear. It is worth recalling that notwithstanding “the extension of human rights obligations to actors other than the territorial State does not necessarily displace or dilute the State’s responsibility under human rights law. The responsibility of different actors for violations of human rights law is not mutually exclusive but can be complementary”.¹¹¹

ii) Greater accountability through monitoring of ANSAs’ commitments

Irrespective of the legal worth attributed to commitments made by ANSAs, their systematic compilation (when these exist in a written form) and their subsequent analysis can provide a basis for monitoring compliance and holding ANSAs accountable. Especially relevant is to assess whether ANSAs’ policies fall short of or exceed IHL or other normative standards on displacement. The adoption of policies going beyond IHL and other normative standards could represent an opportunity to encourage ANSAs to adopt progressive protection policies that could in turn contribute to improving the normative framework.

In that regard the Kampala Convention may offer an opportunity: Article 3(2) (e) requests States (although not explicitly ANSAs) to “endeavour to incorporate the relevant principles contained in this Convention

into peace negotiations and agreements for the purpose of finding sustainable solutions to the problem of internal displacement”. By extension, this provision would also be relevant to ANSAs who are parties to these agreements and would not preclude them taking the initiative for including such provisions in agreements.

Training organized by Geneva Call with the MILF on the Deed of Commitment banning anti-personnel mines.
© Geneva Call (2012)



In conclusion, the reference to such commitments in the 2009 UNSG’s report on the protection of civilians and their recent documentation by UN bodies seem to move in the direction of giving some formal if not legal recognition to ANSAs’ commitments. Furthermore, while it does not change the legal status of ANSAs, it does allow them to be potential protectors and increases their accountability towards civilians, including displaced people.

PART III

Engagement with ANSAs in displacement contexts: operational and policy implications

The relations between ANSAs and displaced populations are influenced by the dynamics of the political and humanitarian context that ANSAs operate within. Mainstream analysis focuses on the impact of the presence and actions of ANSAs on civilians and humanitarian actors and there are fewer insights on the actual or potential influence other key stakeholders have over ANSAs and on their actions.

The first section describes the main actors that can interact with both ANSAs and displaced people and the level and nature of these interactions. The second section then assesses and discusses the challenges and opportunities for engagement with ANSAs.

1] The interface with ANSAs in displacement environments

Both ANSAs and displaced people have interactions with a wide variety of local and international actors.

a) Concerned and host States

Of all the stakeholders, concerned and host States are likely to be the ones with the greatest potential influence over the relationships between ANSAs and displaced communities. However, scope for positive influence is limited or non-existent if state policies are characterized by hostility towards the ANSAs and the displaced, especially if the latter are perceived as supporting the insurgency. This is particularly true for internal displacement as, if States themselves are violating civilians' rights, they are most unlikely to have the will (or the credibility) to ensure that ANSAs respect their obligations under international law.

But States can also be seen to protect displaced civilians by designing strategies that address the causes of displacement or remedy its impact in line with their human rights and IHL obligations. The process of peace negotiation is often conducive for parties to address displacement issues, although whether this materializes in practice is dependent on the trajectory of the negotiations and whether peace accords are implemented. For instance, the term 'internal displacement' was used in Sri Lanka in 1990, before it became internationally recognized, when the government formally asked UNHCR to provide assistance to IDPs on both sides of the conflict.¹¹² The attitude of

the government had, however, drastically changed by 2006 when the conflict flared up again: international organizations lost the liberty to engage with the LTTE on the protection of the displaced and the government exerted control over access to the displaced population and over the type of activities humanitarians were allowed to undertake. Towards the end of the conflict, the government treated most civilians who had been living in the LTTE-controlled areas as LTTE members in disguise or collaborators.

In refugee contexts, the relationship between host States and ANSAs can be more ambivalent and closely linked to the bilateral relations between the country of origin of the refugees and the country of refuge. In many conflicts, ANSAs move to another country, thus finding a form of sanctuary (like civilians) from state violence against them. Such a safe haven becomes politically sensitive for the host States if attacks are launched from their territory on the State of origin. A number of host States have allowed ANSAs to be on their territory and may have sympathized (even if not publicly) with the political cause of the ANSAs. Some States have been adroit in allowing in the displaced and representatives of the ANSAs while preserving the relationship with the State of origin. An illustration is the attitude of the Thai government which let both Burmese civilians displaced and ANSAs' representatives into Thailand. Thailand, however, has not ratified the 1951 Refugee Convention and is therefore not granting refugee status to the displaced, thus not explicitly recognizing the persecution of civilians by the Burmese State and military. Furthermore, the policy of tolerance applied by the Thai government towards both the displaced and the ANSAs in the early days has been gradually eroded in order to preserve the relationship with Burma/Myanmar and allow for the development of bilateral economic ties.

The relations between the Palestine refugees and Lebanon have to a large extent been framed by the role of ANSAs in the context of regional political dynamics with the Palestine-Israel conflict at its core. From 1948 to 1958 State authorities and Lebanese population welcomed Palestinians with whom 'pre-exile' economic and social ties existed. The next decade, 1958-1969, was marked by the establishment of official camps and exclusionary official social, political and

economic policies towards Palestinians; these policies aimed to control the refugee camps and the activities of the ANSAs. However the army's attempts to control the Palestinian movement in the country met internal and external pressures, leading the Lebanese authorities to in effect accept the Palestine Liberation Organization (PLO) establishing autonomous or self-governing institutions in the camps and urban areas populated by the Palestinians.¹¹³ With the departure of the PLO from Lebanon after the Israeli invasion in 1982, many of the Palestinians trapped in camps became vulnerable to the violence of militiamen and the so-called 'war of the camps' led to the destruction of several Palestinian camps.¹¹⁴

Other States have more explicitly adopted partisan views towards ANSAs. The Algerian government has gone beyond what is expected of host States by letting the Polisario Front 'govern' its refugee populations on its soil and by recognizing the protective responsibility of the ANSA towards the displaced.¹¹⁵

Even greater challenges arise when ANSAs are allowed to conduct military operations from the host State and/or when the State provides military support to ANSAs and the presence of large displaced populations in border areas can contribute to a regionalization of the conflict. In the late 1990s the then president of Liberia, Charles Taylor, demonstrated his strong ties with the RUF by sending troops into Sierra Leone to reinforce the RUF while allowing refugee camps in Liberia to potentially be used as bases for military operations and recruitments.

b) Host communities

Relations between displaced people and host communities can range from situations where host communities provide sanctuary and support to the displaced to host communities rejecting their presence and showing hostility towards them.¹¹⁶ Diverse and cumulative factors of a political, ethnic, cultural or economic nature and pre-existing affinities which are likely to trigger acceptance or at least tolerance can also result in fluctuating inter-relationships. This scenario is more common around borders where transnational links already exist. Displaced people and host communities are often exposed to similar immediate threats to their physical security by the State and ANSAs, espe-

cially in contexts such as the DRC where the vast majority of IDPs are living in host communities and where repeated displacement means that those who have been hosted may well themselves become hosts to new IDPs.¹¹⁷ Tensions with local communities are more frequent in refugee contexts. For instance, if social services such as health and education are provided to refugees but not available for surrounding villagers or as donor support for refugee populations decreases over time, competition with host population over scarce resources can become a source of hostility and insecurity.¹¹⁸

