Armed non-State actors and the protection of internally displaced people

Conference organised by Geneva Call and IDMC, 23-24 March 2011, Geneva

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Cover illustration: People who were recently displaced travelled to Datu Odin Sinsuat municipality, Philippines, after initially seeking shelter in a camp close to their homes in Datu Piang where they didn't feel safe. (Photo: IDMC/Frederik Kok, May 2009)

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Executive summary

The expert conference, co-organised by the Internal Displacement Monitoring Centre (IDMC) and Geneva Call in Geneva, Switzerland, on 23 and 24 March 2011, explored different aspects of the complex interface between armed non-State Actors (ANSAs) and the protection of internally displaced people (IDPs).[1] The conference was a unique opportunity for current and former ANSAs and members of civil society from areas undergoing internal displacement to express their views and perspectives, as well as a forum for representatives from humanitarian organisations and academics to share their experience and knowledge, and to present the findings of their academic and field research. The participants sought to both identify the current challenges relating to the protection of IDPs in situations involving ANSAs, and propose innovative ways to improve ANSAs' commitments, not only to refrain from violating IDPs' rights, but also to take steps to protect them.

Main findings

In many countries, IDPs are exposed to violence and to various violations of their rights, either by the State or by ANSAs. ANSAs have various obligations towards IDPs under international law, which can be found in the Geneva Conventions and their additional protocols, but also in the Rome Statute and the Kampala Convention, as well as the Guiding Principles on Internal Displacement (the "Guiding Principles"). However, the vast majority of violations committed by ANSAs against IDPs and other civilians are perpetrated with impunity, as national governments have lost the monopoly on the use of force and their judicial systems may function poorly. In addition, both leaders and other members of ANSAs lack knowledge of standards relevant to IDPs.

The conference recognised that while IDPs benefit from the same protection as other civilians, they have particular vulnerabilities and needs because of their displacement, and it is essential that all stakeholders take these into account. Therefore, even as general provisions of international humanitarian law or international human rights law may provide protection for IDPs, they may not be sufficient to address IDPs' specific needs such as the protection against forcible return or the provision of identity documents, or the needs of specific groups of IDPs, such as internally displaced women or children. In this respect, normative tools such as the Guiding Principles are of particular importance in seeking to achieve comprehensive protection of IDPs. The conference participants described and analysed how, and to what extent, ANSAs can either directly or indirectly cause displacement, violate IDPs' rights or hamper the efforts of humanitarian actors to protect IDPs.

Through case studies focusing on the interaction between ANSAs and IDP communities in the Philippines, Sri Lanka and Colombia, participants identified three challenges for humanitarian agencies:

1. It is crucial for humanitarian agencies and donors to find a balance between quick response and a thorough and ongoing analysis of the domestic context and dynamics, including the historical relationship between displaced communities, State institutions and ANSAs. Knowledge of the local culture, traditions and values is essential to ensure timely and effective assistance.
2. Based on such contextual analysis, humanitarian agencies must adapt their assistance strategy to address the needs of IDPs but also to enhance the "self-protection" capacity of local communities, while ensuring the inclusion of local partners.
3. Humanitarian organisations must also comply strictly with the principles of neutrality, impartiality and independence, to avoid being perceived as supporting one or other party to the conflict.

In many contexts in which local and international actors have provided assistance and protection, as the case study from the Philippines highlighted, internally displaced communities themselves have developed effective coping strategies and asserted their rights in the face of ANSAs. It was emphasised in the conference that while IDPs are subjected to violations, they can also have a proactive role in enhancing their own protection. Also, rather than always being the victims of violations, there have been instances where IDPs have put pressure on ANSAs to commit violations against other civilians.

Benefiting from the testimonies of current or former members of ANSAs, participants identified trends regarding ANSAs' perspectives on IDP protection and as-

sistance. A common challenge for ANSAs is to disseminate knowledge of international protection standards among their forces, and to enforce their application. There are various levels of interest in complying with international standards, both between groups and within each group. Also, mechanisms developed by ANSAs to deal with transgressions may not be in line with international standards. Current and former members of ANSAs also said that allegations brought up against ANSAs by various international organisations were not always substantiated, and participants discussed ways to remedy this.

The relationship between ANSAs and IDPs is often complex and can vary greatly between contexts. In this respect it was noted that in some instances IDPs might prefer to stay in, or return to, areas under the control or influence of ANSAs. The conference highlighted the fact that ANSAs can protect IDPs, where the State is unable or unwilling to do so. Several encouraging examples of steps by ANSAs in this direction included collaborating with humanitarian organisations in providing assistance, facilitating IDPs' safe return or making commitments to respect protection standards.

The conference then analysed ANSAs' motivations and commitments to respect the rights of IDPs. After having identified incentives to convince ANSAs to comply with protection standards, it is important to spread knowledge about relevant international norms and make sure they are well understood. It is then in the hands of the international community to design and implement efficient mechanisms to monitor and verify compliance.

Regarding specific groups of IDPs, there was a consensus over the need for further analysis and research to be dedicated to groups at risk, namely women and children, and for UN agencies and NGOs to engage more with ANSAs to better address the needs and vulnerabilities of these groups. Regarding compliance, monitoring and accountability, the same challenges were identified as for the violations of rights of the general population of IDPs. In addition, concerns were raised over the effectiveness of "naming and shaming" mechanisms, which may not always lead to the desired outcome.

From a donor perspective, the main concern regarding the interrelation between ANSAs and IDPs was to build up an adequate and careful contextual analysis, to strictly comply with the principle of impartiality, as well as to set their action into a broader legal framework including IHL, the Guiding Principles, and other relevant law. The representatives of the Norwegian government and of the European Union also discussed the risk of the "instrumentalisation" of humanitarian concerns when external actors intend to use the "humanitarian entry point" to engage in conflict resolution discussions.

Finally, participants discussed how humanitarian organisations can carry out programmes where ANSAs operate. The presenters highlighted that while building dialogue with ANSAs should be an initial objective, seeking their compliance with international standards of protection can be a longer-term objective. The discussions raised the need to adapt assistance strategies and programmes to the evolving situation on the ground, and at each stage of the displacement cycle. For instance, advocacy for the respect of the rights of IDPs may, *inter alia*, seek to prevent displacement, to ensure humanitarian space and access to communities or to promote durable solutions for IDPs in line with the Guiding Principles. One particular challenge faced by humanitarian actors seeking to ensure the protection of IDPs in areas under the control or influence of ANSAs is the restrictions imposed by some governments on their contact with ANSAs. Counter-terrorism legislation was also discussed by the participants and identified as another major impediment to possible humanitarian engagement, or the perceived neutrality of humanitarian actors.

Recommendations for further action

The conference identified several areas for further exploration, research and action, to better understand how ANSAs impact on internal displacement, and so enhance IDP protection:

1) The role that all stakeholders, including ANSAs, government agencies, IDPs, local communities and humanitarian agencies, may play in designing and implementing protection measures for the displaced, should be assessed further.

2) Researchers and practitioners should identify the underlying causes of the various impacts on IDPs of ANSAs in the different phases of the displacement cycle.

3) Researchers and practitioners should share their findings and experiences to enable a broader understanding of the strategies developed by internally displaced communities to cope with threats presented by ANSAs.

4) Further analysis and research should be dedicated to specific groups at risk of having their rights violated by ANSAs– such as women and children – and UN agencies and NGOs should engage with ANSAs to better address the needs and vulnerabilities of these groups.

5) Humanitarian agencies and donors should find a balance between quick response and a thorough and ongoing analysis of the domestic context and the relationship between displaced communities, governments and ANSAs. Knowledge of the local culture, traditions and values is essential to ensure timely and effective assistance programmes.

6) Humanitarian agencies should better apply academic research on displacement and ANSAs through sound humanitarian policies and activities, including clear principles on engaging with ANSAs.

7) Based on such contextual analysis, humanitarian agencies should adapt their assistance strategy to enhance the “self-protection” capacity of the local community, while ensuring the inclusion of local partners.

8) Assistance strategies and programmes should be adapted as situations evolve, and at each stage of the displacement cycle.

9) Humanitarian organisations should comply strictly with the principles of neutrality, impartiality and independence.

10) The difficulties and risks posed by mechanisms by which humanitarian actors seeking to interact with ANSAs are labelled as terrorists or terrorist sympathisers, and so denied access to funding, should be assessed further.

