

FORCED MIGRATION review

Issue 37
March 2011

Feature: **Armed non-state actors
and displacement**

*plus a selection of articles on other
aspects of forced migration*



FOR **FREE** DISTRIBUTION ONLY



REFUGEE
STUDIES
CENTRE



From the editors

Militia, freedom fighters, rebels, terrorists, paramilitaries, revolutionaries, guerrillas, gangs, quasi-state bodies... and many other labels. In this issue of FMR we look at all of these, at actors defined as being armed and being 'non-state' – that is to say, without the full responsibilities and obligations of the state. Some of these actors have ideological or political aims; some aspire to hold territory and overthrow a government; some could be called organised groups, and for others that would stretch the reality. Their objectives vary but all are in armed conflict with the state and/or with each other. Such actors, deliberately or otherwise, regularly cause the displacement of people.

By the rules of the modern world, states bear the responsibility to treat all in their territory, including displaced people, according to established rights. Even though states often ignore these rights and their own responsibilities under international human rights law, these rights and responsibilities still exist. It is not so clear, however, whether human rights obligations are binding on non-state actors such as armed groups even in cases where these actors exercise significant control over territory and population. It is clear, however, that Additional Protocol II to the Fourth Geneva Convention forbids the displacement of the civilian population for reasons related to the conflict unless the security of the civilians involved or imperative military reasons demand it.

Some of these armed non-state actors behave responsibly and humanely, at least some of the time. Others seem to have no regard for the damage, distress or deaths that they cause – and may actually use displacement as a deliberate tactic – in pursuit of their goals of power, resources or justice. This issue of FMR looks at a variety of such actors, at their behaviours and at efforts to bring them into frameworks of responsibility and accountability.

Although their voices are heard through a number of the articles, it was not possible to provide a more direct voice for the actors in question. They are by definition outside the law and not easily accessible. This issue of FMR focuses more on the consequences of their violence and

its effects on people, and suggests ways in which these might be mitigated. The articles included here reflect the views of civil society groups and individuals in regular contact with non-state armed groups, of academics and governments, and of organisations that have years of experience in engaging – creatively and productively – with non-state armed groups. We have allowed the authors of the articles in this issue to use the terminology that they feel is most appropriate; some authors refer to non-state armed groups, some to armed non-state actors.

This issue also includes a range of articles discussing subjects as varied as the labelling of migrants, solar energy in camps, gang persecution, and scoring states' performance in respect of the rights of refugees.

This issue is online at <http://www.fmreview.org/non-state/> and will be available in English, French, Spanish and Arabic.

All issues of FMR are freely available, and searchable, online at <http://www.fmreview.org/mags1.htm>. We encourage you to post online or reproduce FMR articles but please acknowledge the source (with a link to our website) – and, preferably, let us know. And if your organisation has an online library of resources or listings of thematic links, we would be grateful if you would add links to back issues of FMR.

Forthcoming issues of FMR

- FMR 38 will include a feature theme on technology and communications. See the call for articles at <http://www.fmreview.org/technology/>
- FMR 39 will include a feature theme on being young and forcibly displaced. See the call for articles at <http://www.fmreview.org/young-and-out-of-place>

Details of forthcoming issues can always be found at <http://www.fmreview.org/forthcoming.htm>

With our best wishes

Marion Couldrey & Maurice Herson
Editors, *Forced Migration Review*



We are very grateful to Greta Zeender of the Norwegian Refugee Council's Internal Displacement Monitoring Centre for her help, advice and support on the feature theme of this issue.

We would like to thank those agencies that have generously provided funding for this particular issue: the Internal Displacement Monitoring Centre (IDMC/NRC) and the Swiss Federal Department of Foreign Affairs.

Front cover image

We gave a lot of thought to the image for the front cover of this issue of FMR. We did not want to have guns, nor did we want to either glorify or condemn those who carry them through the image we carried. What we wanted to focus on was the damage caused in people's lives by armed confrontation.

Apollo Images/IRIN

Forced Migration Review

(FMR) provides a forum for the regular exchange of practical experience, information and ideas between researchers, refugees and internally displaced people, and those who work with them. It is published in English, Arabic, Spanish and French by the Refugee Studies Centre of the Oxford Department of International Development, University of Oxford.

Staff

Marion Couldrey & Maurice Herson (Editors)
Kelly Pitt (Funding & Promotion Assistant)
Sharon Ellis (Assistant)

Forced Migration Review

Refugee Studies Centre
Oxford Department of International Development,
University of Oxford,
3 Mansfield Road,
Oxford OX1 3TB, UK

Email: fmr@qeh.ox.ac.uk

Skype: fmreview

Tel: +44 (0)1865 281700

Fax: +44 (0)1865 281730

<http://www.fmreview.org>



Disclaimer

Opinions in FMR do not necessarily reflect the views of the Editors, the Refugee Studies Centre or the University of Oxford.

Copyright

Any FMR print or online material may be freely reproduced, provided that acknowledgement is given to 'Forced Migration Review www.fmreview.org'.

ISSN 1460-9819

Designed by

Art24 www.art-24.co.uk

Printed by

Fine Print (Services) Ltd
www.fineprint.co.uk



FMR 37: In this issue...

2 From the editors

Armed non-state actors

4 Towards engagement, compliance and accountability

Annyssa Bellal, Gilles Giacca and Stuart Casey-Maslen

7 Talking to armed groups

Olivier Bangerter

10 Engaging armed non-state actors in mechanisms for protection

Pauline Lacroix, Pascal Bongard and Chris Rush

13 'Catch me if you can!' The Lord's Resistance Army

Héloïse Ruaudel

15 Dilemmas of Burma in transition

Kim Jolliffe

17 The economic relationship of armed groups with displaced populations

Josep Maria Royo Aspa

18 Privatising security and war

José L Gómez del Prado

20 The Colombian guerrilla, forced displacement and return

David James Cantor

23 How to behave: advice from IDPs

Stine Finne Jakobsen

25 Community-led stabilisation in Somalia

Siris Hartkorn

27 Al-Shabaab's responsibility to protect civilians in Somalia

Allehone Mulugeta Abebe

29 Support for al-Shabaab through the diaspora

Mitchell Sipus

30 Militia in DRC speak about sexual violence

Jocelyn Kelly and Michael Vanrooyen

31 Drug cartels in Mexico

Jessica Keralis

32 Resisting displacement by the Taliban in Pakistan

Farhat Taj and Jacob Rothing

34 Sahwa's role in protecting IDPs and returnees in Iraq

Cherie Taraghi

36 The Kampala Convention and obligations of armed groups

Katinka Ridderbos

37 Keeping schools open: education in conflict

Alice Farmer

39 Darfur and the flaws of Holder v HLP

Christopher Thornton

41 Dealing with non-state armed groups and displacement: a state perspective

Espen Barth Eide

General articles

43 Walter Kälin on the outlook for IDPs

45 Global migration: in need of a global response

Sergio Marchi

46 What's in a label?

Jackie Pollock

48 Renewable energy in the camps of Tamil Nadu

Florina Benoit-Xavier

50 Gang persecution as grounds for asylum in the US

Gracye Cheng

52 Unaccompanied asylum-seeker children: flawed processes and protection gaps in the UK

Katia Bianchini

54 The road to recovery: education in IDP communities

Amy S Rhoades

55 African refugees in Israel

Rebecca Furst-Nichols and Karen Jacobsen

57 Report cards on refugees' rights

Bruce Forster

59 Refugee Studies Centre news and announcements

60 Facing facts

Invitation to write for FMR

You don't need to be an experienced writer to write for FMR. Email us with your suggestions, draft articles or internal reports – and we will work with you to shape your article for publication.

Too often experience gained in the field is confined to an internal report, circulated within one office or organisation only; and too often research is disseminated only via

long academic articles in costly academic journals. FMR aims to bridge the gap between research and practice so that practice-oriented research gets out to policymakers and the field, and field experience, lessons learned and examples of good practice are shared as widely as possible. But we need you to help us do that.

We encourage readers to send us written contributions on any

aspect of contemporary forced migration. Each issue of FMR has a theme but a proportion of each issue is set aside for any other subject relating to refugees/IDPs or stateless people.

Material may be submitted in English, Spanish, Arabic or French. For more details, please see <http://www.fmreview.org/writing.htm> or email us at fmr@qeh.ox.ac.uk



Towards engagement, compliance and accountability

Annyssa Bellal, Gilles Giacca and Stuart Casey-Maslen

The UN and other international and regional organisations are increasingly trying to hold armed non-state actors accountable at the international level for violations of international norms.

Some of the worst abuses against individuals occur in non-international armed conflicts, in situations where one or more armed non-state actors (ANSAs) fight against the state and/or against each other.¹ How, and to what extent, international law is formally binding on these actors is still debated. While it is largely uncontested that international humanitarian law imposes certain obligations on ANSAs, the application of other bodies of international law – particularly human rights law – is controversial.

Either voluntary or forced displacement is frequently caused by violations of international humanitarian law and of basic human rights. Actions by ANSAs displace civilians directly or indirectly through gender-based violence, enforced disappearances, summary executions, torture, death threats, indiscriminate attacks on civilians and civilian objects (i.e. all areas, buildings and infrastructure that are not military objectives as defined by international humanitarian law), forced recruitment (particularly of children) and forced labour. In addition, blocking relief supplies and assistance and other such acts (including deliberate attacks on humanitarian personnel) impede access to food, health services and education.

Legal framework

Organised ANSAs – i.e. those that meet the criteria set by international humanitarian law to be considered a party to an armed conflict – are bound by international humanitarian law, including Common Article 3 of the Geneva Conventions and 1977 Additional Protocol II, both of which apply specifically to non-international armed conflict. Forced displacement is generally prohibited by international humanitarian law.

More specifically, the 1998 Guiding Principles on Internal Displacement include many references to international humanitarian law norms that are legally binding on both states and ANSAs. In addition, the recently-adopted African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa directly addresses the behaviour of ANSAs.²

Despite these existing obligations, many difficulties remain in seeking to ensure ANSA compliance with international norms. The reasons for lack of compliance are diverse: strategic arguments (the nature of warfare in internal armed conflicts that may lead to the use of tactics that violate international law, such as launching attacks from within the civilian population); lack of knowledge of applicable norms; and lack of ‘ownership’ over these norms. ‘Ownership’ here means the capacity and willingness of actors engaged in armed conflict to set and/or take responsibility for the respect of norms intended to protect civilians as well as other humanitarian norms applicable in armed conflict. Indeed, since ANSAs are not entitled to ratify international treaties (as, by definition, they are not a state or other entity with the necessary international legal personality), and are generally precluded from participating as full members of a treaty drafting body, they could – and sometimes do – argue that they should not be bound to respect rules that they have neither put forward nor formally committed to. This being said, there are reasons to believe that many ANSAs can be influenced to better respect international law and humanitarian norms.

Incentives for compliance

First, one should note that ANSAs which pursue certain military and political objectives are not wholly

indifferent to respecting certain international norms. Positive incentives for compliance often quoted by members of ANSAs are the need for popular support (‘winning hearts and minds’), the self-image of the group, the group’s own norms, reciprocity, the need or desire to project a good national or international image, and family ties with the concerned population. There are thus military, political, legal and humanitarian reasons why armed groups would want to respect international norms.

The military argument for compliance comprises elements of both reciprocity and strategic choices. Respect for norms by one party to the conflict typically encourages respect for norms by the other; conversely, abuses and violations committed by one party are normally met by a similar response from the other party. Restraint will also ultimately help to retain the support of the civilian population. In terms of strategic choices, focusing on attacking legitimate military targets instead of targeting the civilian population means that an ANSA is more likely to further its military objectives. ANSAs may thus come to understand that certain means and methods of warfare are counterproductive or have excessive humanitarian costs, which lead to a loss in support.

Political arguments for compliance centre on the desire of many ANSAs, and/or the causes they may espouse, to be recognised as legitimate. Members of several ANSAs interviewed during our research project said that, while they understand political recognition may not be possible, the recognition of an organised armed group as a ‘party to the conflict’ under international humanitarian law may be an important step in encouraging compliance with international norms. In addition, many ANSAs need the support (human, material, financial) of the ‘constituency’ on behalf of whom they claim to be



In Muzbat, northern Darfur, ICRC provides first-aid training sessions for fighters from the Sudanese Liberation Army and civilians from the village area. It is also an opportunity to talk about the law of armed conflicts and explain the basic principles of International Humanitarian Law.

fighting. Some seek to overthrow the existing government or at least to form part of a future administration. And, in certain cases, ANSAs may wish to be seen as more respectful of international norms than the state that they are fighting.³ Finally, some armed groups are sensitive to the argument that better respect for norms applicable in armed conflicts facilitates peace efforts and strengthens the chance of a lasting peace.