The relations between ANSAs and host communities remain relatively unexplored. The attitude of local communities towards the displaced and vis-à-vis ANSAs may be aligned with the national policy or diverge from it. In the Middle East, host communities have often exhibited a welcoming attitude towards refugees, especially at the inception of a crisis, and this has been repeated again in the context of the Syrian refugee crisis. However, the prolongation of the conflict combined with rising numbers of people seeking refuge, in places outnumbering local residents as in Lebanon, has led analysts to refer to an 'uneasy' or 'uncertain' welcome in view of ambivalent community responses.¹¹⁹

Refugees, especially in the context of mass displacement, are often described as a security threat as they may bring the conflict with them across the border. By the same token, if an ANSA operates near to or within an area hosting displaced people, this often negatively affects relations between the displaced and the hosts because of the real or assumed links the displaced have with the armed group. In May 2013, Syrian refugees became the target of local angry crowds following a double car blast at the Turkish border town of Reyhanli, an area through which arms and men were reportedly flowing to bolster Syrian insurgents.¹²⁰

In some contexts foreign ANSAs overtly violate or ignore social and cultural community norms and seek to forcefully impose theirs; in others they have chosen to integrate in local tribal structures, especially if they have expansionist ambitions. For example, rather than supplanting Yemeni tribal structures, Al-Qaeda in the Arabian Peninsula (AQAP) has managed to

collaborate with and integrate itself into them, strategically capitalizing on the tribes' distrust of and hostility towards the State.¹²¹

c) Local civil society

Civil society organizations (CSOs) engage with ANSAs in a multiplicity of ways.¹²² They may have been instrumental in the creation of the ANSAs in situations where armed struggles were initiated following civilian contestation movements. In Libya, the so-called 'February 17 Youth Movement' (LYM) claimed to have about one hundred CSOs under its umbrella, in addition to having considerable student backing. Registered as an NGO on Facebook and highlighting that they "do not belong to a political party, nor to any factions", the LYM has been an active player in the insurgency.¹²³

CSOs are also increasingly acknowledged as key actors in humanitarian or development work and for promoting peace-building efforts due to their more intimate understanding of the conflict dynamics and their often closer proximity to the belligerents and affected populations. In some contexts this may confer on them potential leverage. If they have pre-existing links with the ANSA, local organizations may more easily play a bridging or intermediary role between ANSAs and civilians, including displaced people, as well as other stakeholders such as international organizations. For instance, in areas of the DRC where displaced people and villagers are still at risk of attacks by the LRA, the *Centre Résolution Conflits* (CRC) has set-up 'Task Forces', comprising former fighters, community leaders, army officers and business people through which to reach LRA members.¹²⁴ Another example is that of the *Association pour la promotion rurale de l'arrondissement de Nyassia, Solidarité — Développement — Paix* (APRAN-SDP), a Senegalese NGO originally created by IDPs which has been supporting the return of IDPs and refugees. It has long served as an intermediary with the Movement of Democratic Forces of Casamance (*Mouvement des Forces Démocratiques de Casamance*, MFDC) and helped international NGOs like Geneva Call engage with the MFDC in the process of banning the use of anti-personnel mines.¹²⁵

For the West Africa Network for Peacebuilding (WANEP) "CSOs can act when, for a variety of reasons, official

actors are immobilized, and can improve communication and relationships by fostering interaction across conflict divides".¹²⁶ Among CSOs, religious structures can play a significant role in influencing ANSAs. In the DRC, for instance, a delegation of the 'Justice and Peace' network of the Catholic Church approached the M-23 in Rutshuru to confront them about human rights issues and concerns of the populations.¹²⁷



APRAN-SDP and Geneva Call facilitating negotiations between MFDC and Senegalese government on humanitarian demining. © Geneva Call (2013)

Many Burmese CSOs, based along the Thai-Burma border were actually created by ANSAs and kept close ties with them. Over time these links have, however, loosened and most organizations that were reportedly affiliated with the ANSAs now claim to have full operational freedom. Yet not all ties have vanished either and the loyalty of these organizations towards the groups persists as many of their representatives and members remain political activists. On the other hand these CSOs reveal that through them ANSAs have retained a link with the displaced civilians and are able to monitor their attitudes and behaviours.

In Mindanao, in areas of fighting between the Government of the Philippines and the MILF, local organizations have engaged in protecting IDPs through a range of activities including early warning mechanisms, facilitating IDPs' safe and organized return, and advocating with parties to the conflict to restore peace and investigate security incidents involving displaced people.¹²⁸ Some of the most successful initiatives are community-based. One example of such an endeavour is in Pikit in Central Mindanao, where

the establishment of 'zones of peace' is discussed with the belligerents, religious leaders, community organizations, farmers, and children and youth. With a few minor exceptions, these zones of peace — where armed personnel can enter the zones but are required to respect communities and are not permitted to conduct military operations or to use their weapons — have been respected by all parties to the conflict. Because men in these communities are often viewed with suspicion by the belligerents, women have reportedly played a critical role in ensuring the success of these initiatives by leading negotiations and maintaining the relations with all parties.¹²⁹ Similar models exist in eastern DRC with initiatives such as community-based 'protection committees', 'women's forums' and outreach workers (*agents du changement*) that guide State and ANSAs to fulfil their protection obligations towards communities through training sessions and information exchange. The protection committees have, for instance, successfully negotiated that some armed groups stop collecting taxes from the communities.¹³⁰

While CSOs may be praised for their role in promoting the rights of displaced people and fostering dialogue with belligerents, their links or affiliation with ANSAs can be potentially problematic and dangerous, and many CSOs have concerns about the risk they face of being closed down or criminalized for that affiliation. Local organizations in many geographical contexts appear to have been significantly affected by the spread of the label of 'terrorist' in recent years. Margaret Sekaggya, the UN Special Rapporteur for human rights defenders, has said she was "concerned by the branding and stigmatization of human rights defenders [in India], who are labelled as 'naxalites (Maoists)', 'terrorists', 'militants', 'insurgents' or 'anti-nationalists'".¹³¹

d) Diasporas

In recent years, both scholars and humanitarian actors have considered the significant transnational role of diasporas in conflict situations. Diasporas have dual and often ambivalent roles; they are depicted as playing both a significant role in sustaining a rebellion (thus potentially contributing to displacement) yet also contributing to providing vital support to displaced communities, especially in the form of remittances. Diasporas may have an influence over the

course of a conflict, including by controlling and ordering displacement 'at a distance' or more commonly through their financial and political roles.