Acknowledgements

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The organisers of the conference express their deep appreciation to the presenters and discussants who enriched the discussions by sharing their analysis, findings and experience. Geneva Call and IDMC would also like to take this opportunity to extend warm thanks to all the moderators and participants for their substantial contribution, and to the interpreters. Particular gratitude is due to Melisa Ogliastri who took care of the conference arrangements and ensured that it proceeded smoothly.

This report was prepared by Elvina Pothelet with Greta Zeender of IDMC and with Geneva Call's Aurélie Lamazière and Chris Rush.

Introduction

This report is a summary of the proceeding of the expert conference held in Geneva by Geneva Call and the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council on 23 and 24 March 2011, on the theme "Armed non-State Actors and the Protection of Internally Displaced People".

The report aims to portray the discussions and recommendations made during the conference, and does not necessarily represent the views of the organising partners. The designations employed and the presentation of the material do not imply the expression of an opinion on the part of Geneva Call or IDMC concerning the legal status of any country, armed non-State actor (ANSA), territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Context

The context was described by the speakers of both organisations who opened the conference, and in a separate concept note distributed to participants.

At the end of 2010 the number of people internally displaced by conflicts, generalised violence or human rights violations, had reached 27.5 million in over 50 countries. ANSAs are active in at least half of these affected countries.[2]

In 2010, close to three million people fled their homes across the world, the majority displaced by conflict between governments and armed groups, or by generalised violence.[3] While governments, or armed groups associated with the government, were the main agents of displacement in close to half of the situations of displacement, in more than a quarter of situations, the main agents of displacement were armed groups opposed to the government.

Internally displaced children in a shelter for recently arrived IDPs in Pasto, Nariño province, Colombia. (Photo: Truls Brekke)

ANSAs have enjoyed impunity for the vast majority of violations which they have committed against internally displaced people (IDPs) and other civilians, as national governments have lost the monopoly on the use of force and their judicial systems may function poorly.

The transnational nature of some ANSAs, such as the Lord's Resistance Army which is in 2011 active in the north-east of the Democratic Republic of the Congo and in the Central African Republic, may make it harder to engage them to respect their obligations towards displaced populations. Still, national governments have the primary responsibility to ensure the well-being and security of their populations, including IDPs, and in certain circumstances, they can influence the role of ANSAs in protecting civilians in internal displacement situations.

Yet, in some situations, ANSAs have played a positive role in the lives of IDPs; by providing protection when governments were unable or unwilling to do so, or by facilitating the provision of assistance by humanitarian organisations, as the example given during the conference by an ANSA representative from Darfur illustrates. There is little information available in respect of such positive examples, including whether and to what extent ANSAs have paid attention in areas under their control to the specific needs of women and children and supported their participation in decisions impacting on their wellbeing.

There is therefore a need to better understand the roles that ANSAs may play – both negative, such as the forced displacement of populations, or the prevention of return, or positive, such as cooperating in the provision of assistance or enabling voluntary and safe return. Moreover it is important to identify the incentives that could be used to improve ANSAs' compliance with their legal obligations regarding the protection of IDPs.

Conference goals and expected outcomes

The goal of the conference was to explore all facets of the complex relationship between ANSAs and IDPs, by providing a platform for the sharing of perspectives that promote the engagement of those seeking to protect IDPs with ANSAs, and the identification of areas of concern and suggestions for future action. The conference built upon the findings of the Forced Migration Review issue 37 on armed non-State actors and displacement[4] and gave an opportunity for several of the issue's contributors to elaborate further on their articles.

Three expected outcomes were identified for the conference:

- Description of the different ways in which ANSAs have violated or complied with their legal obligations towards IDPs, in areas such as the protection of IDPs or facilitation and provision of appropriate assistance;
- Review of the coping strategies used by IDPs and the strategies pursued by civil society organisations to minimise abuses by ANSAs as well as the ways these can be expanded and supported;
- Review of policy and practical measures that have been taken to improve the protection of IDPs by ANSAs, while identifying successes, gaps, and lessons to be learned.

Presenters and participants

The conference gathered some 40 participants, including former or current members of ANSAs, representatives of donor governments, United Nations (UN) agencies, the International Committee of the Red Cross (ICRC), international and national NGOs and academics. For a complete list of presenters, and the names of participating organisations, please see Annexe 1.

Agenda

The first day was dedicated to exploring the relationship between ANSAs and IDPs, local communities and international actors, from a legal point of view, but also from the perspectives of civil society organisations and ANSAs in several specific countries – Colombia, Sri Lanka, the Philippines and Sudan. The motivations of ANSAs to protect IDPs were analysed, as were the different types of commitments that ANSAs have made.

The second day of the conference focused on policy issues and programming to improve IDP protection through the direct or indirect engagement of ANSAs. Participants looked at ANSAs' commitments to protect specific categories of IDP, namely internally displaced women and children. After analysing governments' policies and perspectives on engaging ANSAs in order to improve IDP protection, participants reflected on the challenges faced by humanitarian organisations conducting programmes for IDPs in zones where ANSAs operate, and the factors influencing their effectiveness. For the detailed agenda, please see Annexe 2.

Part 1
Exploring relationships between ANSAs and IDPs, local communities and international actors

1. ANSAs and IDPs: a legal review[5]

It is important to first clarify some definitions and set the legal framework of the relationship between ANSAs and IDPs. The non-legal but descriptive definition of an IDP generally used by the international community is provided by the Guiding Principles, as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border".

For the purpose of this report, the term "ANSAs" will refer to armed entities that are primarily motivated by political goals and operate outside effective State control. They include armed groups, *de facto* authorities[6] and non- or partially internationally recognised States.[7]

In this session, Annyssa Bellal of the Geneva Academy of Humanitarian Law and Human Rights (ADH) identified the sources of relevant ANSA obligations under international law in relation to IDPs: in the Geneva Conventions and their additional protocols, but also in the Rome Statute, the Kampala Convention, and in the Guiding Principles.

She then described the two main conditions necessary for international humanitarian law (IHL) norms to apply. First, there must be an armed conflict; this means that in many cases of forced eviction resulting in internal displacement, and in some situations of protracted displacement but where there is no armed conflict, IHL will not apply.[8] The second condition is the existence of a certain level of organisation of an ANSA; IHL will not apply to the actions of a random individual or of a group not sufficiently organised.[9] If these conditions are met, ANSAs are bound by the obligations relating to the protection of civilians in situations of non-international armed conflicts. More specifically, under Article 3 common to the Geneva Conventions, ANSAs must refrain from the following acts:

- violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- taking of hostages;
- outrages upon personal dignity, in particular humiliating and degrading treatment;
- the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

A number of articles from the Additional Protocol II to the Geneva Convention are also relevant, but apply only if the State is a party to the Protocol and if the threshold of application is met. Article 4 sets out the fundamental guarantees of human treatment. Articles 13 to 18 are related to the protection of the civilian population; in particular Article 17 prohibits forced movements of civilians. It must be noted that the ICRC considers the prohibition of forced displacement as a customary international law rule (Rule 129 of ICRC customary IHL study[10]), which therefore applies irrespective of whether the State is a party to Additional Protocol II.

However, current IHL norms regarding the protection of IDPs appear not to be sufficiently developed. The ICRC has identified a need to expand the law on themes such as freedom of movement, family unity, the civilian

character of IDP camps, and specific mechanisms for property restitution or compensation.[11]

There are some situations where the applicability of IHL may be open to question. Situations of urban violence, gangs and other criminal organisations can for example have an impact on IDP protection. IHL would apply in such situations, as long as the two conditions mentioned above are met.

Individual members of ANSAs can be tried for violations of international criminal law. The Rome Statute, which establishes the International Criminal Court's jurisdiction, characterises as a war crime ordering the displacement of the civilian population for reasons which are not dictated by military reasons.[12] When committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack, such an act can also constitute a crime against humanity.[13]

In order to assess ANSAs' obligations, one should also examine other standards established by international organisations, and texts which may not currently be legally binding as such, but reflect the emerging consensus in this regard.

The Convention for the Protection and Assistance of IDPs in Africa adopted by the African Union in 2009 (also called the Kampala Convention), in particular its article 7, assigns specific obligations towards IDPs to members of ANSAs, rather than to armed groups as entities.[14] The Convention will be a binding instrument when it enters into force.

The Guiding Principles, which consist of 30 principles setting out the rights and guarantees relevant to the protection of IDPs in all phases of displacement, are meant to be "observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction".[15] While they are not binding, they reflect both relevant IHL and International Human Rights Law (IHRL) provisions.