The legal arguments for compliance are primarily the avoidance of international criminal sanction and other coercive measures, such as arms embargoes, travel bans and freezing of assets. Fear of prosecution for international crimes is a factor that influences the behaviour of certain ANSAs or of senior individuals within them,⁴ including as a result of the principle of command responsibility.⁵ For instance, the use of forced displacement as a tactic and method

of warfare could qualify as a war crime or a crime against humanity, thereby making its authors as individuals criminally responsible.⁶ Effective command and control by an ANSA over its own fighters is thus in the self-interest of the group's senior officials. In one case, a local commander of an ANSA described to the authors how he kept records of the imposition of internal discipline in accordance with the norms the group had accepted. He later used these records as evidence to defend himself against allegations of war crimes.

Finally, the humanitarian arguments for compliance relate to the fundamental desire of certain ANSAs to respect human dignity. Such a desire should not be underestimated and may allow for opportunities to go beyond actual international obligations and engage ANSAs on respect for norms which offer greater protection for civilians than that strictly demanded by

international law. Humanitarian agencies may in turn support finding solutions to help the relevant actors to fulfil the commitment to the norm in question – for example, by providing reintegration and education programmes for children formerly associated with armed forces to facilitate their safe release.

Good practice in engagement

There has been considerable experience gathered over the years by members of the international community through engaging with ANSAs on the protection of civilians in armed conflict. Below are some of the key lessons that can be drawn from this experience and which may offer other opportunities to enhance compliance with international norms.

As a general remark, the first step to be taken by the international community at large is to encourage direct engagement with ANSAs to promote compliance with

international norms. Furthermore, organised ANSAs should be recognised as a party to conflict under international humanitarian law and indiscriminate labelling of groups as ‘terrorist’ should be avoided, as it runs counter to efforts to promote compliance with humanitarian norms. As former fighters have stated to the researchers, once listed “you are rejected” and “you have nothing to lose”. It should be stressed that engagement with an ANSA does not constitute political recognition or recognition of belligerency nor does it affect the status of ANSAs under international law (although some, especially states, fear that engagement can confer on a ‘terrorist’ or ‘criminal’ group a semblance of legitimacy). In dialogue with ANSAs, efforts should be made to demonstrate the benefit to the groups themselves in complying with international norms. Culturally appropriate language and methods should be used to promote such compliance.⁷

Second, an important step in enhancing compliance with international norms is to ensure that the relevant ANSAs are aware of their obligations under international law. In some cases, for example, such groups have not been aware of the prohibition on child recruitment and the potential individual liability that can result from violation of applicable norms. Those engaged in promoting compliance can do this by disseminating international legal norms to ANSA members; and ANSAs can disseminate them internally.

Indeed, once an ANSA is clear about its obligations and undertakings, it will need to ensure that this is reflected in its practice – for example by ‘translating’ international norms into codes of conduct to govern actions by the group. All armed groups should therefore be encouraged to adopt and respect such internal codes of conduct in accordance with applicable norms. There may be a need for outside technical assistance in achieving this but it is important to ensure that the relevant ANSA assumes the responsibility for adoption, dissemination and implementation of applicable norms.

Engagement with an ANSA should typically occur at the highest level within the group but may also demand engagement with influential individuals outside the group. Engaging an ANSA at the highest level may help to ensure that a commitment is more likely to be honoured in practice. However, enhancing compliance is made significantly more challenging if the ANSA fragments into different factions which might control different areas. In that regard, former members of other ANSAs may be able to play a helpful role in engagement. For example, a former paramilitary involved in the troubles in Northern Ireland has become a credible interlocutor with ANSAs around the world as he understands the challenges and consequences of involvement in armed violence.⁸ It is also important to consider whether ‘constituencies’ and foreign patrons can help to secure better compliance with norms.

Finally, the experience of international organisations and NGOs shows that monitoring is a critical element in promoting compliance with norms. This involves identifying norms whose respect needs to be specifically enhanced and promoting successful implementation with relevant agreements or declarations.

In conclusion, there is a need to move away from traditional state-centred approaches to international law to one that envisages direct application of international law to ANSAs. Direct engagement with ANSAs to encourage better respect for international norms can be a critical contribution to the mitigation of the suffering of civilian populations in contemporary armed conflict.

Annyssa Bellal (Annyssa.Bellal@graduateinstitute.ch), Stuart Casey-Maslen (Stuart.Maslen@graduateinstitute.ch) and Gilles Giacca (Gilles.Giacca@graduateinstitute.ch) are researchers at the Geneva Academy of International Humanitarian Law and Human Rights (<http://www.adh-geneva.ch>).

This article draws on research conducted in collaboration with the Swiss Department of Foreign Affairs since 2009, as well as on the results

of workshops held in Geneva in 2010. See: <http://www.adh-geneva.ch/policy-studies/ongoing/armed-non-state-actors-and-protection-of-civilians>

1. This paper defines ANSA as any armed group, distinct from and not operating under the control of the state or states in which it carries out military operations, and which has political, religious or military objectives. Thus it does not usually cover private military companies or criminal gangs.
2. See in particular Article 7 of the Convention <http://tinyurl.com/AU-KampalaConvention>
3. For example, many of the ANSAs that have signed Geneva Call’s Deed of Commitment whereby they renounce the use of anti-personnel mines have done so in states that are not party to the 1997 Anti-Personnel Mine Ban Convention.
4. Compliance with international norms will not, though, prevent their risk of prosecution under domestic criminal law for taking up arms against the state.
5. “Command responsibility extends as high as any officer in the chain of command who knows or has reason to know that his subordinates are committing war crimes and failed to act to stop them.” <http://www.crimesofwar.org/thebook/command-respon.html>.
6. For example, many of the ANSAs that have signed Geneva Call’s Deed of Commitment whereby they renounce the use of anti-personnel mines have done so in states that are not party to the 1997 Anti-Personnel Mine Ban Convention.
7. Nonetheless, organisations that do engage with ANSAs may fall foul of national legislation that criminalises material support to any entity designated as terrorist. A recent US Supreme Court decision on the scope of activities with ANSAs listed as terrorist groups that could trigger criminal responsibility is one example of a worrying trend. Supreme Court of the United States, Holder, Attorney General, et al. v. Humanitarian Law Project et al., Decision of 21 June 2010. See also, ‘the Supreme Court Goes too far in the Name of Fighting Terrorism’, *Washington Post* Editorial, 22 June 2010; and ‘What Counts as Abetting Terrorists’, Editorial, *New York Times*, 21 June 2010. See also article p39.
8. See presentation by Martin Snodden to the Swisspeace Annual Conference 2009, Bern, 3 November 2009: ‘Rebels with a Cause? Understanding and dealing with non-state armed groups during and after violent conflicts’, author’s notes. See forthcoming report to be available at <http://www.swisspeace.ch>.

Global database of states, territories and non-state actors

The Rule of Law in Armed Conflicts (RULAC) Project is an initiative of the Geneva Academy of International Humanitarian Law and Human Rights to support the application and implementation of international law in armed conflict. Through its global database, the Project reports on states and disputed territories around the world, addressing both the legal norms that apply as well as the extent to which they are respected by the relevant actors.

To search the database, go to <http://www.adh-geneva.ch/RULAC/> and enter state/territory name in ‘Access to global territory by state or territory’ box. Use the left-hand column to search for information on, for example, non-state actors operating there, current conflicts, and international legislation compliance.

Talking to armed groups

Olivier Bangerter

To persuade fighters to respect the rules of warfare, one must understand why violations occur, how armed groups operate, what can be done to prevent violations and how to engage in dialogue with these groups. This article reflects the ICRC's many years of experience in this area.

Forced displacement can be lawful under international humanitarian law (IHL) if it makes a community safer or if imperative military reasons require it. However, in most cases people leave their homes because one or both sides to a conflict has been violating IHL. When a community experiences or fears murder, rape, kidnapping, destruction of their homes or looting, flight is a natural reaction.

All parties to an armed conflict – including armed groups – can either prevent or facilitate the perpetration of IHL violations that affect civilians in general and displaced communities in particular. It is by no means the case that the highest levels of violations are always perpetrated by armed groups but when armed groups' actions do facilitate violations, they usually stem from group decisions rather than personal initiatives. Beyond their potential for violations, armed groups also have the potential to protect residents and displaced alike.

Helping the victims of IHL violations is essential but it is equally important to act ahead of

time to try to prevent violations that will trigger displacement or cause further suffering to people who are already vulnerable. A number of humanitarian organisations seek to prevent such violations when they talk to members of armed groups about the need to protect displaced persons and civilians in general. But how can we ensure that this kind of dialogue achieves the desired result?

The dynamics of violations

If one is to influence patterns of violations that affect displaced people, rather than simply prevent individual incidents, one must understand how and why such patterns arise. Violations of IHL involve social and individual processes and require a degree of moral disengagement. These phenomena become possible when groups and individuals find ways of justifying behaviour that they would previously have considered unacceptable and when, at the same time, their leaders abdicate their responsibilities. More specifically, the leadership of an armed group may condone or order violations of the rules of warfare, or allow them to occur.

A group generally allows violations to occur when its command and control system is weak. Reasons why this can occur include small units operating in isolation, fighters under the influence of drugs, and unclear orders. Alternatively – or in addition – the perpetrators of violations may quite simply not know the law. While ignorance of the law is no defence in legal terms, we must recognise that it is sometimes a genuine reason.

A group condones violations when its leadership knows that its fighters are violating the rules of war but does nothing to prevent such acts or punish the perpetrators. This may happen because the leadership is afraid that fighters will defect to another, less scrupulous faction if it acts to prevent or punish violations. Leaders may also condone violations as an explicit means of rewarding or paying fighters, or when such actions are deemed acceptable in a given culture, as may be the case with looting.

A group may commit violations as a method of warfare. This can happen when fighters believe their survival to be at stake, when their actual aim is in itself a war crime such as genocide, when they make the strategic choice to protect their own fighters at all costs or when they use violence or terror to control populations or territory. A group may also commit violations as a show of force or in retaliation, and as a means of passing a powerful message to the enemy.

Armed groups cover a wide spectrum. While some may be little more than mobs brought together by circumstances, others control tens of thousands of fighters. Many armed groups administer substantial financial resources – they can often outspend NGOs – and their leaders may be highly educated. Because armed groups are structured organisations, they are capable of taking decisions which affect the behaviour of their members, who are under pressure to conform and to follow orders. However imperfect or weak these organisations may be, they have



A Geneva Call fact-finding team investigating allegations of mine use in the Philippines in a meeting with representatives of the Moro Islamic Liberation Front.



ICRC dissemination session for Sudanese Liberation Army combatants in Durum, Darfur.

more power over their fighters than any humanitarian worker has.

Limiting violations

Armed groups adopt political and policy measures. Some of these decisions can help to prevent displacement, reduce the duration of displacement if it occurs, or reduce the incidence of other violations against communities.

Political measures at the group's highest level, together with policy decisions on doctrine, education, training and sanctions, are likely to have a significant impact, as they can make violations more or less likely. But even if the senior leadership takes the 'right' decisions, this will not necessarily bring violations to a complete halt, as individual fighters and commanders retain a measure of independence. No decision will magically prevent people joining an armed group in order to fill their pockets, nor will it prevent those with psychological problems from committing violations. However, decisions and orders from the highest levels of an armed group will influence the behaviour of the vast majority of commanders and fighters.

The most common approach to preventing violations is to demand that all fighters respect a code of conduct setting out the rules that the leaders consider essential. The most famous example is the Chinese

Maoist Three Rules and Eight Remarks, often used by other like-minded movements. This document expressly forbids looting and theft from the population, extortion, ill-treatment of the population, sexual violence against women and ill-treatment of captives.

Another example is that of the Mouvement des Nigériens pour la Justice (MNJ). During the 2007-09 Niger conflict, all MNJ recruits were required to swear an oath on the Qur'an that included not harming civilians or damaging their possessions.

There are real opportunities for humanitarians to have a positive impact on such measures by persuading armed groups to adopt policies that are compatible with internationally recognised standards.

How to persuade

Some years ago, in the Republic of the Congo, an ICRC delegate gave an IHL lecture to a group of militiamen. One of the points he made was about the importance of not looting. The group responded positively to the presentation – but the next week, these same people looted the aid that ICRC had distributed.

What went wrong? Many humanitarians have discovered to their dismay that merely explaining IHL or taking the moral high ground

does not necessarily make parties to a conflict 'see the light' and change their ways. Telling decision-makers and commanders about legal standards is essential but one must back this up with persuasive arguments that show such standards to be relevant to the persons able to take decisions and give orders. This is especially true given the perception among many commanders that IHL is "law defined by states and violated by the same" (comment by a commander to the author in 2009).