There are a number of examples spread across time and geographical locations where ANSAs have been formed by individuals in exile; an archetypal case might be the foundation of the Fatah movement by members of the Palestinian diaspora. In some instances individuals may hold the dual identity of member of the diaspora and leader of an ANSA and are said to have been coordinating military operations, including population displacement, remotely. This has reportedly been the case for the FDLR, whose top leadership used computers and mobile phones in Germany and France to control operations in the DRC through an organized hierarchy of military officers and men on the ground.¹³²

Analysis of the Tamil diaspora illustrates the multiple roles its widespread members have played especially in terms of speaking for the LTTE cause, financing the conflict, and supporting displaced communities. During the many years of conflict and protracted displacement in Sri Lanka, the diaspora played a critical role in providing IDPs with remittances, but as the conflict evolved the LTTE exercised increasing control both over the IDPs in Sri Lanka and over the diaspora. From the 1980s LTTE loyalists were sent abroad or identified locally and, through the setting up of LTTE offices which initially had a cultural and educational focus, they infiltrated the diaspora which gradually increased its funding and political support. The LTTE also controlled linkages between the diaspora and the civilian population.¹³³ It set up an elaborate international fundraising system collecting large amounts of funds used for the procurement and shipment of arms and to finance their 'state-like' administration, but also goods for communities. Until it was banned in Sri Lanka in 2007 and its branches in the US, Australia and the UK closed down, the LTTE-affiliated Tamil Rehabilitation Organization (TRO) received a lot of support from ordinary Tamils across the world. The Sri Lankan Sinhala diaspora also played a significant role during the conflict, especially in attempting to counteract the propaganda of the Tamil diaspora by putting the emphasis on the "terrorist" nature of the LTTE. Later, while remittances still reached the communities,

increasingly larger proportions were taken as tax by the LTTE as the need to fund the military efforts increased after 2005.



Tamil demonstration at Trafalgar Square in London.
© Nicholas Van Hear (2009)

The role of diasporas goes beyond the caricatured perceptions of agents ‘funding terrorism or building peace’ and the tendency to frame the discussion in a dichotomous way — asking whether diasporas are good or bad for conflict — is problematic.¹³⁴ In the Somali displacement context, the assistance provided by Somalis abroad — through emergency aid, care and maintenance and sustainable development aid — represents crucial support for the displaced in camps

and urban settings. It has also been documented, however, that Al-Shabaab has access to remittance flows generated from the trading centres led by Somalis, such as Eastleigh in Kenya, to fund its operations in Somalia and enlist new members through indoctrination in Islamic schools.¹³⁵

The positive contribution of diaspora involvement in humanitarian response, especially through remittances, has led to donor support for diasporic organizations involved in humanitarian initiatives addressing the needs of displaced populations.¹³⁶

e) The international community

i) Third-party States

Third-party States have the monopoly of deciding which ANSAs they want to engage with, when and how. State practices and policies on so-called ‘diplomatic engagement’ with ANSAs are therefore extremely variable. Some States have put themselves forward to engage ANSAs on displacement-related issues. Within a context of broader peace negotiations Norway has, for instance, discussed issues pertaining to the rights of displaced people, including their return, with the LTTE, the FARC and Burmese ANSAs.¹³⁷

While some States may see their involvement as driven by humanitarian needs and by respect of the principles of humanitarian action in IHL, third-party State engagements with ANSAs are often driven by States’ own interests and are therefore often inconstant.

States’ increasing labelling of ANSAs as “terrorists” and counter-terrorism policies introduced in the wake of the 9/11 attacks on the USA in 2001 has added complexity to the relations States and regional organizations can have with ANSAs. It also had related consequences on humanitarian organizations and aid beneficiaries, especially displaced civilians living in areas controlled by ANSAs designated as terrorists. A ‘study of the impact of donor counter-terrorism measures on principled humanitarian action’ commissioned by the UN Office for the Coordination of Humanitarian Affairs (OCHA) and NRC makes the point that for instance “in Gaza, the parameters of humanitarian action have for the most part been shifted so that programmes are designated firstly to avoid contact

with or support to the designated group (Hamas), and only secondly to respond to humanitarian needs”.¹³⁸

At the other extreme, States have on occasion adopted lenient policies towards ANSAs by offering them blanket amnesties during peace processes or in post-conflict settings. While this may have in some instances had a positive effect towards reconciliation and encouraging the return of the displaced, it can ignore the need to address impunity.

ii) The United Nations

It is difficult to state clearly what the UN does in practice in relation to engagement with ANSAs, beyond efforts towards developing an approach to engagement, as it is either not well documented or information is not openly shared beyond each agency. There is no institutional approach on whether the Emergency Relief Coordinator (ERC) should engage with ANSAs, although the UNSG’s reports on the protection of civilians state that ANSAs should be engaged, and UN General Assembly Resolution 46/182 gave the ERC the responsibility to “actively facilitate, including through negotiations if needed, the access by operational organizations to emergency areas...by obtaining consent of all parties concerned”. While the Cluster approach has attempted to provide a more structured multi-agency response to humanitarian and displacement crises, there is no UN-specific framework for engagement with ANSAs on displacement issues. At a global level the role of the UN Special Rapporteur on the Human Rights of IDPs is generally political in nature and focused on dialogue with governments; the role was not given explicit authority to establish direct contacts with ANSAs, leaving limited space for engagement. That said, right from the start Francis Deng, the first incumbent, made efforts to sensitize ANSAs to the need to assure greater protection for IDPs, a practice that has been pursued by his successors.¹³⁹

Each UN agency is able in principle to decide the modalities of engagement (or non-engagement) with ANSAs based on its own agenda. Some UN agencies have at times played an intermediary role between belligerents, often including as objectives ensuring safe humanitarian access and protection concerns. A 2012 UNHCR review of its engagement with ANSAs highlighted how the organization has served as an

official interlocutor for State and non-State actors; one such example was the creation by UNHCR, during the ceasefire period around 2004- 2005, of a Liaison Officer in Sri Lanka which enabled more systematic engagement with the LTTE, including regular field monitoring and specific interventions, advocacy, and promotion around the protection of IDPs and the promotion of safe return using the GPID as a framework.¹⁴⁰ The UNHCR review states that while as “a matter of principle UNHCR should engage all ANSAs where necessary and if possible ... as this is consistent with humanitarian doctrine, but also reflective of the realities associated with providing assistance and protection in complex environments where populations of concern are often located in areas outside state control”, in practice “there is no universal UNHCR policy on how to engage ANSAs”.¹⁴¹ In Thailand for instance, UNHCR’s practice of establishing (or not) relations with the political wings of Burmese ANSAs has been contingent on the Country Representatives and their perception of the tolerance (or the lack of it) of the Thai authorities for engagement. This has led to some confusion for the ANSAs, displaced people and NGOs, especially local organizations who are commonly manoeuvring between ANSAs and the displaced.