The United Nations Security Council (UNSC) has addressed some of the violations committed by ANSAs. For example, Resolution 1612 established a monitoring and reporting mechanism to record six grave IHRL violations committed against children in armed conflicts.[16] It set up a mechanism to list entities – governments and ANSAs – that are alleged to have committed three of the six grave violations against children during armed conflicts, namely killing and maiming, use and recruitment and sexual violence.[17]

A variety of agreements signed by ANSAs, by which they have committed themselves to respect elements of IHL and IHRL, are also worth noting. These commitments will be further discussed in Section IV.

The question of whether IHRL applies to ANSAs is also important, particularly as in many instances IHRL provides enhanced protection. While for the majority of legal experts, the philosophy of human rights concerns the regulation of relations between the State and the individual, others see human rights as focused on the individual "rights holder", and support the applicability of IHRL to ANSAs when they control a territory, with a population under their supervision. Thus, it is increasingly asserted by jurists that ANSAs have obligations to respect peremptory norms of international law, such as the prohibitions of torture or slavery. Moreover, under the case law of most human rights bodies, a general principle has been established according to which States have an obligation to prevent and punish IHRL violations committed by ANSAs.

Discussion and recommendations

Both binding and non-binding legal instruments are useful to ensure and enhance the protection of IDPs by ANSAs. While current IHL norms in this respect are very relevant to IDP protection even if they are not IDP-specific, some specific themes such as the respect of the civilian character of IDP camps need to be further developed. The question of whether or not IHRL norms apply to ANSAs must be addressed as well. In order to enhance compliance of ANSAs with legal standards of protection of IDPs, a first step would be to ensure that the norms are known and understood by these groups.

Participants highlighted that academics and practitioners would benefit from further research on the different ways to engage ANSAs on the question of IDPs, to prevent displacement, during displacement and in the search for durable solutions.

2. Case studies: community perspectives and obstacles to greater ANSA respect for IDPs' rights

In order to identify some key issues in respect of the links between ANSAs, civil society actors and international organisations in regard to IDPs, three contexts were analysed: Colombia, by David Cantor of the Institute of Commonwealth Studies, University of London; the Philippines, by Rexall Q. Kaalim of Bantay Ceasefire, a group of community volunteers in the Philippines; and Sri Lanka, by Bhavani Fonseka of the Centre for Policy Alternatives in Sri Lanka.

The Philippines

Since the early 1970s, the Moro National Liberation Front (MNLF) has been fighting for the independence of the southern island of Mindanao from the Philippines. Putting more emphasis on its Islamic roots, the Moro Islamic Liberation Front (MILF) broke away from the MNLF in 1977. Abu Sayyaf, a smaller and more radical separatist group, split from the MNLF in 1991.

In the Philippines, as a consequence of this war, millions of people have been internally displaced by armed conflict and IHRL violations.[18] Bantay Ceasefire documented many violations of IHRL and IHL, as well as of failures to follow the Guiding Principles. The repeated evacuation of communities has led to the depletion of the resources of the communities and the gradual destruction of their social structures. This has made them more vulnerable. In order to remedy this, while international agencies have provided direct humanitarian aid, some local NGOs have focused on supporting IDPs' empowerment. This may be through supporting people who are demonstrating for a cessation of hostilities, or facilitating the safe and organised return of IDPs.

Bantay Ceasefire has set up a "quick response team" consisting of volunteers that relay information about fighting to various communities, as an early warning system. Interestingly, the local population often directly negotiates with ground commanders of both the rebel MILF forces and government forces. Another example of action on the part of local communities – facilitated by local NGOs – is the creation of "Spaces for Peace". The parties to the conflict have engaged in protecting these zones to maintain them free from violence. In 2008, when the war erupted again in the central part of Mindanao, volunteers from the "Spaces for Peace" initiative volunteered to help monitor the ceasefire.

Rexall Q. Kaalim noted that to make up for the lack of international assistance during the return process, local NGOs often step in to ensure the returnees' safety, the access to their lands and crops, or to engage in dialogue with both government forces and ANSAs for their withdrawal from civilian zones.

Sri Lanka

From the Sri Lankan context, several trends regarding the impact of the Liberation Tigers of Tamil Eelam's (LTTE) activities on civilians were noted. The group, founded in the 1970s, sought to create an independent state for ethnic Tamils in the north and east of Sri Lanka. After fighting for close to three decades against the government, it was defeated in 2009. During the years when the LTTE controlled parts of the north and east[19], it had a notably limited interest in respecting international standards or engaging with international donors and humanitarian agencies. There were recurrent direct and indirect threats to the civilian population both from the LTTE and from the government. These included being subjected to LTTE "taxation" and land expropriation. This particularly affected the Muslim population, which was expelled en masse from LTTE-controlled areas.

In parallel, many international actors tried to engage with the LTTE but, according to Bhavani Fonseka, they failed to take into account that the LTTE was not interested in such engagement except at some particular moments, such as after the Tsunami which struck the country at the end of 2004. She also asserted that the international community had failed to understand that neither the government nor the LTTE were interested in a negotiated solution, but that it also failed to press for a ceasefire or better protection standards for civilians. Finally, she noted the polarisation of different sections of the Tamil diaspora concerning displacement, post-war programmes and return strategies, which also contrib-

Internally displaced people chat with their relatives over the fence of a temporary IDP camp in Vavuniya, northern Sri Lanka. (Photo: REUTERS/Nir Elias)

uted to preventing the international community from engaging in a coordinated fashion.

Colombia

Regarding the situation in Colombia, David Cantor highlighted that national and international analysts have viewed the flight to cities as a result of a lack of security in rural areas, which is caused by the lack of public order and the presence of ANSAs. The common wisdom is that IDPs could return home once government forces have defeated these ANSAs. This conception is found in domestic law and policies, and also defines current debates on IDP return, justifying support for return at the expense of other settlement options. However, the field-based research conducted by David Cantor during 2007 and 2008 showed a more complex picture. It covered 42 communities who had returned home over the previous ten years, and also IDPs living on the outskirts of cities.[20] In practice, State institutions have largely been absent from the areas IDPs came from, while ANSAs have been, and continue to be, present in these areas. According to David Cantor, ANSAs continue to exercise a high degree of influence in these areas, including by offering communities some sort of justice system, and by conducting military operations there.

The research emphasised that IDPs often base decisions not to return, not in terms of "general" security conditions, but rather on individual assessments of the threats to their safety. In other words, IDPs may not be particularly worried about whether or not ANSAs are in return areas, but about how safe they will feel, for example in respect of the risk of landmines or recruitment of their children.

The research also found that groups fighting against government forces in Colombia (hereafter "guerrilla groups") generally welcomed the return of IDPs, but only if they could decide who could return and how, due to the perceived risk that returnees may be informants for the State or for associated paramilitary groups.

On the other hand, paramilitary groups did not exercise control in many rural areas. Prior to their demobilisation, these groups tended to oppose uncontrolled return to zones where guerrilla groups still exercised control. Following their demobilisation, however, the remaining structures present in urban areas have shown little interest in IDP return.

Taking into account the intertwining of the competing frameworks of control imposed by the various parties to the conflict, David Cantor's research showed that IDPs may adopt three different strategies to return. First, they may seek permission from the guerrilla group active in their zone of origin, leaving them vulnerable to charges of collaboration. Second, they may seek to be accompanied by the national army, leaving them dependent on government protection. Third, they may seek to avoid any collaboration with the parties to the conflict, either by returning without informing anybody, by going back and forth between their fields in areas of origin and their shelter in urban areas at night, or by approaching the parties to the conflict directly and asking them to respect the community's decision not to collaborate with any of them. Though risky, the latter approach has proved the most sustainable and provided communities with a higher level of safety, according to David Cantor.

Discussion and recommendations

From the three presentations and the discussions that followed, three key challenges to enhance the efficiency of assistance programmes to IDPs were identified.

Timely response vs. analysis of context

Humanitarian agencies, both protection-mandated or otherwise, need to find a balance between quick response and a thorough and ongoing contextual analysis. Throughout the conference there was a clear consensus for the need for international humanitarian agencies and donors to better understand domestic contexts and dynamics, including the relationship between displaced communities, State institutions and ANSAs. Responses should be subject to an iterative process of review and

adaptation, starting from a preliminary analysis at the onset of the emergency. How international agencies will support coping strategies of the displaced or those threatened with displacement will be largely dependent on this preliminary analysis.