As in most organisations, the armed group does limit the individual's independence. However, individuals never lose their independence entirely, and most will find themselves in situations where they can take decisions on their own. This is true for individual fighters who often have the choice of allowing safe passage to displaced people at a checkpoint or robbing them of their few belongings. It is even truer at the level of commanders and the political leadership, where individuals give orders that affect the behaviour of their subordinates. Recognising a particular individual's margin for independent action is important, as is understanding how to adapt arguments to persuade the person in front of us that what we are saying is specifically relevant to them.

Persuasion can be greatly improved if humanitarians follow three principles:

- Take time to discuss.
- First sow doubt rather than try to convince.
- Appeal to the other person's self-image.

Taking time to discuss is a precondition for successful persuasion. This means both parties exchanging ideas and asking questions, and involves the humanitarian worker listening. Persuasion is not a quick and easy process; it works by building a case over time, sometimes over months. It is folly to think that a commander who has been fighting a certain way for months or years will change his or her ways after a single meeting. It is also unrealistic to expect that a seasoned commander will have no opinion and will accept

our position without debate. Asking questions is often more effective than stating a position.

Rather than attempt to convince the other person outright, the humanitarian's first goal should be to sow doubt. Once our contact starts to doubt the rightness of their current practices, it may become possible to find pragmatic solutions. Such solutions may initially fall short of complete compliance with the law, yet still constitute an improvement in the situation. For instance, if we can remind a commander that child soldiers represent a command and control problem in military terms (which they do), he or she may be more open to discussing the demobilisation of some child soldiers or an end to the recruitment of children in IDP camps.

Flexibility is essential. An all-or-nothing approach usually ends up with nothing. Clearly, humanitarian workers should not compromise on international standards but agreement on less contentious issues may open the door to discussion on more difficult topics.

Appealing to the group's self-image is a powerful lever when attempting to bring about a change in behaviour. Few members of armed groups see themselves as war criminals serving an unworthy end; most consider themselves to be part of a decent group, fighting for a noble cause. Emphasising this aspect and using arguments that appeal to their convictions may go a long way. Even if a group intends to commit atrocities, an appeal to their honour as warriors may help ensure safe passage for the wounded, for the elderly or for women. However, humanitarians must be aware of the dilemmas inherent in discussing such a choice.

Some useful arguments

Arguments are contextual to each situation and must be used creatively; no one argument will be effective in all cases. Using a range of arguments is usually more effective, if only because it helps establish the credibility of the person who is defending certain humanitarian standards. The most common arguments that the ICRC

has found useful in discussions with armed groups relate to:

Beliefs: Members of armed groups have moral, religious and/or political beliefs, and these often constitute an incentive to respect at least some aspects of IHL. For instance, the SPLM in southern Sudan decided to clamp down on violations when they realised that their fighters were harming the very population for which the movement claimed to be fighting. One can appeal to these beliefs by showing genuine interest and a willingness to understand, and by asking the other person to explain apparent contradictions.

The group's own policy: Appealing to a unilateral declaration made by the group, a code of conduct or any other policy document can provide powerful arguments.

Military necessity: Military principles such as economy of effort, preservation of the economic basis and maintenance of popular support ('hearts and minds') can also provide convincing arguments in favour of compliance with the principles of IHL.

Humanity: Victims of IHL violations are human beings. Anyone can be reminded of their family and friends, and of how they would feel if they were harmed in the way they are harming others. Such an appeal to a shared human identity can be very powerful.

Respectability in the eyes of the outside world: Many groups want to project a positive image abroad and are sensitive to arguments related to the harm they will do their cause if they commit violations. For instance, a number of Burmese groups issued directives prohibiting the recruitment of children after they realised that they were on – or were about to be put on – the list annexed to the UN Secretary General's report on children and armed conflict.¹

Legal: Pointing out that an action is illegal may get the attention of groups who position themselves as law-abiding, or who want to take the legal high ground.

International prosecution: Where international prosecution

is looming, compliance with IHL can be presented as a way for individuals to protect themselves; an international inquiry usually triggers much interest in these standards. However, this argument may backfire badly if the humanitarian is suspected of collecting evidence for a future prosecution.

None of these arguments is an answer to all objections; using the right combination of arguments at the right time may help the other person to re-think their position, and may prompt them to doubt their initial stance. But this requires that the humanitarian really masters the arguments and does not repeat them mechanically; being on the receiving end of simplistic 'truths' is amusing at best.

Conclusion

While communication skills, knowledge of the dynamics of armed groups and an open mind are important, the crucial element is credibility.

Credibility comes both from the individual's knowledge and experience and from their organisation's performance in the context. One can discredit oneself very quickly by using arguments based on a wrong understanding of the armed group and its functioning, of the cultural and conflictual context, of the humanitarian issues or of the implications of the law for military reality. Humanitarians can also be discredited by a discrepancy (even a perceived discrepancy) between what their organisation says and what it actually does. Armed groups often watch the provision of assistance to displaced communities very closely; in some cases these communities will include their own families. Ultimately, much depends on whether an armed group is open to persuasion. But when this is the case, without credibility even the humanitarian's best arguments will fall on deaf ears.

Olivier Bangerter (obangerter@icrc.org) is Advisor for Dialogue with Armed Groups in the Unit for Relations with Arms Carriers at the International Committee of the Red Cross (ICRC <http://www.icrc.org/>).

1. Online at: <http://tinyurl.com/SecurityCouncil13April2010>

Engaging armed non-state actors in mechanisms for protection

Pauline Lacroix, Pascal Bongard and Chris Rush

Experience of engagement with armed non-state actors on the landmine ban may point the way to innovative approaches to preventing forced displacement and other abuses of human rights.

In many instances, armed non-state actors (ANSAs) play a significant role generating forced displacement around the world; they are also responsible for many abuses of human rights. On the whole, however, ANSAs have not been considered as being central to finding solutions for these problems. As non-state entities, they cannot participate in the creation of the international legal norms regulating these issues, nor can they become parties to international treaties – yet efforts to improve the protection of civilians during armed conflict cannot afford to ignore ANSAs.

Since 2000, the Swiss NGO Geneva Call has been engaging ANSAs¹ to seek their compliance with international humanitarian norms, initially focusing on the anti-personnel (AP) mine ban and, more recently, on the protection of children and women and the prevention of sexual and gender-based violence in armed conflict. Geneva Call's experience could inform efforts to engage ANSAs on the issue of conflict-induced displacement.

Geneva Call's experience of the anti-personnel mine ban

Geneva Call's work with ANSAs on the issue of landmines has two significant characteristics. Firstly, the organisation has adopted an 'inclusive approach', refraining from employing coercive means (such as 'naming and shaming') but seeking rather to achieve change through dialogue, persuasion and cooperation.² Secondly, in its efforts to address the lack of ownership of humanitarian norms by ANSAs, Geneva Call has developed an innovative mechanism, the 'Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action' (hereafter 'the Deed of Commitment'). This mechanism

enables ANSAs to declare their adherence to standards similar to those contained in the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (AP Mine Ban Convention) which, being non-state entities, they are not eligible to sign. In signing the Deed of Commitment, ANSAs formally commit to a total ban on anti-personnel (AP) mines, to cooperate in and, where feasible, undertake mine action activities,³ and to allow for monitoring and verification of their compliance.

Geneva Call has so far engaged with approximately 70 ANSAs worldwide. As of January 2011, 41 of these, operating in 10 different countries and territories (Burma/Myanmar, Burundi, India, Iran, Iraq, the Philippines, Somalia, Sudan, Turkey and Western Sahara), have signed the Deed of Commitment banning AP mines.⁴

These commitments have improved civilian protection in the areas where the signatory groups operate. Overall, signatory ANSAs have abided by their obligations, refraining from using AP mines, destroying stockpiles and cooperating in mine

action in areas under their control or where they operate.⁵ Moreover, the engagement of ANSAs in the AP mine ban has served as an entry point to highlighting the need to protect civilians from other abuses. Article 5 of the Deed of Commitment requires signatories to consider the AP mine ban as one step toward broader adherence to humanitarian norms and many ANSAs have expressed their support for Geneva Call to expand its operational focus to also encompass other humanitarian issues. The protection of children and women in armed conflicts was identified as a priority; as a result, Geneva Call recently launched the 'Deed of Commitment for the Protection of Children from the Effects of Armed Conflict' and is exploring the possibility of developing an instrument on the prohibition of sexual and gender-based violence in armed conflict.

Process of engagement

In order to consider the possibility of using a standard written instrument as a tool for the engagement of ANSAs on displacement, it is important to consider the process by which Geneva Call secures adherence to, and compliance with, the Deed of Commitment banning AP mines.

Every new signature to the Deed of Commitment is preceded by a period of dialogue with



One of the working groups at the 2nd meeting of signatories to Geneva Call's Deed of Commitment on AP mines, June 2009.

representatives of the leadership of the ANSA in question. In order to engage an ANSA, it is important to understand the factors that might influence it and that ANSAs do not operate in a political and social vacuum. Most, if not all, have some sort of constituency or derive support from the communities where they originate. In many instances, sensitisation of such constituencies or communities has proven instrumental in bringing pressure on ANSAs, and consequently bringing about positive change in their behaviour.

Not all ANSAs approached by Geneva Call have immediately renounced the use of AP mines; rather than opting for an ‘all-or-nothing’ approach, Geneva Call maintains dialogue with such groups. Alternative means to progressively reduce the impact of AP mines on civilians have been promoted, such as ensuring the demining of certain areas or encouraging the introduction of limitations to the circumstances when mines may be used.

Given that ANSAs often lack the necessary resources, capacity and equipment to implement their obligations under the agreement, particularly mine action activities, it is crucial to provide assistance in this respect – whether via training or technical assistance.

To ensure that signatories abide by their obligations, Geneva Call has developed a three-tier compliance monitoring mechanism. Firstly, ANSAs are asked to report on their implementation and compliance. This self-monitoring encourages signatories to take responsibility for their commitments. Secondly, Geneva Call liaises with other actors – such as governments, independent international and local organisations, and the media – to follow developments on the ground. And thirdly, Geneva Call may send field missions, either on a routine ‘follow-up’ basis or to verify allegations of non-compliance.⁶

Applying Geneva Call’s approach to displacement?

Global estimates as to the numbers of people displaced by ANSAs’ activities are not readily available but it is clear that in many instances

ANSAs have been either directly or indirectly responsible for the forced movement, deportation or non-movement of people; they have also been responsible for various forms of material and sexual exploitation of refugees and internally displaced persons (IDPs), for denying people in both categories access to safety, and for forcing return to unsafe locations.

Some humanitarian organisations, such as UN agencies, ICRC and NGOs, are already engaging ANSAs on this issue. These efforts take various forms, for example negotiating access to displaced populations or, more rarely, training ANSAs on IDP protection.⁷ Most of these initiatives seem to be undertaken on an ad hoc basis, and, as far as the authors are aware, no organisation has yet developed a formal engagement tool. The following discussion attempts to highlight how Geneva Call’s approach could inform the engagement of ANSAs on displacement-related norms.

The legal framework

The clarity of the rules contained in the AP Mine Ban Convention greatly facilitated the development of the Deed of Commitment banning AP mines. The legal framework regulating displacement, however, is more complex. Depending on their situation, displaced persons are entitled to protection afforded by one or more bodies of law – international refugee law (IRL), international humanitarian law (IHL) and/or international human rights law (IHRL) – contained in a variety of treaties and conventions. Various regional treaties, national laws and the Guiding Principles seek to complement these international norms and facilitate their incorporation into domestic law.

Taken together, these various instruments impose duties to both prevent displacement and protect displaced persons at every stage of their flight and return. As well as negative obligations (abstaining from forcing population to move, from committing abuses against displaced people, etc), they also impose positive ones (ensuring access to food, shelter, education, etc). A humanitarian instrument on displacement would have to balance

the need to be as comprehensive as possible in respect of the various circumstances where displacement is a risk or a reality with the need to ensure that its standards could actually be applied in practice.

Incentives and deterrents

Many factors influence the decision of ANSAs to commit to humanitarian norms – for example, concern for the well-being of the affected population, the desire to attract assistance to territories under their control and the wish to be considered worthy of governance. Similar motivations may be relevant in respect of displacement. However, additional factors also have to be taken into account. Given the culpability of states in forced displacement (for example, as part of counter-insurgency campaigns), ANSAs might be more likely to require reciprocity from the respective state to abide by international norms relating to displacement. That said, even though caution should be exercised when comparing the landmine and displacement issues, Geneva Call’s experience shows that there are indeed cases where ANSAs commit to humanitarian norms without reciprocity by states. 36 out of 41 signatories of the Deed of Commitment banning AP mines were operating in states not party to the AP Mine Ban Convention at the time of signature.