Among other UN humanitarian agencies, UNICEF has had some engagement with ANSAs to demobilize children and to prevent their recruitment. OCHA has played a proactive role in highlighting, in the UNSG’s reports on the protection of civilians, the need to engage with ANSAs and to translate these policies to the operational level.

The UN Office of the High Commissioner for Human Rights (OHCHR) is gradually starting to refer to ANSAs in its publications and analysis and is acknowledging the evolving policies of the UN. For instance in its 2011 report ‘International Legal Protection of Human Rights in Armed Conflict’ OHCHR noted the “evolving practice in the Security Council and the reports of some special rapporteurs that ... under certain circumstances non-State actors can also be bound by international human rights law and can assume, voluntarily or not, obligations to respect, protect and fulfil human rights”.¹⁴² In practical terms, however, OHCHR remains structured around State practice with the exception of the designation of a focal point on

ANSAs whose role is to advise field offices in contexts where ANSAs operate. The organization is also developing an internal position on ANSAs.¹⁴³

At country level, the choices and approaches of the Humanitarian Coordinator as well as the nature of the humanitarian crisis will affect some of these institutional choices and frame the extent and nature of the engagement with ANSAs. If it is a context where there is an integrated mission, some of these decisions about engagement will be taken in part or in full by the representative of the peacekeeping mission.

In conclusion, while the absence of a UN doctrine for engagement may have enabled flexibility and complementarity, it is also worth noting that the UN is made up of Member States and derives its mandate from those Member States, some of whom may not wish for the UN to engage with ANSAs.

iii) International organizations

There is a wide range of international organizations and institutions that are engaging (directly or indirectly) with ANSAs in displacement contexts, in very different albeit potentially complementary ways.

The monitoring of ANSAs by leading human rights organizations such as HRW and Amnesty International was limited until the 1990s, when they extended their definition of human rights abuses to include acts committed by ANSAs. This approach has led to the global practice of ‘naming and shaming’ whereby these organizations issue public statements and reports about human rights abuses and make recommendations to all parties, including increasingly to ANSAs. Both organizations produce regular reports which emphasize the violations of the rights of the displaced. While HRW’s mandate is to protect the human rights of people around the world by investigating and exposing human rights violations, and holding (State or non-State) abusers accountable, the interaction it has with ANSAs has included advocacy for the respect for human rights. HRW has sought to obtain commitments from ANSAs on IHL issues, for example in Yemen (on the Geneva Conventions) and in Libya (on landmines). However this still appears like an *ad hoc* practice with no systematic follow-up and the engagement has not been focused on displacement issues.

While issues related to displacement are arguably central to peace processes, these have often only marginally been included in the substance of the engagement of peace-mediation and negotiation organizations with ANSAs, although this is slowly changing.¹⁴⁴ An organization like the Centre for Humanitarian Dialogue (HDC), through its ‘mediation’ work, attempts to address key humanitarian issues, including displacement, with the parties to conflict.¹⁴⁵ For instance between 2008 and 2009 the organization brought together representatives of the main Darfur opposition movements and representatives of the humanitarian community for discussions focused on key humanitarian issues including the protection of refugees and IDPs.

ICRC’s mandate entails a proactive interaction with the belligerents, both State and non-State, to ensure and monitor their respect of IHL.



Guaviare state, San José del Guaviare. An ICRC delegate speaks with members of the FARC-EP during a dissemination session on IHL. © ICRC/B. Mosquera (2010)

The engagement can take different forms and includes dissemination of IHL and confidential dialogue on protection issues. Despite having a strategy on internal displacement,¹⁴⁶ ICRC’s focus is on the protection of civilians more broadly and the organization does not appear to engage ANSAs specifically on displacement in a systematic manner.

The Swiss-based organization Geneva Call was set up expressly to entice ANSAs to comply with various humanitarian norms through an innovative accountability mechanism called *Deed of Commitment*. Geneva Call engages ANSAs principally on the total ban of anti-personnel mines, the protection of children from the effects of armed conflict, and the prohibition of sexual violence in armed conflict. It also trains

ANSAs on broader humanitarian norms, including on norms relating to displacement. In 2011 Geneva Call co-organized with IDMC a two-day conference on ANSAs and the protection of IDPs and wrote an article on the potential for engagement with ANSAs that was published in a special edition of FMR on ‘Armed non-State actors and displacement’.¹⁴⁷

Organizations working specifically on protecting and assisting displaced people are rarely explicit about how and to what extent they engage with ANSAs, and remain elusive about the outcomes of these interactions. A positive exception is UNHCR’s 2012 review of the organization’s history of engagement with ANSAs over the previous three decades and across a wide range of contexts.¹⁴⁸ Some organizations worry that engaging on protection activities may bring them in conflict with governments or ANSAs, place staff at risk, and reduce their access to displaced people and few invest in the capacities required for effective engagement, like training and guidance for field staff.

Among the factors deterring humanitarian organizations from engaging with ANSAs is the fact that they do not consider that engagement is core to their mission, or that they are afraid of jeopardizing their assistance work by being perceived by concerned governments of conferring legitimacy to ANSAs. In some contexts they would seek to respect the principle of State responsibility and would not see ANSAs as the representatives of the people. Yet, interaction is still likely to take place for pragmatic reasons as the militarized contexts in which humanitarian actors operate almost inevitably imply close proximity to ANSAs or the mingling of ANSAs with displaced populations.

When it comes to the substance of engagement, for a large majority of humanitarian organizations, if engagement with ANSAs does take place it generally focuses on ensuring humanitarian access and on preserving the humanitarian and civilian character of camps. Humanitarian access constitutes the most logical entry point of engagement for humanitarian actors, and once access is secured further opportunities to engage ANSAs on civilian protection and human rights may arise. A number of international NGOs have on occasion conducted sensitization and training sessions with ANSAs. In 2004 and 2005, during the ceasefire period between

the Government of Sri Lanka and the LTTE, the Danish Refugee Council (DRC) conducted sensitization sessions focused on displacement with the members of the political wing of the LTTE as well as its police force.¹⁴⁹ NRC-IDMC has also conducted a number of workshops on IDP protection using the GPID as a framework. The workshops run by NRC-IDMC involved members of the *Rassemblement Congolais pour la Démocratie* (RCD-Goma) in the DRC, the *Forces Nouvelles* in Côte d’Ivoire, and the Somaliland authorities. While members of these ANSAs showed an interest in abiding by international norms, reportedly no ANSA was willing to make firm commitments on IDP protection.¹⁵⁰

Notwithstanding such attempts, there is no systematic outreach to ANSAs on the rights of displaced people and engagement is irregular, unsustainable, inconsistent, and at times incoherent, often based on a combination of factors which may range from organizational policy choices, country or conflict contexts, the type of ANSA but also programmatic choices or even the personal approaches of heads of offices.