Knowledge of the local culture, traditions and values is essential. Even national actors may misinterpret the actions of local communities if they do not know the context. For example, in the Philippines in June 2009, IDPs were accused by some national media of being reserve forces of the MILF because they refused to leave the area they were settled in, which happened to be near a MILF camp. In fact, the community wanted to stay close to a mosque built by their ancestors which they believed to have the power to protect them. In this case, the lack of knowledge of the local culture clearly created misunderstandings and accusations of collusion with the MILF. The lack of coordination between humanitarian actors in the field may also result in them failing to comprehend evolving situations.

Encouraging "self-protection"

A second challenge for humanitarian agencies is to adapt their response to the local context and to the relationships between actors, with the particular objective of optimising the "self-protection" capacities of internally displaced communities. The variety of IDP's strategies to negotiate a safe return requires humanitarian organisations to adopt a corresponding variety of assistance strategies. More specifically, humanitarian agencies must be able to assess the extent to which IDPs need assistance and the extent to which local communities are able to design and implement corresponding assistance strategies. Indeed, as assistance activities must respond to the local communities' needs and be in accordance with their perceptions of the conflict, humanitarian agencies should put an emphasis on supporting their self-protection strategies. How different actors will perceive the protection strategies will depend on the extent to which these strategies are designed and implemented by the communities themselves. In order to avoid assistance programmes hampering the "self-protection" capacity of local communities, humanitarian agencies need to ensure the inclusion of local partners in assessing when and to what extent the local communities can play a role in protecting IDPs.

The contrast in terms of the potentials for self-protection in the three different contexts is striking. In the Philippines, IDPs carried out demonstrations to advocate for their rights, but such public and open actions would not have been possible in Sri Lanka unless the government or the LTTE saw an advantage in allowing this to happen. Local groups in the Philippines were also able to negotiate on IDPs' behalf with the national army and with ANSAs. In Sri Lanka, at the end of the conflict in 2009, people within buffer zones designated by the government for civilians seeking refuge from the fighting – had very little capacity for self-protection.

A third challenge for humanitarian agencies is to maintain their neutrality, impartiality and independence in all circumstances and to avoid being perceived as part of a government's counter-insurgency efforts or, conversely, as being supportive of an ANSA. Humanitarian actors may also face ethical issues due to the relationships between the communities and the state or non-state actors; here again a thorough assessment of the context is key.

3. Some ANSA perspectives on IDP protection and assistance

Listening to the perspectives of ANSAs is crucial to be able to better understand their attitudes and approaches to IDP protection and assistance, and more broadly, their interaction with local communities. To this end, the Secretary for Humanitarian Affairs of Darfur's Justice and Equality Movement (JEM), Suleiman M. Jamous, and a former member of the Revolutionary Armed Forced of Colombia (known by its Spanish acronym FARC), presented testimonies. They discussed the impact of ANSAs in causing displacement but also in facilitating return, and how the methods and tactics used during conflict can prolong people's displacement.

The speaker formerly associated with the FARC, a guerrilla movement proclaiming itself to be a revolutionary, agrarian, anti-imperialist, Marxist-Leninist organisation of Bolivarian inspiration, and which has been involved in the Colombian armed conflict since its creation in 1964, highlighted that the presence of an ANSA in a given region does not necessarily mean that IDPs will face more violence. On the contrary, according to the speaker, ANSAs can sometimes be the only body engaged in protection of civilians. The local population can even enter into a "social contract" with the armed group, under which the group ensures the security of the entire community. He said that since most of the members of the guerrilla groups in Colombia used to be peasants themselves, they understand the local customs, and are able to respond to the local concerns and aspirations, for example by sanctioning behaviour considered unacceptable by local communities such as drug use and theft. On the other hand, the speaker asserted that paramilitary groups, who have been linked to sectors of the army or to local politicians, have generally underestimated the strength of ties between guerrilla groups and some civilian communities, and maybe because they generally themselves lack ties with local communities, they tend to commit more violations against them.

According to the former member of the FARC, forced displacement in Colombia has been occurring in the context of the fight between guerrilla groups and the regular forces for domination of certain zones, or as a result of retaliatory attacks by paramilitary groups against the population. He highlighted that the extraordinary deployment of military forces within the framework of "Plan Colombia"[21], as well as the consequent retaliatory measures from the guerrillas – including the laying of booby traps – also contributed to a considerable increase in rural and urban displacement.

The speaker asserted that ANSAs operate in areas where the State's presence is weak, and they may play a complementary or even substitute role in the protection of the displaced. According to the speaker, the current Colombian government has promoted the return of displaced peasants to their land, but often does not have the necessary means to ensure their safety in return areas. He added that returning IDPs may then seek assistance from the FARC for protection. The FARC may relocate them to other areas, as a strategy to extend its control over territory.

According to Suleiman Jamous, JEM has made a clear public stand regarding the protection and assistance of IDPs. He said his organisation fought for the protection and wellbeing of the Darfuris, and more specifically to offer marginalised populations in Sudan a share of power, and to do so in full conformity with international standards. JEM, specifically through its Humanitarian Office, has committed to respect IHRL and IHL through the signing of agreements with international agencies, such as the memorandum of understanding it signed with UNICEF on the protection of children in Darfur.[22] The speaker admitted that individual members of the group had at times failed to respect IHRL or IHL standards, but asserted that the perpetrators had been punished. He emphasises the transparency of JEM's activities and monitoring mechanisms.

Suleiman Jamous said he regretted the lack of thorough analysis and assessments by the international community when designing assistance programmes.

Finally, Erin Mooney, an international expert on IDPs, emphasised the importance of knowledge of and compliance with IDP standards by parties negotiating in a peace process, including ANSAs. From her experience of the Darfur context, ANSAs have been more receptive in protecting the rights of IDPs and refugees, and during negotiations, they have reminded the other party to negotiations about international protection principles,

including the Guiding Principles. She added that by introducing these standards during negotiations, there is the hope that all parties, ANSAs, the government and the international community, will better implement them and become more accountable to them. Finally, she noted that while ANSAs may see themselves as representing IDPs and other disenfranchised populations, their interests usually do not totally coincide with those of IDPs. In order to ensure IDP protection, the views of IDPs and other civil society actors must be sought during negotiation processes.

An internally displaced woman among the tens of thousands who have sought protection at Zam Zam IDP Camp in El Fasher, North Darfur, Sudan, fleeing fresh clashes between government and rebel forces. (Photo: UN Photo/Olivier Chassot, March 2011)

Discussion and recommendations

From both contexts, a number of common features were identified:

- The interaction between ANSAs and communities can change when the dynamics of the conflict change. The civilian population and civil society actors may want to distance themselves from ANSAs even when there are some areas of common interest.
- As the interaction between actors changes, so do identities. For instance, ANSA members might have began as civil society activists, and joined the rebellion afterwards. Information about individual backgrounds can be useful to better devise short-term and long-term solutions.
- A common challenge faced by ANSAs is to make their forces aware of and ensure they comply with international protection standards. Efforts to enhance knowledge and compliance may include training courses, sensitisation programmes and sanction mechanisms. It was suggested that the higher the level of education and training of the members, the better prospect of adherence with standards.
- The speakers from Colombia and Sudan both brought up the issue of allegations made against ANSAs by international agencies or institutions which are, according to them, not always substantiated. During discussions, participants suggested that academic institutions could contribute to identify and address the weaknesses of the monitoring and verification mechanisms of the UN agencies, or of the NGOs, to assess the compliance of ANSAs with international agreements.

Drawing common recommendations as to the commitment of ANSAs to the protection of IDPs is not an easy task since there are many ANSAs, each showing different levels of interest in complying with international protection standards. A group may itself be divided along several lines, including ethnicity, age and gender, education level, but also in terms of geography, for instance, the perspective of those in conflict may be very different from members in the diaspora. This raises a number of questions on how to best increase awareness of international standards and to enhance compliance with them. It seems that the opportunity depends not only on the conflict situation, but, above all, on the nature and approach of the respective armed group itself.

Participants in the discussion wondered whether, bearing in mind the differences between contexts and groups, it is possible to identify common approaches to make ANSAs more aware of their responsibilities towards IDPs and other civilians, and also how to ensure that mechanisms developed by ANSAs to deal with transgressions are in line with international standards.