It is also important to consider that, unlike AP mine use per se, violations of norms in respect of forced population displacement can, under certain circumstances, constitute war crimes or even crimes against humanity. It is difficult to predict what impact this may have on the process of engagement. On the one hand, some commentators point to the deterrent effect of international justice. The fear of prosecution could constitute an incentive for ANSA leaders and commanders to ensure that their practices are in conformity with international norms, therefore easing the work of an organisation willing to engage them. On the other hand, it may be that ANSAs would be less likely to accept dialogue, or to negotiate in good faith with such an organisation, fearing that they might share the information obtained (either voluntarily or following a summons by the court or tribunal),

which could then be used to take action against members of the ANSA or the ANSA itself. Geneva Call expects to gain insight into this aspect through its work with ANSAs in respect of the new Deed of Commitment for the Protection of Children from the Effects of Armed Conflict, as recruitment of children under 15 constitutes a war crime.

Supporting implementation and monitoring compliance

At the same time as drafting a humanitarian instrument on displacement, it would be important to plan implementation support and compliance monitoring mechanisms. External support for the implementation of commitments on displacement by ANSAs is likely to be even more crucial than in the case of landmines. Indeed, we touch here a key difference between the two questions. Landmines have to be taken out of the ground and destroyed, which of course requires a considerable amount of expertise and resources but is a finite process addressing inanimate objects. In the case of displaced populations, who have both agency and rights, and experience various vulnerabilities at every stage of displacement, the picture is far more complex. In order to improve the protection of affected populations and achieve lasting change, the provision of ongoing assistance would be crucial.

Monitoring compliance with a humanitarian instrument on displacement would also be very

challenging. In some instances, it is very difficult to differentiate voluntary from involuntary population movements and to assess the exact cause of displacement. Conflict might be only one of the reasons why people flee their homes and thus it may often be difficult to attribute responsibility for displacement to one particular actor.

Another challenge is that some obligations regarding displacement are not absolute. For instance, IHL prohibits compelling civilians to leave their place of residence unless the security of the civilians involved or imperative military reasons so demand. Yet assessing such situations would be a very delicate exercise, and likely to be contested.

Conclusion

Given the nature of today's armed conflicts, efforts to improve civilian protection must address not only the conduct of states but also that of ANSAs. Mechanisms intended to enforce rules have proven to be insufficient but Geneva Call's experience has demonstrated that, by taking an inclusive approach, ANSAs can be engaged in changing their behaviour without the threat or use of coercive means against them.

There would be many challenges in seeking to engage ANSAs on displacement-related norms through the development and use of a formal mechanism. However, given the scale of global displacement and the suffering endured by

those displaced, the humanitarian community does need to be prepared to explore innovative ways to seek to address this issue.

Pauline Lacroix (pauline.lacroix@graduateinstitute.ch), a recent graduate from the Graduate Institute of International and Development Studies of Geneva, was an intern in Geneva Call's Asia Department in 2010. She wrote this article with the assistance of Pascal Bongard (pbongard@genevacall.org), Geneva Call's Programme Director for Africa and Policy Advisor, and Chris Rush (crush@genevacall.org), Geneva Call's Senior Programme Officer for Asia. <http://www.genevacall.org/>

1. For operational purposes, Geneva Call uses the term 'armed non-state actors' to refer to organised armed entities which are primarily motivated by political goals, operate outside effective state control, and lack legal capacity to become party to relevant international treaties. This includes armed groups, de facto governing authorities and non- or partially internationally recognised states.
2. See *Armed Non-State Actors and Landmines - Vol III: Towards a Holistic Approach To Armed Non-State Actors?* 2007 <http://tinyurl.com/GCall-2007>
3. http://www.mineaction.org/section.asp?what_is_mine_action
4. The list of signatories can be found at <http://tinyurl.com/GenevaCallSignatories> It is important to note that a number of signatories have changed their status since the time of signing and are currently no longer considered non-state actors. Some of them have become part of their state's authorities while others have either dissolved or abandoned armed struggle.
5. For more information, see *Non-State Actor Mine Action and Compliance to the Deed of Commitment Banning Anti-Personnel Landmines*: January 2008 – June 2010. Geneva Call. 2010 <http://tinyurl.com/GCall-compliance2010>
6. For example, see Fact-Finding during Armed Conflict: Report of the 2009 Verification Mission to the Philippines to Investigate Allegations of Anti-Personnel Landmine use by the Moro Islamic Front. Geneva. <http://tinyurl.com/2010-GC-Report-Philippines>
7. See Norwegian Refugee Council's activities: Zeender, Greta. 2005. 'Engaging armed non-state actors on internally displaced persons protection', *Refugee Survey Quarterly* Vol. 24, no. 3, pp. 96-111.

In Their Words

Although almost all current armed conflicts involve one or more armed non-state actors, the international community knows little about their willingness to comply with international standards or the challenges they face in doing so. And yet their compliance is crucial if civilians are to be protected.

As a first step towards overcoming this knowledge gap, Geneva Call has collected the perspectives of a number of different NSAs on the issue of protection of children in armed conflict. This report, published in December 2010, is called *In Their Words: Perspectives of Armed non-State Actors on the Protection of Children from the Effects of Armed Conflict*.

How do armed non-state actors see their role in protecting children from the effects of armed conflict? What challenges do they face? How do they perceive and react to international mechanisms? This publication not only takes an initial step towards answering these questions but also provides examples of good practice. It is clear that NSAs are part of the problem.

The focus here is on how they may be part of the solution. The publication includes contributions from NSAs operating in Africa, Asia and the Middle East. It also includes contributions from the unrecognised State of Somaliland, the partially recognised State of Abkhazia and the independence movement Polisario Front of Western Sahara; the rationale for their inclusion is that these entities too are without an international forum to make their perspectives known.

In Their Words aims to promote a more constructive basis for discussion between the international community and NSAs with the hope that children will be the ultimate beneficiaries.

Online at <http://tinyurl.com/GCall-InTheirWords>

For more information, please contact Jonathan Somer, Geneva Call +41 22 879 1050 or jsomer@genevacall.org



‘Catch me if you can!’ The Lord’s Resistance Army

Héloïse Ruaudel

Despite being a relatively marginal armed group, the Lord’s Resistance Army (LRA) has triggered forced displacement on a massive scale. But why have national, regional and international responses so far failed to dismantle the group and to protect civilians effectively?

The Lord’s Resistance Army’s increasingly violent attacks against civilians in Uganda from the 1990s and well into the 2000s – through large-scale and systematic abductions, massacres, maiming and military use of children – led to an unprecedented humanitarian crisis characterised by massive population displacement.

Six years after arrest warrants were issued by the International Criminal Court against the LRA’s leader, Joseph Kony, and four of its top military commanders, civilian populations across several countries of East Africa remain greatly affected by LRA violence. Regular armies and peacekeeping forces have so far failed to eradicate the group by force. Peaceful efforts to end the violence have also fallen short.

Unprecedented forced displacement

While there is generally a correlation between the presence of armed groups and the forced movement of populations, the level and scale of displacement in areas where the LRA has been operating are relatively high, especially considering the limited size and military capacity of the group.

Displacing populations by force has been a deliberate objective of the LRA. Acts of extreme violence and terror perpetuated by the group, whether in the form of large-scale massacres, repeated attacks or symbolic cruel acts such as mutilations, have spread fear in local populations and have resulted in the displacement of civilians and even the depopulation of entire areas.

The LRA has also displaced civilians during violent attacks by forcing them to move with the group, both as a military strategy and as a survival

strategy. Those captured or abducted are uprooted from their communities and – unless they are only forced to carry looted goods for a few days before being released or killed – they will have no other choice but to join the LRA for months or years to come. In addition to killing those trying to escape as a deterrent to others, the LRA purposely disorients its captives by forcing them to walk across vast areas and to cross borders. Testimonies of formerly abducted persons confirm that they had been kept constantly on the move, rarely sleeping twice in the same place. Many escapees recall the days or weeks they spent trying to get back to where they had been abducted from.

Government-led policies to resist or prevent LRA violence against civilians have failed and have often yielded results opposite to what was intended. Most significantly, in 1996, the Government of Uganda forcibly moved hundreds of thousands of Acholi into ‘protection camps’. The people displaced by this hasty and ill-conceived counter-insurgency strategy did not find the protection they needed at all, as these settlements became an easy target for the LRA to abduct civilians from, especially young adolescents. The high risk of abduction persuaded parents that it was safer for their children to leave the camps at nightfall for the main towns. This unique phenomenon known as ‘night commuting’, which led to the daily migration of thousands of children, lasted several years and eventually triggered an international outcry.

In 2002, the government ordered those remaining in villages to move into camps. By mid-2005, the level of displacement reached a peak with some 1.8 million IDPs, and approximately 90% of the population in Acholiland. For those forced

into these congested camps this has also meant forced dependency, vulnerability, humiliation and collective fear and disempowerment.

Running and hiding

Over the years, many people have prematurely announced the ‘end of the LRA’ and claimed military victory over the group; these predictions and statements have always proved wrong. The military option persistently pursued – although partially suspended by several peace initiatives – has not been tied into serious analysis of the LRA’s military strategy and their unusual resilience and adaptability. Years of successive military operations by the Ugandan People’s Defence Forces have had a limited effect in damaging the LRA’s top military command but have had disastrous humanitarian consequences.

The group has also been consistent in operating in remote areas where state presence and infrastructures are minimal or absent, where there are no communication networks but enough people, mineral resources and food to prey on. The LRA has therefore remained relatively undisturbed in border areas where state presence is weaker.

Once the Government of Sudan stopped backing the group in 2005, the deliberate military strategy of the LRA to be constantly on the move and in hiding gradually became their best option for survival. While for some the LRA appears to be under pressure and running for its life, for a number of analysts they are not just surviving but are skilfully using terror and running rings around several armies.¹ While over the past few years the group appears weakened and depleted by continuous military operations, deaths and defections, the scale of its violence has comparatively increased. It has been said about the situation: “This is a conflict that everyone says they want to end, but nobody seems able to.”²

Protecting civilians

The spread of the LRA over several national territories in the last five years has not coincided with the development of a coherent regional response to dismantle the group and protect local populations. The traditional state-centric security approach has been adopted by states who have mainly considered that the LRA does not have the military capacity to threaten their respective regimes. While they have occasionally deplored the human costs, the thousands of deaths and the displacement of about 400,000 people, this has so far failed to trigger a comprehensive intervention to halt the violence and protect civilians, which a human security 'people-centred' approach might have done. This can be observed at a national level, through the regional approach and internationally.

The fact that the LRA is no longer operating on Ugandan soil has lifted the pressure off the government there to protect its own civilians, and Uganda sees no obligation to protect foreign civilians against the exactions of this 'Ugandan-led' armed group.

For the governments of the Central African Republic and the Democratic Republic of Congo, the LRA is but one among many armed groups operating on its territory – but one with very little political weight compared to others, not deserving an enhanced action from their already weak and stretched armies. For the Government of South Sudan, the implications of the self-determination referendum

have supplanted preoccupations about the LRA despite reports of LRA attempts to re-establish contact with the Sudanese Army.

Furthermore, the LRA has indirectly benefited from the shifting relationships between the states in the region and the continuous mistrust and lack of coordination that have characterised more recent joint operations.

What is needed

Like the states involved, the UN peacekeeping missions in the region are all well aware that the LRA almost systematically retaliates against civilians in response to military attacks. The regional armies and the peacekeeping missions alike have disclaimed responsibility for failing to protect civilians.

The LRA is considerably weakened now in comparison to the early 2000s but it is operating over a much larger territory and the effects of its actions remain disastrous for civilians and continue to cause large-scale displacements. The continuing lack of a strong, coherent and consistent regional response will play out in favour of the LRA which has proved to be very opportunistic and adaptable.

A new human security approach to conflict resolution is needed to avoid a prolonged low-level military campaign that causes extreme insecurity for civilians and yet fails to halt the LRA's activities.³ While the resumption of peace negotiations remains improbable in the short

term, there is scope to engage in a political process designed to establish regional peace and security through coordinated military efforts to apprehend the LRA's leadership together with the involvement of civil society and community leaders. It needs to be designed in such a way as to mitigate the risk of civilian casualties including by protecting civilians from potential retaliatory attacks by the LRA, improving information gathering about the group, combined with preventive deployment of peacekeeping and armed forces in areas at risk and, finally, encouragement for LRA defections.

While affected populations need increased emergency humanitarian aid, in order to progressively deprive the LRA of their operational space in border areas, governments and donors should also mark their presence by prioritising socio-economic development to reduce the vulnerability of isolated local communities.

Héloïse Ruauudel (heloise.ruauudel@qeh.ox.ac.uk) is the Policy Programme Manager at the Refugee Studies Centre. She was the Special Assistant to the UN Humanitarian Coordinator in Uganda between 2003 and 2005.