2] Challenges, limitations, and opportunities to engage ANSAs on the protection of displaced people

There are political, practical, and ethical motives to explain the lack of engagement of humanitarian actors with ANSAs. While aggressive or threatening behaviour by ANSAs can act as deterrents, other significant impediments to engagement in conflict and large scale displacement contexts relate to the prevailing influence of States that prevent humanitarian actors from engaging with ANSAs or deter their access to displaced populations in areas controlled by ANSAs. However, there are also opportunities for inclusive approaches towards ANSAs.

a) Impact of restrictive State policies and counter-terrorism measures

Engagement with ANSAs is often perceived by States as politically sensitive, in particular triggering concerns of legitimizing ANSAs — despite clear legal basis, in particular Common Article 3 to the Geneva Conventions, and policies that humanitarian engagement is neutral and impartial in character and does not affect the legal status of armed groups.

In reaction, some host governments have compelled humanitarian organizations to operate only in government-controlled or designated areas or have banned access altogether. A UNHCR review of key challenges to the safeguarding of humanitarian space reports that governments in Colombia and Afghanistan viewed humanitarian engagement with ANSAs as the equivalent of endowing 'terrorists' with legitimacy and were therefore extremely unwilling to allow such engagement.¹⁵¹

The development of counter-terrorism measures by host governments or donor States, has compromised further the space for engagement, by criminalizing dialogue with ANSAs designated as 'terrorist'. UN agencies have had to follow these prescriptions, as has been the case with Hamas in Gaza since 2006. Such policies have had similar consequences for international NGOs.

There are other circumstances where host governments do not necessarily oppose engagement but it is the organizations themselves that opt for non-engagement with ANSAs to avoid aggravating or jeopardizing difficult relationships with the State. Some donors in their funding agreements have also imposed no-contact conditions with ANSAs listed as 'terrorist', limiting who NGOs and UN agencies can interact with if they accept funding.

Such restrictive policies and the increased use of counter-terrorism measures have proved detrimental to the protection of displaced populations. For instance, according to WANEP "humanitarian access in the rebel-controlled north of Mali was curtailed by counter-terrorism policies, despite a growing number of internally displaced persons and growing humanitarian need".¹⁵² And after 2008, when the United States listed Al-Shabaab as a "terrorist" group, an 88% decrease in aid to Somalia was recorded between 2008 and 2010.¹⁵³

b) Restricted engagement or avoidance of engagement

In conflict and displacement contexts, interactions with ANSAs are almost by default conceived as problematic. ANSAs are systematically blamed for their interference with displaced communities, leaving little space to conceive the possibility of more constructive

interactions built around ANSAs' responsibilities towards civilians. This hinders more nuanced and even positive behaviours that ANSAs may exhibit.

Despite policy recommendations that "lives can be saved by engaging armed groups in order to seek compliance with IHL in their combat operations and general conduct",¹⁵⁴ in practice the effect of working in environments where ANSAs are perceived as hostile and dangerous is that some organizations opt for a strategy of avoidance rather than engagement. For NRC, the complexity of some of these dynamics as experienced in Afghanistan and Somalia, as well as what they perceive as a misinterpretation of the humanitarian principle of neutrality, has gradually led some actors to avoid contact with any type of military (including ANSAs) even in contexts where it would be feasible. Yet as pointed out by Liam Mahony, "a commitment to the 'humanity' principle demands a commitment to preventive protection, not just services after abuse ... and taking on the challenges of reducing conflict and changing the behaviour of abusers".¹⁵⁵ Recent research by the Humanitarian Policy Group (HPG) on 'Humanitarian Dialogue with Armed Non-State Actors' found that "many agencies avoided direct structured engagement ... for fear of political, security consequences of engagement".¹⁵⁶ So while many humanitarian actors would define attempts to engage as essential, especially in contexts where there are strong communal connections between ANSAs and the displaced, it appears that on the ground there is still a lack of engagement.

It is equally important to understand what ANSAs make of the behaviour of the international community as this will have an impact on the possibilities for engagement and most likely also have repercussions on the protection of civilians. In fact the reluctance to engage also comes from ANSAs, a number of which have responded negatively to attempts at engagement by humanitarian organizations, especially when they see a strong bias or politicization of these actors. This is particularly the case for 'integrated missions', which contribute to blurring humanitarian objectives with political and military agendas, thereby compromising the perception of aid agencies as neutral in the eyes of armed opposition groups. Ultimately this can be detrimental to the protective environment the missions are trying to build.¹⁵⁷

Recently Islamist ANSAs such as Al-Shabaab have been framing most humanitarian intervention as a manifestation of foreign policy. The HPG research shows that in the Afghan context especially ANSAs' hostility towards the UN is linked to the perceived partiality of the UN. There is more diversity in positions toward other aid actors there, although often hostility and suspicion predominate. Aid agencies with the greatest access had consistently demonstrated their neutrality and impartiality over a period of time, while positive perceptions of agencies often reflected personal experiences and engagement.

c) Militarization of displacement sites

Conflicts are by their nature politicized and militarized and in such environments displacement sites, which aspire to offer sanctuary, are both a civilian space where daily life unfolds for families and also a space which is penetrated by the political and military dimension of the conflict, from within and through external interventions.

This *de facto* interplay between the civilian and the military jeopardizes the civilian character of camps and other displacement sites. Episodes of heavy militarization of camps, especially in West and East Africa in the 1990s, have led humanitarian organizations, with UNHCR at the forefront, to develop operational policies that define what constitutes 'militarization' and ensure the applicability of the civilian and humanitarian character of asylum.¹⁵⁸ These policies, intended to prevent the emergence or proliferation of 'refugee warriors', emphasize that refugees need to "abstain from any activity likely to detract from the exclusively civilian and humanitarian character of the camps and settlements".¹⁵⁹ Successful operationalization of this principle as it was conceived has, however, been the exception rather than the rule.¹⁶⁰

Although UNHCR can find itself 'running' camps in many instances (most often through implementing partners), it is the host State that has primary responsibility. UNHCR can assist the State in the task of preserving the humanitarian character of camps but the State may restrict its ability to intervene in the location of camps for instance, or may have a relaxed policy about ensuring the separation of combatants and non-combatants. On rare occasions the State has

even let an ANSA manage camps, the Polisario Front in Algeria being one example.

Humanitarian organizations continue to be challenged by the risk of amalgamation between the military space where they would locate ANSAs and the humanitarian character of spaces of refuge whose civilian nature needs to be preserved. While displacement sites are intended to provide refuge from conflict, they are however not apolitical and displaced people have the right to freedom of opinion and association and should be allowed to establish self-governance systems. Instead of systematically denying ANSAs a presence in displacement sites, "active military groups are often not separate from the community but an integral part of it and as such can be key agents of protection and transformation".¹⁶¹

It is also almost always assumed that the displaced themselves or ANSAs are responsible for the militarization of displaced sites, while governments rarely acknowledge their own involvement in the militarization. Yet violence and persecution by government agents, or perpetrated by ANSAs but tolerated by a government, can lead refugees and IDPs to arm themselves, not for offensive purposes but for self-defence.