4. Analysis of ANSA motivations and commitments to respect the rights of IDPs

The fourth session aimed to contribute to an understanding of why ANSAs may cause forced displacement and fail to meet protection standards in general, and how they may commit to comply with IHL and IHRL standards. Olivier Bangerter of the ICRC provided an overview on motivations of armed groups which can lead to forced displacement and other violations, and argued that understanding these motivations is essential when it comes to persuade ANSAs to better protect IDPs.[23] Sandesh Sivakumaran of the University of Nottingham described the types of commitment which ANSAs have made in regard to IDPs.

In order to find ways to persuade ANSAs to better comply with IDP protection standards, one first needs to identify their motivations to do so. Yet this requires an acknowledgement that violations of IHL or IHRL can actually be part of a deliberate strategy of the ANSA. Olivier Bangerter said that it was not possible to reach broad conclusions as to whether ANSAs or state forces were the more frequent perpetrators of violations, and that in the same conflict, different ANSAs may have completely different approaches. He added that an ANSA may have one of three different attitudes towards IHL or IHRL violations: it may have ordered violations, approved them tacitly, or let them happen. The group's leadership may not be able to control violations committed by the members, but as it does not constitute a policy of the group as an entity, this scenario was not elaborated on.

Motivations for committing violations vary between groups; a first motivation may be to meet a strategic goal of the group. It is important to stress that most policies implemented by a group are rational, even where they are inhumane. For example, genocide may be a deliberate policy of an ANSA, and may be considered a rational choice by a group aiming to destroy a certain population.

A second reason may be that a group perceive that any method used to reach its strategic objective is justified. Extreme violence can sometimes be perceived as either the only or the most efficient way to achieve a given goal. In Sierra Leone, the Revolutionary United Front (RUF) justified its extremely violent methods – which included amputations carried out on a very large scale – by explaining that it was the only way to "clean the system". In this extreme case, violence clearly was used as a method to spread terror to force political change.

A third reason may be to gain military advantage by breaking the link between civilians and the government. Spreading violence and chaos can contribute to undermining the ability of the State to protect the civilian population, who might, as a result, turn to ANSAs to ensure their security. The forced displacement of the population has been viewed as an efficient military tool for an ANSA seeking control over a certain area. Indeed, if an armed group relies on the civilian population for material support or intelligence, it will strive to keep this population in the area under its control. Similarly, an ANSA may cause the displacement of people supporting its enemies. During elections or referendums, an ANSA may want the population that votes according to the group's interests to be located in the right constituencies.

A fourth motivation to commit violations of international protection standards is revenge. ANSAs might launch retaliatory attacks either to avenge their own members, or the population under their control. When the conflict has an ethnic dimension, the temptation for revenge may be particularly powerful.

Regarding the question of how to engage ANSAs for better IDP protection, the presenter suggested that it may be much easier if the violations are a command and control issue rather than if they are part of the group's policy or if its members are told that the violations are in the interest of the group.

In the case of violations committed by an ANSA, one must consider the various elements shaping the leaders' decisions, even if they are not part of the group's policy. Their psychological and physical state at a given moment, for example when facing sudden attack, are crucial when assessing the circumstances of an order to commit violations.

If ANSAs have various motivations to commit violations, they can also decide to comply with protection standards. Sandesh Sivakumaran described various types of engagement which ANSAs have committed to regarding IHRL and IHL norms: unilateral commitments, bilateral

agreements (usually with the State, but also with an international agency), internal commitments (such as codes of conduct, internal regulations and orders), ad hoc commitments (such as press releases, reactions to reports of NGOs or UN entity, policy statements), and statements explaining why the armed group is fighting.

The most common form of commitments are bilateral agreements, probably in part because they provide a sense of equality in terms of obligations and compliance. However, this type of agreement often comes late in the conflict, once it has reached a certain intensity or has been ongoing for a prolonged period; a certain level of dialogue and cooperation between the parties must be achieved; and they often concentrate on very specific issues. On protection of IDPs for example, bilateral agreements might focus on specific modalities of return, to the exclusion of other relevant protection issues. This weakness is evident from a number of agreements, particularly ceasefire and peace agreements, which contain provisions for IDP protection limited to return; most of the other IDP-related issues tend to be missing.

Although on a much more modest scale, ANSAs have also committed to the protection of IDPs through unilateral declarations. For example, JEM and SLM Unity in Darfur, Sudan, have reaffirmed in a statement published in 2008, their commitment to refrain from forcibly displacing civilian populations.[24] In Sierra Leone, the RUF included in its Ideology Book the following statement: "...do not cause damage in any refugee or displaced camps, or even enter into these camps." Such commitments tend to be much broader than commitments in respect of IDPs contained in bilateral agreements, and to reflect the view of the group regarding certain norms or attitudes. However, they are far less frequent.

The substance of the commitments also takes a number of different forms. With regards to IDP-related issues, there are, for example, few commitments by ANSAs to comply with the Guiding Principles. One reason for this may be a lack of knowledge of the existing protection standards for IDPs. However, it must be noted that commitments to IHL or IHRL norms that apply to IDPs and other civilians are actually far more numerous. Yet this type of general commitment to IHL or IHRL is not sufficient to allow for full IDP protection since IDPs' specific needs, as identified in the Guiding Principles, may be overlooked. When reference is made to the protection of civilians, the actual commitments made tend to relate to targeting, such as protecting civilians from attacks, or taking precautions in attacks, while some of the specificities of IDP protection addressed in the Guiding Principles, such as the protection against forcible return or the provision of ID documents, may be missing.

Discussion and recommendations

It is crucial to think about best practices when it comes to promoting compliance by ANSAs with IDP protection principles. Efforts should be made to identify the right incentives, to show ANSAs that compliance is in their interest. Convincing ANSAs is the first step. It is essential then, at a later stage, to spread knowledge about relevant international norms and make sure they are well understood. For commitments to have a chance to be implemented, they have to come from the leadership of the group, in full understanding that it is in their interest to do so.

While the international community can have an important role in monitoring commitments to IDP protection by ANSAs, measuring and verifying compliance may prove very difficult. More effort should be dedicated to enhancing existing monitoring mechanisms.

Part 2
Engaging ANSAs in IDP protection policies and programming

5. ANSAs' relationships with specific internally displaced categories, in particular women and children

Because few studies exist on the interaction between ANSAs and specific internally displaced groups, the presentations focused on groups affected by armed conflict and not on IDPs specifically. The conference discussed the attitudes of ANSAs, as well as the direct or indirect impact of ANSAs' activities on particular categories of IDPs – specifically women and children. To this end, Jonathan Somer of Geneva Call shared with the participants conclusions drawn from Geneva Call's publication *In Their Words: Perspectives of Armed non-State Actors on the Protection of Children from the Effects of Armed Conflict*.[25] Jocelyn Kelly of the Harvard Humanitarian Initiative presented the result of the research she conducted on the attitude of two Mai Mai groups towards displaced and other women in Democratic Republic of the Congo (DRC).[26]

Featuring the testimonies of nine ANSAs regarding their perspectives on the protection of children in armed conflict, In Their Words was commissioned based on the recognition that if ANSAs are responsible for violations against children, they are also part of the solution. The publication therefore aimed to provide a platform for ANSAs to describe how they perceive and react to international standards, what challenges they face, and some of the good practices they may have developed.

Several conclusions can be drawn from the publication. Firstly it is apparent that the participating ANSAs consider that they have a role in protecting children. The ANSAs detail the measures taken to ensure the protection of children during armed conflict. These can include general measures to ensure the protection and physical welfare of children (such as the provisions incorporated in the code of conduct of the MILF in the Philippines), or measures to provide education to the children in areas under their control (as promoted by JEM in Darfur).

On the use and recruitment of children, Jonathan Somer said that international efforts to raise the minimum age of recruitment into armed forces have influenced ANSAs' policies. The Karen National Union (KNU) reported that it increased the age of recruitment into its armed forces to 18 following the publications of reports by the UN and NGOs. However, many of the ANSAs interviewed pointed out the challenges in implementing the legal standards, with several highlighting the gap between them and their failure to reflect the reality of warfare. The MILF also pointed out difficulties in convincing its own constituency to accept the legal definition of a child. International standards may indeed be perceived as incompatible with some interpretations of Islam, which consider that an individual becomes adult upon reaching the age of puberty. Several ANSAs also said that they often faced difficulties in determining the exact age of potential recruits due to their lack of birth certificates.