1. Tim Allen and Koen Vlassenroot, *The Lord's Resistance Army – Myth and Reality*, Zed Books (London), 2010
2. Chris Dolan, Director of the Refugee Law Project <http://www.refugeelawproject.org>
3. Mareike Schomerus and Kennedy Tumutegyeize, *After Operation Lightning Thunder, Protecting Communities and Building Peace*, Conciliation Resources, 2009, <http://tinyurl.com/Schomerus-Tumutegyeize> and *LRA: A Regional Strategy beyond Killing Kony*, Crisis Group Africa Report, No. 157, 2010 <http://tinyurl.com/ICG-regional-strategy-on-LRA>

Engaging with armed groups: dilemmas and options for mediators

Engaging with armed groups: dilemmas and options for mediators by Teresa Whitfield draws on experience and case studies to provide mediation practitioners with an overview of the challenges associated with engaging with armed groups.

The publication's focus is on the dilemmas, challenges and risks involved in a mediator's early contacts with an armed group and subsequent engagement as interlocutor, message-carrier, adviser and/or facilitator – all roles that may precede and accompany formal negotiation between parties to a conflict. The author also suggests options for mediators from early contacts to formal negotiation.

This is the second in the HD Centre's Mediation Practice Series. The first in the series, *External actors in mediation*, looked at how mediators can work effectively with actors such as regional powers, neighbouring states, regional organisations and donor countries. Forthcoming publications will address issues such as the negotiation of ceasefires, managing spoilers in peace processes, and whether or not to involve civil society in peace processes.

The HD Centre is an independent global mediation organisation. For more information, see <http://www.hdcentre.org> or email pr@hdcentre.org

Dilemmas of Burma in transition

Kim Jolliffe

Until a government of Burma is able to accept the role of NSAGs as providers for civilian populations and affords them legitimacy within a legal framework, sustained conflict and mass displacement remain inevitable.

Throughout decades of brutal conflict, which have seen thousands of villages destroyed and millions of people displaced, Burma's ruling regime has made no effort to provide support for affected civilians. As a result, Burma's ethnic non-state armed groups (NSAGs) – thought to hold territory covering a quarter of the country's landmass – play a crucial role as protectors and providers of humanitarian aid.

The approach to governance taken by different NSAGs varies greatly, as does the level of willing support given to them by their respective populations. In these traditional cultures, hierarchical leadership structures have evolved over time, often based largely on loyalty to those who provide support and protection. Leaders linked to or part of NSAGs are now firmly established as being responsible for the governance of millions of people in Burma. This situation poses a threat to the state which, in turn, has responded with brute force, perpetuating the cycle of conflict and protracted displacement.

Areas under the governance of NSAGs in Burma can be divided into what are known as the 'black areas' of active armed groups and the 'ceasefire territories' of those who made agreements with the national government over 15 years ago. These areas are collectively home to millions of civilians, many of whom fled areas of conflict or martial law to find refuge and humanitarian support. In many of these areas, education, healthcare, specialist support for youth and women as well as emergency relief are provided by the NSAGs' civil sectors, in most cases to a much higher standard than that provided by the state in nearby regions. Community workers supporting these projects, however, are heavily restricted and regularly attacked and arrested by Burma Army soldiers.

IDPs who have fled to the 'black areas' are typically considered by the state to be supporters of the rebels and are under continuous threat of violence. Those in the ceasefire zones receive no support from the government and, increasingly since 2009, experience sporadic incidents of abuse by the Burma Army. To many of these people, who are almost all ethnic minority citizens, all forms of state administration are seen as a threat rather than anything resembling a government; such tensions

held in November 2010 were as corrupt as most people expected and set continued military rule in stone. However, parallel to this, many foreign donors and governments have noted the military loosening its grip on civil society, opening up an unprecedented amount of space for humanitarian support and development. In parallel with this, however, all NSAGs have been ordered to incorporate their members into the Burma Army as 'border-guard forces', triggering a new series of threats to civilian communities and little hope for reconciliation between the military and NSAGs or their civil sectors. The majority of NSAGs have refused to be incorporated into the Burma Army and now anticipate



Free Burma Rangers

exacerbate xenophobia between ethnic groups, and heighten people's dependence on NSAG support.

Post-election challenges

Meanwhile, non-conflict regions in Burma are in a state of political transition which has allowed a new set of development actors to come in and new rationales among international donors. The elections

mass offensives by the Burma Army which could potentially lead to the further displacement of hundreds of thousands of civilians. In November 2010, a breakaway faction from the Democratic Karen Buddhist Army that had refused the government's demands launched attacks on the Burma Army which then retaliated with mass use of artillery, displacing at least 20,000 civilians. This has

IDPs in
Burma

continued into early 2011, with refugees moving across the border as well as being sent back almost every day since the skirmishes began.

Essentially, while other parts of Burma may see improvements in development and access to services as the economic and political framework of the country is reordered, it is likely that marginalised communities in the east of the country will be left with very little, and will in fact suffer further conflict as a result of the nation's overall transition. If the military's plans are successful, and NSAGs are incorporated into the army, years of experience and training of employees of the NSAG civil sectors – teachers, medics, administrators, and so on – will have been wasted.

This presents a dilemma for those international actors who, alongside NSAGs in Burma, provide support to these populations: how much does support to NSAGs entrench existing divides and perpetuate conflict? Development agencies would normally be advised to avoid legitimising any armed group by allowing them involvement in the distribution of internationally funded supplies. However, when the national government is essentially an armed group itself (perhaps even more so than a number of the political organisations linked to NSAGs in Burma), difficult choices need to be made. These involve far more than moral considerations; they also involve looking at the impracticality of supporting groups which are, alas, no longer potential agents of change. This is especially relevant as, in recent years, more and more development actors and researchers argue that the development of civil society under the military government could not only bring unprecedented successes in development but also help bring about political change over time.

Undoubtedly, however, in the current climate withdrawing support provided through NSAGs would be gravely injurious to people under their governance in the short term and would in no way guarantee even long-term benefits. Until a government of Burma finds a genuine political solution which incorporates NSAG leaders, the environment for

international aid agencies is likely to remain contentious – but must still involve the provision of support though these groups. There should now be a pragmatic focus on what can be done to encourage greater cooperation between legitimate (i.e. government-allowed) and NSAG civil society groups to ensure that, where possible, groups operating in NSAG territory can provide services legitimately in the future.

There is a glimmer of hope in that there are some NSAG civil society groups that have been able to operate in government territory in recent years. The education branch of at least one of the more responsible ceasefire groups now provides support for primary schools in government-controlled areas through the monasteries. However, the question of continued viability of such programmes is largely dependent on the outcome of the expected flare-ups in conflict and the attitude local authorities would take towards the group now that – having refused incorporation into the army – they have been declared illegal. Ominously, offices of the Kachin Independence Organisation and the New Mon State Party have already been shut down in government territory and in early 2010 numerous youth workers of the former organisation were arrested, supposedly as part of a search for terrorist bombers.

The decades-long trend of the government taking a unilateral and belligerent approach to conflict resolution looks certain to continue, as will its policy of non-discrimination between soldiers and civil workers linked to political opposition groups. Without these concessions being made, NSAGs will inevitably retain arms and, in areas of active conflict, continue to target government troops with ambushes, landmines and other guerrilla tactics, even if their power bases are successfully eliminated. These activities protect vulnerable populations but also provoke retribution against civilians, creating a vicious cycle of conflict and displacement.

Conclusion

Some commentators are optimistic that space for officially permitted

relief and development aid will begin to open up, first in non-conflict areas and then spreading to other regions. However, unless some event causes a dramatic shift within or removal of the ruling committee of military generals that continues to dominate politics in Burma, this is likely to take decades, making continued support through NSAGs essential.

In the meantime, those working legitimately in Burma will need to push the boundaries to gain access to vulnerable populations, no matter who controls their territories. But this is difficult. According to an ethnic local NGO leader based in Yangon, "We would like to work more with the community groups in the border areas but if we are seen to be making contact, the government will think we are supporting rebels." Furthermore, commented a foreign consultant to numerous international NGOs in Yangon: "It is already hard enough to get MoUs [Memoranda of Understanding] for development in the most peaceful parts of the country. Weighing up poor peaceful areas or poor conflict areas, organisations will pick their battles.... [and] INGOs will probably be unwilling to send their staff to dangerous areas anyway."

NSAGs will remain critical to the provision of support to considerable numbers of IDPs in Burma, unless the government changes its approach to governance in these regions. Most IDPs and other civilians will continue to choose to live under the governance of NSAGs; and will remain dependent on international support. Steps to encourage a convergence of ideas and resources among legitimate civil society and groups linked to NSAGs should be, and could become, critical to the future peace and development of these regions, yet offer few solutions to the current displacement crisis. International donors should consider increasing support – administered from Thailand – for the most vulnerable populations, while working towards the long-term objective of convergence.

Kim Jolliffe (SPCM88@gmail.com) has been researching conflict and training community groups in Burma for the past two years.

The economic relationship of armed groups with displaced populations

Josep Maria Royo Aspa

One of the ways that non-state armed groups get their funding is by exploiting displaced populations.

Practically all armed groups are heavily dependent on external support. Armed groups primarily seek support from both other states and from the diasporas, displaced populations and other armed groups, in order to prevent the burden of the war effort from falling entirely on the civil population they claim to protect, a situation that has its own political costs. States too need external support to deal with outbreaks of instability and violence; during the Cold War this was normal and it still continues today in most current armed conflicts.

The violence, discrimination and poverty that follow armed conflicts lead to forced displacements of population that often help to maintain the original conflict. Armed groups frequently use IDP and refugee camps as a source of supply and recruitment, as well as for refuge for themselves. Although the armed groups have no legitimate power, they can depend on the refugee population on two essential fronts: fighters and income.

Armed groups have been formed or have recruited members (voluntarily or forcibly) and resources from the IDP and refugee camps in regions and states neighbouring conflict zones. In some cases these camps have become important refuges and logistical bases for the armed conflict.

Most of the Afghan armed groups originated in refugee camps in neighbouring countries. The Taliban, for example, emerged from the *madrassas* (Koranic schools) of the Afghan refugee population in Pakistan. The Karen refugee population – mainly on the Thai-Burma border – supports the Karen National Union armed group against the Burmese government. The Hutu and Tutsi communities that left Rwanda and Burundi during the successive waves of violence following independence in the 1960s settled in large refugee

camps in Uganda, Rwanda, Burundi, the Democratic Republic of Congo and Tanzania which later spawned the insurgency that destabilised both countries. Other cases of similar effects can be seen in Ethiopia, Iraq, Turkish Kurdistan, Chechnya, Sri Lanka, Sudan, Tajikistan and elsewhere.

The refugee populations provide support for insurgent groups as a way of establishing protection mechanisms in host countries. Without any such protection, refugee populations are frequently extremely vulnerable given the potentially hostile local population and/or state authorities, and are thus at the mercy of other armed groups and criminal gangs.

Coercion is another important factor in eliciting contributions from the refugee population, particularly when armed groups are in control of refugee camps. The groups are easily able to take over as they are both armed and organised, whereas the displaced populations tend to be disorganised, weak and unarmed. In these circumstances it is easy for the groups to demand money, provisions and recruits from these populations, even where they are unpopular and are not supported by the populations they claim to represent.

The most extreme example of this situation occurred following the genocide in Rwanda in 1994, when the remnants of the former Rwandan Armed Forces, officials from the previous Rwandan government and the Interahamwe militias organised resistance in the refugee camps in the former Zaire. They created a de facto government within these camps, exploiting international aid to continue their armed struggle against the new government in Rwanda, forcibly abducting and training new recruits, controlling and distributing humanitarian aid, and appointing

themselves as camp managers, giving the refugee population no alternative but to let them do so.

A similar situation is happening with the displaced populations in the Sudan region of Darfur. These people have suffered repeated attacks and abductions in recent years, becoming immersed in a spiral of militarisation by insurgent groups, pro-government militias and the Sudanese Armed Forces.

The economy of armed groups

There can be varying forms of economic relationship between armed groups and displaced populations. Some armed groups persuade the populations under their control to provide resources, while others force them to. The relationship between the parties may be symbiotic, parasitic or predatory, and may move from one type to another depending on how the war develops.

In a symbiotic economic relationship the armed group promotes certain types of activity in exchange for a share in the derived benefits. In such cases the economic development of the area and the economic well-being of the population may become dependent on the armed group for security and infrastructure; the group establishes a degree of social and economic order in the areas it controls in exchange for support and income, emulating a government and providing security, infrastructure and a rule of law that allow economic activities to continue in exchange for some form of taxation on the civilian population.