Finally, although an increasing number of conflicts take place in urban environments and although over half of the world's displaced people are thought to live in urban areas, existing policies around militarization are all related to camp-based displacement. This is a significant gap.

d) Tools for engaging ANSAs on protection of displaced people

There are some tools that have been developed to engage various stakeholders on the protection of displaced people, and similarly tools have been developed to engage with ANSAs on humanitarian issues more broadly. However, there is no tool or framework specifically aimed at ANSAs' engagement on displacement.

One of the most significant efforts to provide a much needed structured approach to humanitarian negotiation with ANSAs was the production by OCHA of the *Humanitarian Negotiations with Armed Groups:*

A Manual and Guidelines for Practitioners in 2006. Yet, this document focuses on negotiations and does not cover the wider range of possible interactions (advocacy, dissemination, training, and capacity building) that humanitarian organizations may have with ANSAs. It makes no direct or specific reference to engagement on displacement.¹⁶²

Following the repeated reference to the importance of humanitarian engagement with ANSAs in the UNSG's reports on the protection of civilians, a number of initiatives were undertaken in subsequent years aimed at identifying means to enhance the protection of civilians through constructive engagement with ANSAs. In 2011 the Geneva Academy of International Humanitarian Law and Human Rights carried out a study on how to enhance ANSAs' compliance with international norms. The study called *Rules of Engagement* has been followed up by further research on the reactions of selected ANSAs to certain humanitarian norms, especially those protecting civilians, and including norms related to displacement. The final aim of the project is to provide a field manual for 'humanitarian engagers'.¹⁶³

The GPID have proved to be a useful framework to enable a number of organizations to engage with ANSAs on displacement-related issues. Another potentially useful tool for engagement with ANSAs is the manual called *The Guiding Principles on Internal Displacement, A Toolkit for Dissemination, Advocacy and Analysis* developed in Sri Lanka in 2001, which is a compilation of useful information, including the modules on internal displacement put together by the NRC and OHCHR.¹⁶⁴ *The Handbook for the Protection of Internally Displaced Persons* published in 2010 by the IASC gives useful advice to organizations working with displaced populations in conflict settings about engaging with ANSAs. It covers gaining a clear understanding of the command structure of the groups; monitoring and reporting their behaviour towards the displaced; advocating with ANSAs to protect IDPs; putting a stop to violations; and ensuring respect for international human rights and humanitarian law. The tools it contains include public exposure of violations, direct dialogue, and passing information to other bodies with influence.¹⁶⁵

e) Opportunities to assert ANSAs' responsibilities

In contexts where the State is unable or unwilling to assist displaced populations — including because that State itself is responsible for people's displacement and is violating the rights of the displaced — its policies tend towards letting humanitarian actors provide assistance and protection. There are however some major pitfalls in this approach which tends to put the international organizations, which are by their nature the most 'external' actors, at centre-stage of a given humanitarian context. First, there is the risk of ignoring or sidelining the self-protection strategies of civilians and local initiatives for protection. Second, the emphasis on the State as the primary protection duty-bearer in bodies of law other than IHL appears to lead to framing ANSA as (only) responsible for causing or prolonging violations. Third, this may be counter-productive as there are more deterrents to ANSAs protecting civilians than incentives for ANSAs to protect them.

Consequently, there is an assumption that ANSAs cannot fulfil humanitarian functions and their role tends to be defined only in military terms, ignoring the social and political dimension that many insurgencies have. This approach in turn risks minimizing or removing their responsibility towards civilians, stripping them of potentially being a 'protection actor', a role that some ANSAs willingly aspire to or see as an important component of their holistic functions. Even an ANSA with a poor human rights record like Al-Shabaab still sees the protection of civilians as falling within their remit.

While laws emphasize the prohibition on ANSA activity in displacement contexts, certain instruments like the GPID and ANSAs' own commitments offer avenues for improved protection of displaced populations. For a great majority of organizations getting access to displaced populations is almost the sole objective. While achieving this objective involves engaging directly or indirectly with ANSAs if they have control of an area, the engagement is often limited, and because of the operational pressures that are characteristic of displacement contexts, organizations discount the potential protective role of ANSAs there. More could therefore be done to go beyond responding to the effects of displacement by engaging ANSAs on their

responsibilities and obligations with a view to preventing future violations. "If everyone is eligible to be a humanitarian actor, we should not exclude armed groups from the opportunity and responsibility of humanitarian action," argues Hugo Slim. "If an insurgent group is best placed to help meet people's

rightful needs in a mixed disaster then we should expect them to do so."¹⁶⁶

Al-Shabaab fighters distribute relief to internally displaced people at K50 camp, which is outside Mogadishu and has limited access to aid.
© Feisal Omar/REUTERS (2011)



PART IV

Conclusions and recommendations

1] Key findings

- Some ANSAs choose to displace populations, whether this displacement is deemed lawful or unlawful. Reasons why ANSAs would forcibly displace people include taking possession of a territory and its resources. While displacement can be triggered by an objective to dispossess, punish or control civilians, populations may also, however, be moved or facilitated to move by ANSAs in order to protect them from greater harm.
- Displacement is not solely a situation forcibly imposed on civilians but is often the outcome of a more complex set of factors, including the evolution or prolongation of the conflict, which in combination trigger movement. In many cases displacement is not a deliberate strategy but a by-product either of generalized violence and violations by one or both parties to the conflict, at times combined with the effect of natural disasters or climate change, or a *de facto* situation where civilians spontaneously move into the hands of ANSAs in search of protection and livelihoods.
- The inter-relationship between ANSAs and displaced populations is complex and not static. There are no discernible consistent behavioural patterns given the multiple factors and actors that can affect these dynamics. However, certain factors including joint ethnicity, the shared experience of suffering, a common ideology, the fact that members of ANSAs have pre-existing ties with displaced communities, may forge strong bonds between ANSAs and civilians. Under these conditions ANSAs are more prone to exhibiting more protective behaviour towards the displaced, who are in turn likely to show greater allegiance to and support for them. If, by contrast, these elements are absent and if it is a context in which the ANSAs and the displaced civilians are of different nationality and ethnicity or have divergent interests, there is a higher probability that the relationship will be characterized by abusive behaviour by the ANSA, resentment, hostility and coerced obedience.
- In many conflict and displacement contexts, framing the relations between ANSAs and displaced communities as that of ‘violators and victims’ does not always accurately reflect the reality on the ground. An over-simplified analysis may lead to policies towards both displaced civilians and ANSAs that are inadequate or inappropriate. While it may suit the political agenda of some States to maintain ANSAs in the role of violators or potential violators of rights — thus reinforcing their criminal status under domestic law — this view risks overshadowing both the potential protective role played by ANSAs in some instances and the human rights violations committed by some States.
- Legitimizing coercive and repressive responses towards ANSAs leaves limited space for constructive engagement. Yet, more systematic and principled engagement with ANSAs over the responsibilities they have towards civilians, in particular displaced people, may yield some positive results in decreasing the probabilities of IHL and human rights violations from occurring in the first place.
- The legal and normative framework applicable to ANSAs relating to displacement and displaced people is manifold: in contexts where IHL applies, the prohibition of displacement is the rule unless displacement is deemed lawful because of a prevailing military imperative and/or if it intends to protect civilians. IHL however does not apply in all circumstances and has gaps in respect of the conditions of displacement and the rights of the displaced; most notably, it does not comprehensively address the civilian character of camps, the return of displaced nor individual remedy mechanisms, including compensation for lost property. In the same vein, unlawful displacement is proscribed by ICL, but notwithstanding the relative novelty of this legal framework, neither the ICC nor any of the regional international courts have yet condemned individuals, from State or non-State entities, for the crime of forcible displacement.