On the issue of cooperation with the international community, most contributing ANSAs said they were willing to work to provide access and facilitate assistance. They welcomed cooperation with the UN, but said that in some cases such cooperation was lacking. This was particularly so in respect of the "de-listing process" in the framework of UN Security Council Resolution 1612 on the monitoring of child recruitment. Some groups also called for international assistance for the social reintegration of child soldiers following their demobilisation.

Sometimes assistance programmes suffer from a lack of cooperation by the affected State, which is most of-

Children run around the Minova IDP Camp, South Kivu, DRC. (Photo: IRIN/Aubrey Graham, June 2009)

ten manifested through the denial of access to ANSA-controlled areas or the forbidding of dialogue with ANSA representatives. In some instances the concerned State deliberately hampers efforts by the ANSA for dialogue or engagement. Several States have refused to allow the UN to implement action plans with listed non-State parties.

Jocelyn Kelly of the Harvard Humanitarian Initiative then presented her research carried out in eastern DRC on the protection from sexual violence that particularly affects women and girls. Her research mainly consisted of interviews of members of two Mai Mai militias. She found that militia members were trained to adopt violent behaviour through very brutal methods seeking to suppress their sense of humanity. She also described their relations with civilians as very ambivalent, involving both envy due to their desire to return to civilian life, and a view of civilians as an exploitable resource. It is important to highlight that the Mai Mai do have relationships with civilians, since they perceive themselves as their protectors, and rely on them to provide them with food or use them to obtain information on their enemies. The groups with the closest relationship with civilians were found to be less likely to commit sexual violence. When perpetrated, rape was found to be the result of orders from commanders, or of individual militia members acting without sanction from above getting drawn into the "craze of violence".

Based on the results of her research, Jocelyn Kelly stressed the importance of determining whether or not there is a desire from the group to enforce IHRL and IHL norms. Indeed, while it might be part of the group's strategy to be perceived as the "bad guys", some ANSAs do want to respect the norms, and it is then necessary to identify the tools to help them achieve this. One must also take into account the ability of the group to enforce IHRL or IHL. It may be difficult for commanders to enforce norms when there are no accountability mechanisms, such as internal rules or clear disciplinary measures.

Discussion and recommendations

It was apparent that much of the discussion about groups at risk was not displacement-specific, but was also relevant to people in similar situations within wider conflict-affected populations. From the presentations several main issues could be observed. The impact of ANSAs on vulnerable displaced groups has not been adequately explored and it is recommended that this be a priority for further research.

Other issues that came out in this session included:

- There is a clear message from a number of ANSAs that UN agencies and NGOs should engage with them more, not only in seeking compliance with international protection standards, but also to ensure improved monitoring of their compliance.
- Efforts by humanitarian organisations are sometimes hampered by a lack of support or deliberately hostile actions by the State.
- Humanitarian organisations must be extremely careful in seeking a balance between engaging with ANSAs and providing services to the population. A particular challenge in this respect is the labelling of some ANSAs as "terrorist groups", putting NGOs that work with them at risk of prosecution.
- A group may not comply with international legal standards even though it has a very clear command structure and a formal code of conduct. In these cases the violations may be linked with issues of discipline. Efforts should then be directed toward a better adherence of all members of the group to internal rules and relevant international standards;
- The accountability mechanisms put in place by the groups to deal with cases of non-compliance by their members must also conform with international standards, for example with regard to the right to a fair trial.
- Concerns were raised over the efficiency of sanctions, such as the listing mechanism under Resolution 1612, for groups that commit violations related to children in armed conflict.[27] Depending on the nature and approach of the ANSA concerned, such "naming and shaming" mechanisms may not always lead to the desired outcome.

6. Dealing with ANSAs and displacement: the perspectives of governments

The participants had the opportunity to consider donor's perspectives – specifically those of the Norwegian government and the European Commission – on the issue of the links between ANSAs and displacement.

According to Haakon Gram-Johannesen of the Norwegian Ministry of Foreign Affairs, governments operate within a context of interstate relations most of the time, where the arenas and the procedures are well established. On the contrary, engagement with ANSAs occurs where there are not established procedures, and in fact, in most cases, the concerned governments' point of view will be one of "non-interaction" with armed groups, and in many cases that is a well-founded position.

The Norwegian government has a holistic approach, with an "integrated foreign policy of engagement", including humanitarian assistance, peace mediation efforts and longer-term development cooperation. According to the speaker, this model has certainly contributed to the credibility of Norway as an important peace mediator.

Regarding IDP protection, the speaker called for the strengthening of the prevention of displacement, and of protection and assistance to IDPs, based on both international law and extended dialogue with all relevant actors. The Norwegian government has established partnerships with organisations engaged in such dialogue, including ICRC, the Centre for Humanitarian Dialogue and Geneva Call. Haakon Gram-Johannesen underlined that the prevention of violations may be supported through the strengthening of accountability mechanisms, the rebuilding of legal systems, the implementation of resolutions by the UN Security Council and other international bodies, or by resorting to the International Criminal Court.

He said that Norway's approach to dealing with ANSAs would be primarily to establish and develop contact and dialogue based on confidence. Even though this type of engagement raises questions of effectiveness (in other words, whether the ANSAs could take advantage of this "soft" approach) Norway has come to the conclusion that dialogue is the most beneficial approach. Opportunities for constructive engagement, respect for IHL and reduction of violence are enhanced when ANSAs seek political legitimacy.

The second presenter, Patrick Dupont, described the approach adopted by the European Union (EU). The Humanitarian Aid department of the European Commission (ECHO) is driven by the principles of impartiality, neutrality and independence, which may be very difficult to implement in situations of conflict, especially when engaging with ANSAs is necessary. The EU must be extremely careful not to be perceived by local actors as "Western do-gooders". It emphasises contextual analysis and assessment of needs to guide its decision to fund programmes. At the same time, donors often have to balance the need for analysis and a quick response to a crisis.

The EU seeks to address difficult questions, such as how to deal with ANSAs who refuse to engage with the international community, and how do deal with armed groups with economic rather than political motivations.

ECHO addresses the issue of displacement and protection and ANSAs through three entry points. First, regarding the policy framework, EU humanitarian action is driven by a need-based approach. The Consensus on Humanitarian Assistance adopted in 2003 asserts that EU humanitarian assistance shall be fully grounded in the respect of IHL, IHRL and refugee law.

Second, the EU has, within this framework, funded a number of sensitisation activities to spread knowledge among ANSAs of international norms, and the responsibility of State and non-State authorities. Since ECHO is not an operational actor, it does not directly engage with ANSAs. But through partners, ECHO has promoted communication with ANSAs, to understand their motivations and to help them improve their knowledge of IHL.

Third, advocacy is also an important part of the EU activities; it is carried out by partner agencies but also by the European Commission itself. Throughout the daily field engagement of the EU partners with local communities including ANSAs, EU experts have been essential in information gathering, in needs and context analysis, and in conducting international advocacy, within the European Commission as well as towards the EU institutions.

Discussion and recommendations

A number of commonalities can be drawn from the donor's perspectives. The need for exact and careful contextual analysis is clearly an issue for donors. Donors have to be fully impartial, and base their humanitarian assistance on needs, without any political considerations. The legitimacy and impacts of their engagement is also of concern, as well as the need to set their action into a broader legal framework including IHL, the Guiding Principles, and other relevant law.

Regarding terrorist listing, the speaker from the EU emphasised that it needed to act in full conformity with relevant legislation, and therefore cannot either engage directly or fund any organisation that is on its terrorist list. At the same time, he said that it is very difficult to ignore some organisations that are on the list.

With regards to dealing with humanitarian and political issues, further thought should be dedicated to the utilisation of a "humanitarian entry point" to conflict resolution discussions. When actors cannot agree on sensitive political issues, the need to protect communities may be a way to trigger negotiations. In these cases, the risk of the "instrumentalisation" of humanitarian concerns needs to be borne in mind.

7. Humanitarian programmes and advocacy on behalf of IDPs in zones where ANSAs operate

Finally, it is essential to look at programming and policy from the perspective of humanitarian organisations to understand the type of challenges they may face when providing humanitarian assistance and protection to IDPs in ANSAs-controlled areas. Humanitarian actors often engage in negotiation processes with ANSAs to secure access to their beneficiaries. They have to design programmes for IDPs in very challenging contexts, and developed ways to engage with ANSAs.