In a parasitic arrangement the armed groups provide protection and guarantees of security in exchange for collaboration and economic retribution through extortion or the establishment of taxes and charges, charges for permission to access resources, looting of international aid, or payments known as 'revolutionary taxes'. The degree of extortion may be more controlled

and regulated if it stems from the leadership of the armed group, or it may be totally arbitrary where individual combatants establish the level of abuse and extortion.

In a predatory economic relationship the armed groups are unconcerned by relationships with the civilian population, intimidating and terrorising them through the use of force in order to increase their power or to gain access to resources.

Conclusions

It is important to be aware that the relationships that emerge

between armed groups and civilian populations in the economy of war do not always correspond to the standard victim-victimiser model. These relationships may be far more complex and may generate new forms of protection, authority and rights over the distribution of resources that may then play a decisive role in the outcome of the armed conflict. Understanding the economy and funding mechanisms of non-state armed groups is essential if we are to fully understand their nature. Greater understanding is needed of how these groups operate and where their funding comes from if

we are to be in a position to facilitate humanitarian action in contexts of violence and to promote the respect for and fulfilment of human rights.

Josep Maria Royo Aspa (josepmaria.royo@uab.cat) is a political scientist and since 2000 has been a researcher on the Programa de Conflictos y Construcción de la Paz (Programme on Conflict and Peace-building, <http://escolapau.uab.cat/>) at the Escola de Cultura de Pau (Faculty of Peace Culture) in the Autonomous University of Barcelona.

Privatising security and war

José L Gómez del Prado

State security functions normally carried out by national armies or police forces are being outsourced to private military and security companies in countries where conflict is displacing many people.

The development of private military and security companies (PMSC) has produced a new breed of security guards and private soldiers engaged in war zones and highly insecure areas under murky legal restraints. Their activities blur the borderlines between the public services of the state and the private commercial sector, creating a dangerous 'grey zone' with no transparency, no accountability and no regulation. Their activities, together with those of paramilitaries and mercenaries, are having an increasingly negative impact by causing forced displacements and human rights violations in general.

The PMSC industry fulfills a number of tasks which were traditionally carried out by national armed forces and the police. Governments, inter-governmental and non-governmental organisations, transnational corporations, humanitarian organisations, the media and international organisations are increasingly using their services. This army of private security guards constitutes the second largest force in Iraq after that of the US Army. In Afghanistan, the figures released in April 2010 by the US Department of Defense

indicate that there are 107,292 hired civilians and 78,000 soldiers.

The use of private military and security companies in humanitarian operations has blurred the distinction between humanitarian non-profit organisations and private profit-making corporations. In conflict or post-conflict areas, such as Afghanistan and Iraq, where PMSCs increasingly provide security to humanitarian NGOs, it has become

difficult for the local population as well as government officials to distinguish humanitarian assistance from intervening force.

Capitalising on this, one security company regularly put an advertisement in the *Journal of International Peace Operations*¹ in relation to its activities in Afghanistan, Somalia, Congo, Bosnia and Herzegovina, Sudan and Iraq displaying a picture of an individual feeding a malnourished baby with the following message:

"Through selfless commitment and compassion for all people, Blackwater works to make a difference in the world and provides hope to those who still live in desperate times."

Afghanistan

The population of Afghanistan is concerned by the lack of regulation and accountability of the private security companies in an environment of a failed state and post-conflict situation. In armed conflicts and post-conflict situations PMSC employees, contracted as civilians but armed as military personnel, operate with an ambiguous status which can transform



them from a 'civilian' into a 'combatant' at any moment.²

In many instances the local population in Afghanistan perceives employees of PMSCs as contributing to insecurity by perpetuating a 'culture of war', and is concerned about the lack of transparency and accountability of PMSCs and their employees. Private security guards who are in civilian clothes, do not wear any identification and travel in unmarked vehicles are dangerously blurring the lines between humanitarian actors working in the country and security forces. Afghans also appear to think that funds needed for reconstruction are being diverted to pay private security companies, which may paradoxically prevent the stabilisation of peace in the country. The belief that private security guards are making the country more unstable in order to keep their jobs is also widespread among Afghans.

Private security companies are also sending the message to the local population that security is not a public commodity and that it is only available to rich expatriates or wealthy Afghans. Many Afghans also look on private security companies as private militias and associate them with warlords and criminal gangs.

Iraq

In Iraq, by Order 17 issued by the Administrator of the Coalition Provisional Authority (CPA) in June 2004, contractors were immune from prosecution during the three years of the CPA. Similarly in Colombia, any abuses which may be committed by US military personnel and private contractors working under Plan Colombia can be neither investigated nor prosecuted. Furthermore, following a 2003 agreement between Colombia and the US, the government of Colombia would not be able to submit to the jurisdiction of the International Criminal Court any US armed forces personnel or US private contractors working for transnational private security companies who have committed crimes against humanity.

In Iraq as in Afghanistan many security functions have been privatised using contractors which have been able to operate with

impunity. However, the extent of human rights violations by these contractors has obliged the authorities to react. In Afghanistan there have been some efforts to establish legislation to regulate and monitor the transnational security companies operating in the country. Early versions of the draft law on private military and security companies were rejected by the Ministry of Justice and the Supreme Court because they were in conflict with the Afghan Constitution (2004), which grants the monopoly of the use of force to the state, as well as in conflict with the Police Law of September 2005, which lists the duties and obligations of the police as including public order and security.

In Iraq, after the indiscriminate shooting of 16 September 2007 in the populated neighbourhood of Mansour in Baghdad, in which Blackwater³ security contractors protecting a US State Department convoy opened fire on civilians killing 17 persons (including some children), Blackwater was expelled and all its activities suspended in the country – and all private military and security companies operating in Iraq were reassessed. The privatisation of security has challenging implications for accountability in the current context of Iraq and Afghanistan and it is likely to have a longer-term impact on the populations' perception of justice and the rule of law.

End notes

The PMSC industry is transnational in nature and is growing very rapidly, particularly since the beginning of the recent conflict situations in Afghanistan and Iraq, with an aggregate estimate of contracts between US\$20 billion and \$100 billion annually. Since 2001 the use of these private contractors to support operations in Iraq, Afghanistan, Somalia and other failed states, and the human rights violations in which they have been involved, have become the focus of international attention. It has generated debate about the type of functions PMSCs should fulfill, the norms under which they should operate and how to monitor their activities. To respond partly to these concerns the two governments where most of the security industry

Over 5.5 million hectares have been appropriated by paramilitaries, government officials and agro-industrial corporations from Colombian peasants, thousands of whom were internally displaced or killed throughout the 1980s. A former senior officer in the Israeli Defense Forces, Yair Klein, established a private military and security company named Spearhead Ltd through which he participated in the training of right-wing paramilitary groups in Colombia. Members of these were responsible for grave human rights violations, the assassination of peasants, widespread land theft and displacement of populations in Colombia.

In 2001, Klein was tried in absentia by the Criminal court of the Manizales District in Colombia, found guilty of providing training to paramilitary groups and drug traffickers, and sentenced to 14 years' imprisonment. Klein is currently in Israel.

(70%) is located, UK and USA, with the government of Switzerland and the security industry itself, launched the Swiss Initiative⁴ based on the idea of self-regulation.

Because of PMSCs' impact in the enjoyment of human rights, the UN Working Group on the Use of Mercenaries (WGUM) is convinced that a legally binding instrument regulating and monitoring their activities at the national and international level is necessary.

A resolution dissociating the activities of PMSC from the traditional resolution on mercenaries was tabled in 2010 at the UN Human Rights Council in Geneva. Although adopted by a large majority, the delegations of the Western Group generally voted against the resolution, a clear indication of the interests of the expanding security industry.

Having been adopted by the Human Rights Council the resolution opens up a process for all stakeholders to elaborate an international framework to regulate and monitor the activities of private military and security companies. The elements and the draft text of a possible Convention presented by the WGUM will be one among many other initiatives

for the elaboration of such an international regulatory framework. For this process to succeed, it will be necessary for public opinion and civil society of Western countries to bring enough pressure to bear on their respective governments.

In addition, national governments, as shown above, can be and should be encouraged to take on this task in their own countries where PMSCs are operating, although the examples show that they tend to

take action only after abuse becomes unacceptably great or visible.

It would certainly help also if multinational, humanitarian and media organisations, for example, took a more thoughtful and responsible attitude towards employing or cooperating with these organisations.

José L Gómez del Prado (jose.del-prado@wanadoo.fr) is the Chairperson-Rapporteur of the UN Working Group

on the Use of Mercenaries (<http://www2.ohchr.org/english/issues/mercenaries/>).

1. Publication of the International Peace Operations Association and the Peace Operations Institute, vol. 2, No. 4, January/February 2007, Washington <http://issuu.com/ipoa/docs/> In November 2010, the International Peace Operations Association changed its name to International Stability Operations Association.
2. UN Report of the Working Group on the Use of Mercenaries to the Human Rights Council http://www.unwg.rapn.ru/ru/4/Annual%20Reports/2_G0811295.pdf; UN Report of the Working Group on the Use of Mercenaries to the General Assembly http://www.unwg.rapn.ru/en/4/Annual%20Reports/2_N0652080.pdf
3. Now called Xe Services.
4. <http://www.eda.admin.ch/psc>

The Colombian guerrilla, forced displacement and return

David James Cantor

Colombia provides an instructive case-study of the relationship between non-state armed groups and the forced displacement – and return – of civilian populations.

Recent estimates suggest that up to 4.9 million Colombians have been internally displaced as a result of the protracted armed conflict and associated political violence that involves the state and armed left-wing guerrilla groups, as well as a range of highly regionalised right-wing ‘paramilitary’ groups and armed drug-trafficking networks.¹ Much of the forced displacement in recent years has resulted directly or indirectly from military offensives by the state and by paramilitary groups disputing control of rural zones that were historically guerrilla strongholds. Not only have internally displaced persons (IDPs) fled the effects of the war but, in acute disputes for control over territory and population, all parties to the conflict have forcibly displaced local inhabitants suspected of ‘collaborating’ with the enemy.

The large number of non-state armed groups (NSAGs) and the complex nature of their shifting disputes and alliances belie any easy attempt to characterise their role in the phenomenon of forced displacement in Colombia. Nonetheless, while other NSAGs have appeared and disappeared, the Communist-oriented Revolutionary Armed Forces of Colombia-Army of the People (FARC-EP) and the smaller Cuban-

inspired Camilist Union-National Liberation Army (UC-ELN) have endured as the principal insurgent parties to the conflict. The fact that much of the displacement in the past 15 years has been triggered in their rural zones of influence raises certain important questions: How do they understand and apply the IHL provisions prohibiting forced displacement? How do they react to returns by IDPs to those rural zones where they operate? What possibilities exist for IDPs to return in safety to such zones? What role can local or international humanitarian agencies play in such processes?

This article draws upon my field research in six regions of Colombia during 2007 and 2008, documenting processes of returns by IDPs in those and preceding years.² At that time, guerrilla groups were militarily active in almost all of these regions, a situation that has now changed owing to military gains by the state’s armed forces in some regions.

IHL and internal regulations

The two main insurgent NSAGs conceive their relationship to international humanitarian law (IHL) in fundamentally different ways. The FARC-EP does not accept that it is formally bound by IHL, which, in any event, it considers ‘open to

interpretation’.³ The UC-ELN, by contrast, affirms that it is covered by the 1977 Additional Protocol II to the Geneva Conventions (AP2) and has incorporated many of these rules into its Code of War. Yet it also criticises AP2 as being incomplete and imprecise, and has supplemented it with regulations that appear to go beyond the formal requirements of IHL.⁴

Regardless of these legal considerations, each guerrilla group formally regulates its fighters through a diffuse body of internal rules, which sometimes coincide with basic principles of IHL. For instance, both guerrilla organisations require their members to treat with respect persons whom they consider as non-combatants. Thus FARC-EP disciplinary rules expressly outlaw ‘...disrespect towards the masses, the killing of men or women of the civilian population, sexual violation, robbing from the civilian population... [and] any activity that may go against... the sound customs of the population.’⁵

However, this principle of distinction is much narrower than that conventionally conceived in IHL and tends to label any form of collaboration with ‘the enemy’ as removing the person’s right to protection as a ‘civilian’.

The extent to which IDP returns are addressed by the insurgents’

internal regulations corresponds directly to the manner in which each perceives its relationship to IHL. Thus, arguably extending Article 17 of AP2, the UC-ELN's Code of War places no qualifications on its blanket prohibition of forced displacement: "The civilian population will not be forcibly displaced from combat zones."