Both the refugee and human rights legal frameworks are built around a clearly state-centric approach and therefore focus on States’ obligations. ANSAs are identified as agents of persecution and human rights violations and abuses, with only marginal and sporadic reference made to their responsibility to prevent or redress these mistreatments.

- The development over the last 15-20 years of a normative framework on internal displacement has broadened and to a certain degree clarified ANSAs’ obligations for preventing displacement and protecting the displaced, and the provisions related to return and other durable solutions. Recently transformed into hard law in the African context, the new Kampala Convention fails, however, to directly address ANSAs as such but only their members and focuses only on prohibited actions, leaving a vacuum on the potential positive role of ANSAs in the protection of displaced people.
- The relationship between ANSAs and displaced people is not sufficiently analyzed in its broader context. Other stakeholders — especially diasporas, States, and international and local organizations — are all likely to have an impact in influencing these dynamics. Analyzing these layers of complex and fluctuating relations is key to gaining a comprehensive understanding of a given conflict and displacement context; it should be the premise to define the most suitable strategy for an engagement that is aimed at improving ANSAs’ compliance with humanitarian and human rights norms, including the rights of displaced people.

- While an array of research and operational policies and measures have attempted to fill the gap between the protection of civilians as a concept and the lived experiences of civilians, a top-down approach whereby protection is solely the remit of States and humanitarian organizations continues to prevail. Despite popular narratives of community involvement and community resilience within such a model, displaced civilians themselves and ANSAs continue to broadly fit the pre-conceived categories of victims and perpetrators. By refusing to see ANSAs as potential protection actors, protection gaps are likely to persist. Furthermore, the focus by humanitarian organizations on access has led to situations where humanitarians opt for non-engagement if access is denied. In this case the civilians living in territory controlled by ANSAs, including displaced people, risk being deprived of protection and assistance when the very conduct of these groups might call for more robust and innovative engagement.
- There is currently very limited sustained and principled engagement by humanitarian actors with ANSAs on displacement-related issues. It is especially relevant that UNHCR has no universal policy on engagement with ANSAs and that specialized international NGOs — with the exception of some training on the rights of displaced people — generally focus on access.

2] Recommendations and suggestions on ways forward

- The study of ANSAs should more systematically assess their role in relation to displacement, especially their protective behaviour, which to date remains largely undocumented. Such research should aim at sharpening understanding of the underlying structural motives for displacement, considering the role played by both ANSAs and civilians in displacement. Further research should be conducted at field level to explore in greater detail specific interactions between ANSAs and displaced populations in diverse geographical contexts. It should also reflect the variety of places of refuge (e.g. in camps, with host communities, or in urban contexts), as well as some of the gendered and generational dimensions of these relations. This work ought to be combined with inputs from and consultations with practitioners, displaced communities and members of ANSAs and should ultimately serve to guide the development of more appropriate policies and programmes.
- To refine our comprehension as to why ANSAs may be unable or unwilling to adhere to certain norms, humanitarian organizations and research institutions with expertise on displacement should consult with ANSAs to better understand their positions on existing norms pertaining to displacement. Geneva Call may, for instance, use its forthcoming meeting of ANSA signatories to the *Deeds of Commitment* to introduce the issue of displacement and assess its importance in the eyes of ANSAs. Some of these initial discussions could be pursued and deepened with selected ANSAs during follow-up field missions in contexts where displacement-related issues constitute a paramount component of the conflict. ANSAs' views collected as part of these consultations could complement existing data on ANSAs' perspectives, including Geneva Call's *Their Words, Directory of ANSA Humanitarian Commitments*.¹⁶⁷
- Building on recommendations from the UNSG's reports on the protection of civilians, policymakers, humanitarian organizations, and other influential actors — especially local and diaspora organizations — need to develop strategies for enhancing ANSAs' compliance with international law and norms pertaining to displacement. Forthcoming UNSG's reports should more clearly frame ANSAs as potential protection actors, especially in displacement contexts, beyond the preponderant role of States and the complementary one of humanitarian actors. Such an approach, while not affecting the legal status of ANSAs, could in practice create a positive incentive for them to take greater responsibility for their actions and adopt more protective behaviours. These reports should be used by actors engaging with ANSAs as policy guidance.
- Humanitarian organizations should further develop engagement strategies with ANSAs on displacement, such as the *Deed of Commitment*. The dissemination of relevant norms and provisions, through training sessions and discussions with ANSAs, should be used as a means to strengthen ANSAs' awareness of their obligations towards the rights of displaced people and as a means to prevent or facilitate displacement in accordance with IHL, the Guiding Principles on Internal Displacement and the Kampala Convention. The involvement of civil society organizations in such activities is essential to ensure the pertinence, appropriateness and sustainability of these actions and ensure greater ownership by the communities concerned.
- Humanitarian organizations that have the protection of displaced civilians at the core of their mandate need to institutionalize their policies over the issue of engagement with ANSAs.¹⁶⁸ Internal discussions should take place within and across organizations (at field as well as at headquarters level) in forums such as the Global Protection Cluster, the International Council of Voluntary Agencies (ICVA), and the Inter-Agency Standing Committee (IASC) to identify some of the main challenges and good practices as well as engagement strategies. Organizations could also learn from those such as ICRC and Geneva Call which are already systematically engaging with ANSAs on humanitarian norms. It is essential to ensure participation of local staff and address specific challenges that they may face as well as the leverage they may have when engaging with ANSAs. As a follow-up to internal and external discussions, the leadership of these organizations should develop their own internal guidelines (where these are missing) based on existing experiences of engagement and negotiations with ANSAs.
- Existing human rights monitoring and reporting mechanisms should document more systematically and in an equal and impartial manner on unlawful displacement and violations towards displaced people committed by both State and ANSAs. When reporting on violations against displaced people committed by ANSAs, human rights organizations or humanitarian actors should not restrict recommendations to State authorities and the international community. They should furthermore resist from downplaying cases of abuses and displacement caused by governments against those triggered by ANSAs. They should make recommendations to ANSAs to stop and where possible redress violations they are accused of committing.
- External monitoring of ANSAs' behaviour related to civilian displacement should be strengthened, including by using as a baseline ANSAs' own commitments when these already exist. The UN Special Rapporteur on the Human Rights of IDPs should establish a more systematic process for ANSAs to report on progress made towards the respect of norms relevant to displacement.
- Human rights and humanitarian organizations and the media should broaden their coverage of ANSAs' actions in displacement contexts beyond negative acts. They should also document ANSAs' behaviour or initiatives aimed at preventing or mitigating the causes of displacement and protective actions towards displaced populations. When protection shortfalls exist because of a lack of capacity or a lack of knowledge by those with the potential to protect, such reports, which have often in the past recommended support to (government) structures, should similarly address capacity issues for ANSAs.
- Host States and donor States should halt policies that obstruct efforts to engage with ANSAs and support initiatives aimed at reducing episodes of displacement triggered by ANSAs and at enabling them to prevent and address displacement.
- Policymakers should consider supporting projects by local organizations and diaspora groups aimed at engaging ANSAs — directly as well as through wider community mechanisms and networks — towards building a more protective environment for displaced people. Such projects can have a positive and complementary role to the protection work of international humanitarian organizations, including in contexts where ANSAs' hostility towards the international community is limiting 'protection by presence' types of activities. These initiatives should have solid monitoring and evaluation mechanisms built in, both to enhance transparency over the role of such actors and to ensure impact.
- As an adjunct to engagement and monitoring, in order to address impunity, persistent and grave violations amounting to the war crime of displacement by State and non-State actors alike should be prosecuted as such by international jurisdictions.