Rolf Vestvik of the Norwegian Refugee Council (NRC) focused his presentation on nine elements, based on NRC's experience in seeking to gain access and to carry out programmes in challenging environments:

- Produce strong contextual analysis, including of stakeholders, geographical conditions and the political situation, as misunderstanding the local context can lead to faulty programming.
- Draw on the knowledge of national staff for a more refined and in-depth analysis of the context.
- Focus on the deliverables: do "pragmatic programming" to extend presence, by first focusing on programmes which will bring immediate benefits to the community.
- Deliver long-term humanitarian assistance to ensure successful and sustainable programming, and to allow for better analysis and build trust with local actors.
- Establish a presence where the conflict is actually taking place, to be near key actors. This may not be in the capital.
- Only promise what can be delivered, based on accurate needs assessments.

Internally displaced children in an IDP camp in Garowe, Puntland. (Photo: IRIN/Keishamaza Rukikaire, February 2011)

- Focus on delivering humanitarian assistance, particularly at first, rather than on broader issues. There may be opportunities to bring up more general concerns once the organisation's credibility is established.
- Carefully choose partners depending on the situation. For example, in a given context, one may chose to associate with the UN to be more effective, while in another one may chose to act alone.
- Choose advocacy tools according to the context and one's specific goals. While in some situations, public communication will be key to get access to certain areas, in other cases quiet diplomacy will bring more results.

Rolf Vestvik added that it is important to regularly evaluate one's work, to learn lessons on what has worked or not, especially since the humanitarian community is generally reluctant to perform self-evaluations.

The final speaker, Karina Lynge, from Danish Demining Group (DDG) presented the work of her organisation in central Somalia as an example of programming in a challenging environment. DDG conducted a "bottom-up stabilisation" programme engaging communities and ANSAs in the town of Galkayo, which is split by a "green line" between the semi-autonomous State of Puntland in the north and the self-declared State of Galmudug which claims the city of Galkayo's southern part.

DDG works through a participatory approach with local institutions and security providers – police, military and intelligence services – on making the local communities safer from armed violence, mines and small arms, which are prevalent in the region. Karina Lynge highlighted several challenges in carrying out such programmes in the context of Somalia:

- The political sensitivity of the relations between the administrations of North Galkayo (Puntland) and South Galkayo (Galmudug).
- Security concerns for staff and beneficiaries, including threats of kidnapping, targeted killings, piracy and cross-fire risks.
- Challenges linked to working with a de facto but unrecognised state such as Puntland and a nascent self-declared state such as Galkmudug.

Finally Karina Lynge highlighted some of the essential elements to the success of the project in this volatile context:

- Equal representation of staff, offices, resources and activities in north and south Galkayo, to balance relations with the two administrations and between the different clans and populations in the two areas of the town.
- Respect for and compliance with local administrative structures although they might be somewhat underdeveloped and not internationally recognised.
- A participatory and consultative approach, involving beneficiaries and local administrations in both planning and implementation of programmes.
- Effective operations with immediate results or quick impact.

Discussion and recommendations

During discussions, participants highlighted that as humanitarian organisations often have to carry out programmes where ANSAs operate, the question for humanitarian workers is not whether they should engage with ANSAs, but how, when and with whom to engage. Building dialogue with these ANSAs should be an initial objective prior to engaging in advocacy activities, including seeking their compliance with international standards of protection.

They emphasised that the protection of IDPs should be sought throughout the displacement cycle. To do so, it is crucial to clearly identify the stakeholders, and coordinate effectively with humanitarian agencies. Adapting the strategies and activities as the situation evolves is also important.

Participants mentioned that one of the challenges is to have a pragmatic approach which still complies with the humanitarian principles of neutrality, impartiality and independence. Another challenge is directly linked with humanitarians' engagement with ANSAs and the risk of legitimising their actions by the mere fact of engaging in a dialogue with them. To what extent is a humanitarian organisation, which engages with the parties to the conflict, seen as neutral, particularly by the parties themselves? Therefore, dialogue with all parties, including the government, is a key consideration.

Several participants highlighted how "terrorist labelling" mechanisms such as groups of terrorist lists, and corresponding donor restrictions, hamper the efforts of humanitarian actors to achieve a good level of interaction with ANSAs.

Annexe 1 List of presenters, discussants and participants[28]

Presenters

- Annyssa Bellal, Geneva Academy of Humanitarian Law and Human Rights (ADH)
- Rexall Q. Kaalim, Bantay Ceasefire
- Bhavani Fonseka, Centre for Policy Alternatives
- David James Cantor, Institute of Commonwealth Studies, University of London
- Ex-member of the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia* or FARC)
- Suleiman M. Jamous, Justice and Equality Movement (JEM)
- Olivier Bangerter, International Committee of the Red Cross (ICRC)
- Sandesh Sivakumaran, University of Nottingham
- Jonathan Somer, Geneva Call
- Nina M. Birkeland, Internal Displacement Monitoring Centre (IDMC)
- Elisabeth Decrey-Warner, Geneva Call
- Jocelyn Kelly, Harvard Humanitarian Initiative
- Haakon Gram-Johannesen, Norwegian Representative
- Patrick Dupont, European Commission Representative
- Rolf Vestvik, Norwegian Refugee Council (NRC)
- Karina Lynge, Danish Demining Group (DDG)

Discussants

- Aurélie Lamazière, Geneva Call
- Erin Mooney, consultant
- Chris Rush, Geneva Call
- Manisha Thomas, ICVA
- Kathrine Starup, Danish Refugee Council (DRC)
- Josep Zapater, United Nations High Commissioner for Refugees (UNHCR)
- Greta Zeender, IDMC

Organisations represented

- Bantay Ceasefire
- Centre for Policy Alternatives
- Danish Demining Group
- Danish Refugee Council
- European Commission
- Geneva Academy of Humanitarian Law and Human Rights
- Geneva Call
- Harvard Humanitarian Initiative
- International Committee of the Red Cross
- International Institute of Humanitarian Law
- Internal Displacement Monitoring Centre
- Jesuit Refugee Service
- Justice and Equality Movement
- Norwegian Mission to the United Nations
- Norwegian Peacebuilding Centre
- Norwegian Refugee Council
- Oxford Refugee Studies Centre
- Office for the Coordination of Humanitarian Assistance
- Office of the United Nations High Commissioner for Refugees
- Swiss Federal Department of Foreign Affairs (Political Division IV)
- United Nations Development Programme
- United Nations Action against Sexual Violence in Conflict
- University of London
- University of Nottingham
- United States Mission to the United Nations.

Annexe 2 Agenda

23 March 2011 — Exploring the relationship between ANSAs, and IDPs, local communities, international actors

8:30 - 9:00	Registration
9:00 - 9:30	Opening remarks Nina M. Birkeland, IDMC, and Elisabeth Decrey Warner, Geneva Call
9:30 - 10:00	ANSAs and IDPs: a legal review Annyssa Bellal, ADH (Geneva Academy of Humanitarian Law and Human Rights)
10:00 - 10:30	Coffee break
10:30 - 12:15	Country case studies — Local community perspective and challenges to enhance ANSA compliance with IDPs' rights 1) Philippines: Relationship between ANSAs and IDPs— Rexall Q. Kaalim, Bantay Ceasefire 2) Sri Lanka: IDPs in LTTE areas— Bhavani Fonseka, Centre for Policy Alternatives 3) Colombia: Coping strategies of IDPs in returned areas controlled by ANSAs— David James Cantor, Institute of Commonwealth Studies, University of London Discussant: Josep Zapater, UNHCR
12:15 - 13:30	Lunch
13:30 - 14:45	ANSA perspectives on IDP protection & assistance 1) ANSA perspective on IDP protection in Colombia 2) Relationship between the Justice & Equality Movement Sudan (JEM) and war-affected populations in Darfur, including IDPs— Suleiman M. Jamous, JEM Discussant: Erin Mooney, consultant
14:45 - 15:15	Analysis of ANSA motivations and commitments in regard to IDPs 1) Motivations and ways to persuade ANSAs to better protect IDPs— Olivier Bangerter, ICRC 2) Types of ANSA commitments in regard to IDPs— Sandesh Sivakumaran, University of Nottingham
15:15 - 15:45	Coffee break
15:45 - 16:30	Analysis of ANSA motivations and codes of conduct in regard to IDPs (second part of session) Discussant: Greta Zeender, IDMC Q&A
16:30 - 16:50	Presentation of Forced Migration Review 37 Armed non-State Actors and Displacement Nina Birkeland
17:00 - 18:00	Drinks reception