Similarly, in its Heaven's Gateway Accord signed with prominent civic society representatives in 1998, the UC-ELN made far-reaching pledges regarding IDPs: "[We] will promote and support [IDPs'] organisation and interlocution in defence of their legitimate interests and needs, **especially in safe return...**" [emphasis added]

By contrast, the FARC-EP internal regulations appear to omit any direct reference to the issue of forced displacement, and neither guerrilla organisation has incorporated the UN Guiding Principles on Internal Displacement into their internal regulations. In any event, such internal regulations present only an incomplete picture of the Colombian guerrilla groups' relationship to the IDP phenomenon.

Guerrilla practice and returns

In general, the guerrilla groups appear highly receptive to the return of IDPs. This is clearly implied by the UC-ELN regulations. Moreover, the FARC-EP has even sought out rural populations displaced in urban centres and either encouraged them or, in some instances, ordered them to return. This approach is consistent with its political rationale as a protector of peasant interests as well as humanitarian concerns but is also supported by military considerations. For example, even in zones under dispute, the strategic benefits of having a known civilian presence in a rural area would often appear to outweigh the attendant risks for the guerrilla.

Both guerrilla groups impose restrictions upon the movement of persons in rural zones as a matter of practice. Yet returns represent a particular risk for the guerrilla because of the possibility that the IDPs have become informants during their exile in the urban centres controlled by the state's

armed forces and/or paramilitaries. To manage these risks, the guerrilla groups tend to impose one or more of the following conditions:

- Prior permission from the guerrilla must be given for the return to take place.
- Returns accompanied by the state's armed forces or by paramilitaries are prohibited, although the presence of certain civilian state institutions is sometimes permitted.
- Strict timelines are established within which IDPs must return.
- Returning IDPs must agree to further restrictions on their movements, either to remain in the zone or to reduce the frequency of visits to urban areas.
- Where necessary, the guerrilla organisations enforce returning IDPs' compliance with these conditions through coercive means, including the strategic use of anti-personnel mines. These same coercive means underpin the 'law' and 'justice' systems that the guerrilla groups offer to these remote and often isolated communities.

Safety in return: IDP strategies

IDPs seeking to return to their homes in the rural zones of Colombia often face the reality of continuing tensions between the guerrilla organisations and the armed forces of the state or other NSAGs. Each of these seeks to place a competing range of demands on those former inhabitants who wish to return. Yet returning IDPs do not respond passively; rather they are actors in their own right who often attempt to manage, through particular practical strategies, the risks posed to their safety by the imposition of these competing frameworks of control.

Some IDPs return to their homes as a result of a failure to integrate in the cities and lack confidence in the ability or willingness of the state to protect them. Seeking out the guerrilla group and requesting its permission to return home may be the only plausible strategy for many poor peasants, particularly where the guerrilla presence in the rural

zone is strong. Nonetheless, this implies the necessity of acquiescing to conditions that the guerrilla group may impose and may expose them to the risk of retaliation by other parties to the conflict.

There are also IDP communities that try to ensure their safe return by seeking the protection of the state's armed forces. Where the armed forces have a strong presence in the region, permanent accompaniment of these communities is sometimes provided. This deters direct and sustained guerrilla attacks against village centres where the armed forces are based. However, the effectiveness of this deterrent diminishes outside the village limits (e.g. in fields and on access roads) and attacks are not uncommon. Moreover, the perception of 'collaboration' by the community makes it a military target for the guerrillas. Thus proposals for temporary accompaniment of returns by the armed forces are not merely ineffective but can be highly dangerous for returning IDPs.

Other IDPs seek to guarantee their safety by avoiding the possibility of perceived 'collaboration' with any party to the conflict. Some simply try to avoid contact with them, as for example in 'labour returns' where the IDPs go to work their rural lands during the day but return to the urban centres by nightfall. However, others take a more sustainable approach, and make separate but direct approaches to all of the parties to the conflict in order to request that they respect the decision of the community not to collaborate with any of them. I encountered examples of this strategy in five of the six regions where I worked. Although the strategy is not new or exclusive to returning IDPs, the context of return appears to give IDPs greater leverage in securing the respect of relevant parties to the conflict. In some instances, this was because both the guerrilla groups and other parties to the conflict desired that the return should take place.

Role of humanitarian agencies

Certain agencies – such as the International Committee of the Red Cross and the Catholic Church – have fulfilled an important function through their interlocution, on purely humanitarian grounds, with the

guerrilla groups and other parties to the conflict in order to prevent threatened forcible displacements and to secure guarantees for the safe return of a person or a community. The international community could further facilitate such work by requesting the Colombian government to formally affirm that such contacts do not usurp the presidential prerogative to negotiate peace with NSAGs.

In zones where control is hotly contested, such agencies can also play a key role in supporting those communities of returning IDPs which seek to ensure their safety by requesting all parties to the conflict to respect their civilian character. To be successful, this strategy usually requires the active support of respected external agencies to help the community maintain a) the high degree of internal organisation necessary to present a united front to the armed actors, b)

separate and direct communication channels with all local parties to the conflict, and c) plausible economic alternatives to involvement in the coca-economy or other illegal activities which may compromise the 'neutrality' of the community. Although this strategy may offer the best hope of sustainable protection for returns to highly disputed territories, the protection it offers is fragile and requires constant work if it is to be maintained.

Conclusion

It is important that NSAGs involved in internal conflicts are not viewed as merely an impediment to the return of IDPs. Rather, pragmatic ways of engaging the particular interests of such NSAGs, and supporting the practical protection strategies of local communities, must also be pursued in order to ensure the highest levels of respect possible for vulnerable civilians caught up in complex and protracted wars.

David James Cantor (david.cantor@sas.ac.uk) is a Lecturer in International Human Rights Law at the Institute of Commonwealth Studies, University of London (<http://commonwealth.sas.ac.uk>). His forthcoming book *The Return of Internally Displaced Persons: International Law and its Application in Colombia* is to be published by Martinus Nijhoff in 2011.

1. Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), 'Salto Estratégico o Salto al Vacío' (27 January 2010) <http://www.codhes.org>. This would appear to be in addition to the nearly half a million Colombian persons of concern to UNHCR in neighbouring countries. <http://www.acnur.org/crisis/colombia/paisesvecinos.htm>
2. This doctoral research was generously supported by The Leverhulme Trust, the Arts and Humanities Research Council, and the University of Essex.
3. Human Rights Watch, *War Without Quarter: Colombia and International Humanitarian Law* (1 October 1998). <http://www.hrw.org/legacy/reports/reports98/colombia/>
4. Comandante Manuel Pérez, 'Declaración Pública' 15 July 1995, reproduced in *Agenda Ciudadana para la Paz, Conversaciones de paz frente al horror: acuerdos humanitarios* (Mandato Ciudadano por la Paz, la Vida y la Libertad, Bogotá 1998), 57-64.
5. Corporación Observatorio para la Paz, *Las verdaderas intenciones de las FARC* (Intermedio, Bogotá 1999) 168-169.



All photos UNHCR/Zaimai

Yenis and Grimaldo still miss the home they were forced to flee in El Salado, northern Colombia, in 2000. "Now there is nothing in that place, only vegetation," Grimaldo says.



Argemiro walks the streets of Cartagena for hours every day, selling his hand-made brooms and mops.



Displaced twice by Colombia's violence, Eliécer is now the leader of 118 displaced families in Cartagena, helping them assert their rights. He would never go back to his home area. "One of my friends returned two years ago. He was killed soon after that."



This displaced father and child had never been out of their region and now have to adapt to a big city. Henry, 44, earns money recycling garbage.

How to behave: advice from IDPs

Stine Finne Jakobsen

Humanitarian actors would do well to listen to IDPs' advice when planning assistance for those affected by the presence of NSAGs.

This article presents advice given by internally displaced persons (IDPs) on how they themselves need to behave in order to survive under non-state armed groups' (NSAGs') control – which in turn has implications for how external actors should behave. The advice is drawn from more than 100 interviews conducted in 2007 and 2008 with IDPs settled in a shanty town on the outskirts of the Colombian city of Cartagena. Contradictions in the 'rules' below show that there is no uniform or right way to survive; an approach that works in one situation might be unwise in another. The ten rules are listed here under four modes of behaviour: passivity, invisibility, obedience and mobility.

Passivity

In a situation where an illegal armed actor is controlling the local population and imposing order through terror, not to talk, not to know and not to see may be essential coping strategies.

Rule 1: Keep your mouth shut – your neighbour might be an informer.

"Back in the village you should only mind your own stuff and nothing more", explains one woman. In villages under NSAG control, people need to be careful not to share information or express criticism – even to neighbours – because it could reach the ears of the armed groups and have repercussions.¹ Not knowing whom to trust has a detrimental effect on social relations. When it is no longer possible to know who has made alliances with the militias, or who is an informer, mistrust creeps in, ending all social life. One local leader recalls how social relations deteriorated when the paramilitaries took control of his home region: "Then you no longer talked to the other person, to the friend...." "It was turned into a village of fear", another interviewee recalls.

Rule 2: Close your door, stay inside and watch television.

Follow the soap operas, watch the news and keep the door closed in an attempt to block out the atrocities unfolding outside. Particularly for young women, another reason to remain inside is to avoid rape. Sexual violence has been a systematic and generalised practice by NSAGs in Colombia in order to instil terror in the population. The house was considered by many the only safe place; venturing outside involved the risk of running into the armed groups, being caught in cross-fire or accidentally witnessing something. To remain inside and close your door is thus also a way to avoid witnessing a violation or an atrocity. As long as you have not seen anything you do not know what happened.

Invisibility

Invisibility implies to duck and hide, to melt into the rest of the population and avoid actions that can draw attention to you. Certain daily activities should be restricted or abandoned but total invisibility is never possible since everyday life has to go on.

Rule 3: Stay out of trouble.

"In my community the guerrilla [left-wing militias] kept order", one local leader explains; they punished troublemakers and acted as the rural police – always ready to intervene as the de facto armed authority. "When the local committee held meetings, they [the guerrilla] would always stand at the back of the room, and when we had finished they would give their own speech", he recalls. The population has to adjust to the rules and norms put in place by the armed actors, and face any punishments meted out for transgressing them.

Rule 4: Avoid social and political involvement.

Among the local communities, people engaged in social and political activities and with key community functions – such as school teacher or priest – are at particular risk of being targeted by NSAGs. When an area

falls under control of a new NSAG all existing political power-holders are regarded as loyal to the enemy, and the NSAG seeks to exterminate them. In order to get rid of all opposition the armed groups also target people whom they believe play any organising role. One older man who had held an administrative post in his village left almost immediately when the paramilitaries moved in because he knew that they "didn't want to know anything about politics". Thus fear undermines social activism in affected communities.

Rule 5: Don't go out after dark.

In Colombia night falls around 6pm and the sun rises around 6am. Sometimes a night-time curfew is imposed by NSAGs but at times avoiding going outside in the dark is a self-protective measure adopted by people. This is motivated by the perception that most 'bad things' (robberies, assassinations, assaults) take place in the dark; you could be caught in cross-fire or be apprehended. Moreover, remaining indoors is also a strategy for not accidentally witnessing an atrocity. A night curfew deeply affects both social life and the unfolding of everyday livelihood activities such as fishing or hunting at dusk, walking to and from the fields or the village at dawn, or meeting up with neighbours socially after work.

Obedience

Obedience implies following the rules and orders of the NSAGs – a first step towards securing survival. However, obeying the orders of one group is inevitably perceived by their adversaries as supporting that group. And in obeying, the principle of passivity is violated.

Rule 6: Go to the meetings but don't look as if you are scared.

The NSAGs oblige the local population to attend meetings. One from each household has to be there and the task often falls on the women. At the meeting people receive warnings and are informed about policy, rules and regulations. An oft-repeated phrase is "el que nada debe, nada teme" – if your

conscience is clean you have nothing to fear, hence the injunction to never look scared at meetings.

Rule 7: Always do or give them what they ask.

When NSAGs control a village they require the population to comply with certain injunctions – such as keeping roadsides clear, keeping farm animals locked up, and serving coffee, water or meat to combatants. The groups may also confiscate assets such as livestock, boats and vehicles, or demand that people pay protection money. Inability or unwillingness to comply could lead to violent retaliation, and the only option for survival may be to leave: “We left due to fear and a lot of pressure from the paramilitaries, because we didn’t have the money to pay the protection money they asked of us”, one man says. Civilians living in areas under dispute are in a particular vulnerable situation. If, for example, a family complies with one NSAG’s demand for food, they risk being accused at a later date by another group of being a collaborator. This puts considerable pressure on families. There is no way to escape a demand for food or shelter, one woman recalls: “You have to do it – you don’t want them to kill your children.” There may be situations where people decide to disobey orders but as that is practically signing one’s own death warrant, the only option left for survival is immediate escape.

Rule 8: If the armed actors accuse you of something, don’t think you can argue or prove your innocence.