Endnotes

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ENDNOTES

⁷¹ By ‘agents of persecution’, paragraph 65 of the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (1979), recognizes that “persecution is normally related to action by the authorities of a country” but that it can be perpetrated by “the local populace” or “sizeable fractions of the population”. “Sizeable fractions of the population” embraces any non-governmental group such as a guerrilla organization, death squads, anti- as well as pro-government paramilitary groups, etc... It also includes, a fortiori, non-recognized entities exercising de facto authority over a part of the national territory.” HCR/IP/4/Eng/REV.1 Redited (1992) <www.unhcr.org/3d58e13b4.html>.

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⁷⁴ Introductory Note by the Representative of the Secretary-General on IDPs, UN GPID.

⁷⁵ See Kampala Convention Article 7.5(a) and GPID principle 6.

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⁷⁷ Principle 9 of the GPID.

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⁷⁹ Principle 13 of the GPID and Articles 1(f) and 7.5(e) of the Kampala Convention.

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Acronyms

ANSA	Armed non-State actor	IASC	United Nations Inter-Agency Standing Committee
APII	Additional Protocol II to the Geneva Conventions	ICC	International Criminal Court
APRAN-SDP	<i>Association pour la promotion rurale de l'arrondissement de Nyassia, Solidarité — Développement — Paix</i>	ICL	International Criminal Law
AQAP	Al-Qaeda in the Arabian Peninsula	ICRC	International Committee of the Red Cross
AQIM	Al-Qaeda in the Islamic Maghreb	ICU	Islamic Courts Union
BIAF	Bangsamoro Islamic Armed Forces	ICVA	International Council of Voluntary Agencies
CAR	Central African Republic	IDMC	Internal Displacement Monitoring Centre
CBO	Community-based organization	IDPs	Internally displaced persons
CNF	Chin National Front	IHL	International Humanitarian Law
CPN (M)	Communist Party of Nepal (Maoist)	IRC	International Rescue Committee
CRC	<i>Centre Résolution Conflits</i>	JEM	Justice and Equality Movement
CSO	Civil society organization	KHRG	Karen Human Rights Group
DDR	Disarmament, Demobilization, and Reintegration	KNU	Karen National Union
DKBA	Democratic Karen Buddhist Army	KNPP	Karenni National Progressive Party
DRC	Danish Refugee Council	LRA	Lord's Resistance Army
DRC	The Democratic Republic of Congo	LTTE	Liberation Tigers of Tamil Eelam
ELN	National Liberation Army (<i>Ejército de Liberación Nacional</i>)	LYM	Libya 'February 17' Youth Movement
ERC	United Nations Emergency Relief Coordinator	MFDC	Movement of Democratic Forces of Casamance (<i>Mouvement des Forces Démocratiques de Casamance</i>)
FARC	The Revolutionary Armed Forces of Colombia (<i>Fuerzas Armadas Revolucionarias de Colombia</i>)	MILF	Moro Islamic Liberation Front
FDFA	Swiss Federal Department of Foreign Affairs	MUJAO	Movement for Unity and Jihad in West Africa
FDLR	Democratic Forces for the Liberation of Rwanda (<i>Forces Démocratiques pour la Libération du Rwanda</i>)	NGO	Non-governmental organization
FMR	Forced Migration Review magazine	NIAC	Non-international armed conflict
GPID	UN Guiding Principles on Internal Displacement		
HDC	Centre for Humanitarian Dialogue		
HPG	Humanitarian Policy Group		
HRL	Human rights law		
HRW	Human Rights Watch		

NPFL	National Patriotic Forces of Liberia
NRC	Norwegian Refugee Council
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	United Nations Office of the High Commissioner for Human Rights
PKK	Kurdistan Workers Party (<i>Partia Karkaren Kurdistan</i>)
PLO	Palestine Liberation Organization
PNLO	Pa-Oh National Liberation Organization
RUF	Revolutionary United Front
SADR	Saharawi Arab Democratic Republic
SLM/A-MM	Sudan Liberation Movement/Army - Minni Minnawi
SLM/SLA	Sudan Liberation Movement/Sudan Liberation Army
TFG	Transitional Federal Government of Somalia
TRO	Tamil Rehabilitation Organization
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
WANEP	West Africa Network for Peacebuilding



Geneva Call is a neutral and impartial humanitarian non-governmental organization that engages in dialogue with armed non-State actors (ANSAs) to promote their adherence to, and respect for, international humanitarian norms in armed conflict and other situations of violence, in particular regarding the protection of civilians.

Geneva Call is currently focusing its efforts on banning the use of anti-personnel mines, protecting children from the effects of armed conflict, prohibiting sexual

violence in armed conflict and working towards the elimination of gender discrimination. Geneva Call also responds to ANSA requests to help build their knowledge of, and capacities, to implement international humanitarian norms.

The key tool of engagement that Geneva Call uses is an innovative instrument known as the *Deed of Commitment*, which allows ANSAs to undertake to respect international standards and be held accountable.

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