24 March 2011 — Engagement of ANSAs on IDP protection: policies and programming

9:00 - 9:15	Introduction & summary of main points of Day 1 IDMC/Geneva Call
9:15 - 10:10	NSAs and specific groups 1) ANSAs perspective on the protection of children in armed conflict— Jonathan Somer, Geneva Call 2) ANSA attitude towards displaced and other women: comparing two Mai Mai groups in DRC— Jocelyn Kelly, Harvard Humanitarian Initiative Discussant: Manisha Thomas, ICVA
10:10 - 10:50	Dealing with ANSAs and displacement - governments' perspectives 1) Haakon Gram-Johannesen, Norwegian Representative 2) Patrick Dupont, European Commission Representative
10:50 - 11:20	Coffee break
11:20 - 12:15	Humanitarian programmes and advocacy on behalf of IDPs in zones where ANSAs operate 1) Negotiating humanitarian access with ANSAs to assist and protect IDPs— Rolf Vestvik, Norwegian Refugee Council 2) Example of programming in Somalia: Bottom-up Stabilization Engaging Communities and ANSAs - by Karina Lynge, Danish Demining Group Discussant: Kathrine Starup, Danish Refugee Council
12:15 - 12:45	Conclusions and Recommendations – What next?
13:00 - 14:00	Lunch

Notes

1 Definitions of ANSAs and IDPs for the purpose of the report can be found in Section I. This report uses "ANSAs", the terminology found in Geneva Call's publications. IDMC usually uses the term "non-state armed groups."

2 IDMC, Internal Displacement: Global Overview of Trends and Developments in 2010, March 2011, p.9, see http://www.internal-displacement.org/publications/global-overview-2010.pdf

3 IDMC, Internal Displacement: Global Overview of Trends and Developments in 2010, March 2011, p.9, see http://www.internal-displacement.org/publications/global-overview-2010.pdf

4 *Forced Migration Review*, issue 37, March 2011, see http://www.fmreview.org/non-state/

5 For further analysis see BELLAL, Annyssa, GIACCA, Gilles, and CASEY-MASLEN, Stuart, "Towards engagement, compliance and accountability", Forced Migration Review, issue 37, March 2011, URL: www.fmreview.org/non-state/04-06.pdf

6 Examples of de facto authorities include Somaliland and Abkhazia.

7 This definition has been developed by Geneva Call.

8 The existence of an armed conflict was defined in a 1995 Decision addressing, among other, a challenge that the International Criminal Tribunal for the former Yugoslavia (ICTY) lacked subject-matter jurisdiction to try a specific individual for war crimes. The Court stated that "[A]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.", Prosecutor v. Tadić (Case No. IT-94–1-AR72), Second Amended Indictment,14 December 1995, para.70.

9 The case law of ICTY has indicated some of the elements for the conditions related to the group's organisation to be fulfilled.

10 Jean-Marie Henckaerts, *Study on customary international humanitarian law: a contribution to the understanding and respect for the rule of law in armed conflict*, International Review of the Red Cross, March 2005

11 See Jakob Kelleberger, "Strengthening Legal Protection for Victims of Armed Conflicts. The ICRC Study on the Current State of International Humanitarian Law", *International Review of the Red Cross*, Volume 92 Number 879, September 2010, pp.799-804.

12 Rome Statute of the International Criminal Court, article 8 (2) e) (viii)

13 Rome Statute of the International Criminal Court, article 7 (1) d)

14 As of June 2011, the Kampala Convention had not entered into force as it needed additional ratifications to reach the 15 needed.

15 UN Guiding Principles on Internal Displacement, Principle 2 (1)

16 Resolution 1612 (2005) on Children and Armed Conflict adopted by the Security Council at its 5235th meeting, on 26 July 2005, Children and Armed Conflict, S/RES/1612 (2005).

17 A new resolution on sexual violence in armed conflict was adopted by the UNSC in December 2010. In a similar way to the mechanisms in place under resolution 1612, this resolution establishes monitoring, analysis and reporting arrangements on conflict-related sexual violence. In a similar way to the mechanisms under resolution 1612l, it sets up a listing mechanism for parties to armed conflict that are credibly suspected of committing or being responsible for patterns of sexual violence in situations of armed conflict. Resolution1960 (2010) adopted by the Security Council at its 6453rd meeting, on 16 December 2010, S/RES/1960 (2010).

18 IDMC, "At least 15,000 people remain displaced in camps in the Philippines due to the 2008 GRP/MILF conflict (February 2011)", IDP Population Figures, http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/A01DB3AC980C9A22C125772600312329?OpenDocument

19 At the time of the Agreement on a ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam, the LTTE controlled 15,000 square kilometres of territory.

20 For further details see CANTOR, David, James, "The Colombian guerrilla, forced displacement and return", Forced Migration Review, issue 37, March 2011. URL: www.fmreview.org/non-state/20-22.pdf

21 The Plan Colombia is a US-backed military aid program launched in 1999 and dedicated mainly to the Colombian military and police for counter-narcotics and military operations.

22 Memorandum of Understanding between the Justice and Equality Movement (JEM) and the United Nations Regarding Protection of Children in Darfur, signed on 10 July 2008, http://reliefweb.int/sites/reliefweb.int/files/resources/3864EE07BF38473C852577670066EA08-Full_Report.pdf

23 For further analysis see BANGERTER, Olivier, "Talking to armed groups", *Forced Migration Review*, issue 37, March 2011 URL [specific article]

24 Statement by the Opposition Movement [Justice and Equality Movement (JEM) and Sudan Liberation Movement-Unity (Sudan)] undated; published on 11 July 2008: "We reaffirm our commitment to refrain from [...] forcibly displacing civilian population [...]"; "We also continue to commit to curtailing the militarization of IDP/refugee camps".

25 Geneva Call, *In their word: Perspectives of Armed non-State Actors on the Protection of Children from the Effects of Armed Conflict*, 2010, URL: www.genevacall.org/resources/research/f-research/2001-2010/2010_GC_CANSA_InTheirWords.pdf

26 For further details on the results of the research, see KELLY, Jocelyn, "Militia in DRC speak about sexual violence", *Forced Migration Review*, issue 37, March 2011, URL: www.fmreview.org/non-state/30-31.pdf

27 Resolution 1612 (2005) on Children and Armed Conflict adopted by the Security Council at its 5235th meeting, on 26 July 2005, Children and Armed Conflict, S/RES/1612 (2005).

28 This report does not identify by name some of the presenters, as per their wishes.

The Internal Displacement Monitoring Centre

The Internal Displacement Monitoring Centre (IDMC) was established by the Norwegian Refugee Council following the request of the United Nations Inter-Agency Standing Committee to set up an IDP database in 1998. The Geneva-based Centre has since evolved into the leading international body monitoring internal displacement caused by conflict and violence in some 50 countries worldwide. IDMC is funded by a wide range of institutional donors and foundations.

The Internal Displacement Monitoring Centre focuses on the following activities:

- monitoring internal displacement worldwide and maintaining an online database on conflict and violence related internal displacement;
- increasing visibility and awareness of internal displacement and advocating for the rights of internally displaced people;
- providing training on the protection of IDPs;
- contributing to the development of guides and standards for the provision of assistance and protection to internally displaced people.

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Geneva Call

Geneva Call was launched in March 2000 as a neutral and impartial humanitarian organization dedicated to engaging ANSAs towards compliance with IHL and IHRL norms, consistent with common Article 3 of the Geneva Conventions. The organization focuses on ANSAs involved in situations of armed conflict that operate outside effective State control and are primarily motivated by political goals. These include armed movements, de facto authorities, and non-internationally recognized States.

Geneva Call engages ANSAs in a constructive dialogue aimed at persuading them to change their behaviour and respect specific humanitarian norms, starting with a total ban on anti-personnel (AP) mines. The organisation originated in 2000 from the International Campaign to Ban Landmines following the international community's realisation that the landmine problem would not be effectively addressed unless ANSAs were included in the solution. The Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action is an internationally recognized mechanism through which 41 ANSAs have already adhered to a total ban on the use of AP mines and to cooperate in humanitarian mine action activities. Geneva Call plays an important role in monitoring and supporting the implementation of these commitments. The organization is now expanding its advocacy work with NSAs to the protection of women and children in situations of armed conflict.

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