If an individual is accused – whether rightly or not – by the NSAG of having done something, rapid escape may be the only option. At times people receive a direct personal warning, either through a text message or by word of mouth, and thus have some time to leave. Collective warnings of a coming ‘social cleansing’ may lead to the exodus of an entire community. At times lists are hung up in public places with names, nicknames and professions of targets.

Mobility

In wartime, mobility is restricted and regarded as suspicious by armed actors and groups. Unnecessary movement should be avoided – but moving away can be the ultimate

solution to secure survival through anonymity in an urban setting.

Rule 9: Avoid all unnecessary movement.

Many interviewees talk about how mobility was severely restricted in the communities. Roadblocks were common; local transport was often stopped and – to send a strong signal of power – passengers were routinely dragged out of vehicles and arbitrarily killed. For national government forces and NSAGs, dominating an area implies controlling and registering all movements of people and supplies on the road system or river basins. People with livelihoods requiring mobility are natural targets, suspected of bringing information or supplies through to the enemy. Thus a driver or a travelling salesman may be considered ‘involved’ and therefore targeted. For people living in remote hamlets, regular activities such as going to the village for supplies meant risking one’s life. Some communities have experienced total confinement, resulting in scarcity of food and medicine, or have experienced rigid restrictions on all movements and on the amount of food they could purchase and bring into the area.²

Rule 10: If you leave, never come back.

Most IDPs say they will never return, recognising that, for the armed actors, leaving equals running away and is interpreted as motivated by ‘involvement’ and guilt. Moreover, when people leave an area they must move to another place where the local NSAG is not able to find them. Most often they head for urban areas where they can melt into the anonymity of the city. And here they stay. Return is not considered viable as long as the NSAGs are still present; even if an area has been freed from NSAGs many people still avoid returning – fearing that the NSAGs might also return one day or that they may maintain surveillance of the area or that they may have demobilised and are now living as civilians.

Advice for external agencies

Humanitarian actors most often come into contact with the affected civilian population after they have left their area of origin. However, if they seek to support people living under

NSAG control such agencies would do well to listen to the IDPs’ advice and bear in mind the following – again, in places inherently contradictory – recommendations:

- Expect to meet silence: due to fear of retaliation from NSAGs, people cannot voice complaints and express their distress.
- Expect to meet social isolation and fragmentation.
- Meetings may have acquired a particular – negative – connotation for people.
- People live under constant threat of coercion by NSAGs and aid distributed to civilians may well be commandeered by them.
- Contact between the population and external actors may be considered threatening by NSAGs and may therefore place civilians at great risk.
- Local people recruited as staff by external agencies acquire enhanced visibility and may run particular security risks.
- Attempts to organise the population are very risky, and local leaders are often the first ones targeted by NSAGs.
- It may be impossible to predict which actions or interventions are considered problematic by NSAGs.
- Curfews and generalised fear disrupt regular livelihood activities and food aid may be greatly needed.
- Severe restrictions on mobility may impede bringing supplies into NSAG-controlled areas.
- Once people leave an area as internally displaced it is very risky for them to return.

Stine Finne Jakobsen (sfj@rct.dk) is a researcher at the Rehabilitation and Research Center for Torture Victims (RCT), Copenhagen, Denmark (<http://www.rct.dk>). She is currently finalising her PhD research project on social processes of survival among IDPs in Colombia.

1. Many of these ‘rules’ apply to state armed groups, as well as to non-state armed groups, in particular in disputed areas.

2. See 2004 publication on confined communities from the Project Counselling Service in Bogotá: http://www.pcslatin.org/public/confinamiento_esp.pdf (Spanish only)

Community-led stabilisation in Somalia

Siris Hartkorn

Non-state armed groups are often considered to lack legitimacy as potential counterparts in building security institutions but when they are in fact in control, this point of view has to be reviewed.

Somalia has for many years been known as the classic example of a failed state and illustrates clearly how difficult it can be to restore state institutions after their total collapse. Prolonged civil war, famine and poverty have caused a humanitarian crisis with large flows of IDPs and an estimated 3.2 million people in need of humanitarian assistance.¹ Yet while increasing numbers of the population are in urgent need of assistance, access by international agencies to provide relief has become more difficult as a result of pressure from non-state armed groups (NSAGs).

Since the fall of Siad Barre's regime in 1991 various self-appointed administrations have attempted to seize power – and declare autonomy – in different parts of the country. Most well known, though not internationally recognised, is Somaliland to the northwest. As humanitarian space has been shrinking in south-central Somalia, agencies have reorganised their operations to run from the relatively stable areas of Somaliland and, to some extent, Puntland in the north. Yet south-central Somalia remains the region where most of the IDPs and population in acute need are situated and, while the difficulties for humanitarian agencies in negotiating access with NSAGs in the capital city Mogadishu are well known, it is not representative for all of south-central Somalia.

Where NSAGs form local administrations, they become one

of the duty bearers towards the population, including IDPs. And when these administrations are viewed as legitimate among the population, they become important potential partners. In the town of South Galkayo, some 450 km north of Mogadishu, an NSAG called Ahlu-Sunna Wal-Jamaa is in control. Here, in contrast to its experience of trying to facilitate



Pete Muller

in order to create an environment where development can take place. Experience from working in South Galkayo supports the argument that the approach to stabilisation in Somalia needs to explore community-driven processes rather than large-scale and highly politicised stabilisation efforts that have so far proven counter-productive. Building safety at the community level needs to follow humanitarian principles: placing the need of the population at the centre, while not promoting a political agenda. This may even

mean engaging with NSAGs in cases where they have some legitimacy within the population and prove willing to adhere to international standards of humanitarian law.

South Galkayo is the capital of Galmudug State, a self-declared administration founded by clan elders and the NSAG Ahlu-Sunna Wal-Jamaa following the defeat of the Mogadishu warlords in 2006.

safe return for IDPs to Mogadishu, the Danish Demining Group (DDG) has had a positive experience not only of obtaining access but also of engaging in partnership with both the communities and the self-appointed administration.

A pragmatic approach

Engaging with NSAGs in building institutions to ensure civilian security can be controversial but can also be necessary in cases like Somalia where no central state power exists or is likely to do so in the near future. The prolonged civil war and high levels of insecurity in Somalia have created an urgent need for initiatives to reduce armed violence

The town of Galkayo is situated on the border of Puntland and south-central Somalia and is split north and south under the Puntland and Galmudug State administrations respectively. Ahlu-Sunna Wal-Jamaa is the overall security provider in South Galkayo and has managed to improve security in the area administered by Galmudug State. Compared to other regions in south-central Somalia, the area under the control of Galmudug State has enjoyed relative stability since 2006 and has attracted people displaced by conflict from other regions. While the relationship between the host communities in South Galkayo and the IDPs has



previously been good (mainly due to clan loyalties), the risk of tension is now increasing as the growing number of IDPs puts pressure on the communities' limited resources.

Galkayo is of great strategic importance as it represents one of the few pockets of relative stability in Somalia, from and in which international organisations can operate. Yet most organisations settle in North Galkayo under the Puntland administration, a move that has fuelled a feeling of marginalisation in South Galkayo. DDG is one of the few organisations that have explored the possibility of access in South Galkayo by starting up community safety programmes in two communities there, Dalsan and Alanley, in 2010.

Community safety is a bottom-up approach to stabilisation where the communities themselves have strong ownership of the process. External as well as internal dynamics of crime, armed violence and clan conflict combined with the very limited resources within the communities make stability in South Galkayo very fragile and there is an urgent need for sustainable security solutions. Galmudug State is pursuing statebuilding goals in their region but lacks the capacity and resources to create security and development without external assistance – and is therefore actively seeking partnerships with international organisations. In contrast to al-Shabaab, Ahlu-Sunna Wal-Jamaa does not oppose

international agencies which receive funding from Western governments. This is partly due to the make-up of the NSAG, which is funded on clan structures rather than religious discourse, and partly because Ahlu-Sunna Wal-Jamaa works in alliance with the Transitional Federal Government. DDG is working with Galmudug State to address all aspects of armed violence and bring together members of different communities to identify and develop solutions to their safety and security needs, through development and implementation of a community safety plan. Such community safety projects aim not only to improve the immediate security situation but also to strengthen the target communities' capacity to resist being drawn into conflict and to improve any individual or group behaviour which might contribute to triggering conflict.

Community safety

More than 50% of the households in DDG's two target communities report owning at least one firearm, and accidents related to small arms and light weapons (SALW) remain among the highest security concerns in the two communities. DDG's programme involves installing safe storage devices² for small arms and light weapons and clearing unexploded ordnance, and by providing education on the risks of mines and training in firearm safety behaviour. Another big security concern in Dalsan and Alanley is communal and clan conflict.

Here DDG seeks to strengthen the communities' capacity to manage conflict and find peaceful settlements to disputes, e.g. through conflict management education. As IDPs are new-comers to the communities, they often become vulnerable when there is conflict; strengthening the relationship between IDPs and the host communities by involving both groups in the community safety process, and thereby creating common ownership, is therefore of high importance.

Crimes of rape, theft, assault and robbery are also of great concern within the two communities. Such crime can not only affect the safety of the population but can also be potentially destabilising – for example, by sparking revenge killings and conflict between clans, families or north/south population.³ Traditional leaders lack the tools to address these new criminal trends; what is needed is an effective police force that the communities trust to solve crime and settle disputes. Galmudug State has recently trained 325 police officers to be employed in South Galkayo but with 38% of households reporting that they would still go to clan leaders concerning a crime, rather than to the police, the relationship between police and the communities clearly needs to be strengthened. DDG has helped establish community-based policing committees, which function as a link between the two. DDG is also engaged in discussions with Galmudug State to identify other ways of supporting the building of formal security institutions, such as training the police force in human rights principles.

There are many challenges associated with providing capacity building and assistance for a police force that is institutionally anchored within an NSAG rather than a recognised government and this has to be done with certain considerations in mind. In the context of Galmudug State, the main challenges are the lack of capacity within the administration and the difficulty of stepping outside clan structures in order to build independent, accountable state institutions. DDG's decision to engage in partnership with Galmudug State was possible because of the high level of legitimacy

that Galmudug State and Ahlu-Sunna Wal-Jamaa hold within the population, and their willingness to discuss human rights standards and international humanitarian law, a potential that can only be explored through partnership and dialogue.

Integrating armed violence reduction and development

Armed violence is one of the major obstacles to development and therefore development initiatives need to be linked to reducing armed violence. In an attempt to link the two processes, DDG and the Danish Refugee Council (DRC) have developed an integrated approach to Community Safety and Community Driven Recovery and Development. In South Galkayo as well as other places across Somalia, both DDG and DRC are present and, when possible,

work alongside each other to engage communities to take ownership of the process of both improving safety and pursuing development goals.

In the Somali context this integrated approach has been successful, fostering sustainable change in the target communities. With UNDP and JPLG (UN Joint Programme on Local Governance and Decentralised Service Delivery)⁴ exploring a similar integrated approach at the district level in Puntland and Somaliland, there seems to be an increasing international recognition that armed violence reduction and development need to go hand in hand.

Siris Hartkorn (hartkorn@hotmail.com) is Advisor to the Danish Demining Group, DDG, Horn of Africa (<http://www.danishdemininggroup.dk>).

DDG is part of the Danish Refugee Council. For more information about this programme, please contact Klaus Ljoerring Pedersen (klpc@drc.dk), DDG Regional Director, Horn of Africa and Representative for Armed Violence Reduction.

1. Bradbury, Mark *State-building, Counterterrorism, and Licensing Humanitarianism in Somalia*, September 2010, Feinstein International Center <http://tinyurl.com/TuftsBradburySept2010Somalia>

2. Device for keeping the weapon locked and stored safely to avoid theft and accidents (see picture opposite).

3. 'Community Safety & Security Analysis and Recommended Actions for Galkayo District, Somali Community Safety Framework, forthcoming 2011 at <http://www.somalipeacebuilding.org>. The Somali Community Safety Framework is a partnership of local and international NGOs, UN agencies and academic institutions seeking to advance community security in the Somali regions.

4. UN JPLG for Somalia is a five-year joint programme of ILO, UNCDF, UNDP, UN-HABITAT and UNICEF. The partners in the Joint Programme are the Somalia government institutions, Regional Councils, District Councils, Legislatures, Municipal Associations, international and local NGOs/CSOs, and the private sector. <http://jplg.org>

Al-Shabaab's responsibility to protect civilians in Somalia

Allehone Mulugeta Abebe

For 20 years armed groups have been permanent fixtures of the conflicts in Somalia and have been direct participants in human rights and humanitarian law violations. Now there are some international moves to hold them to account.

The role of these armed groups and the consequences of their actions on the welfare of civilians have all been extraordinarily negative. Unfortunately, the accountability of these groups for civilian protection has been largely ignored while their notoriety has more to do with Western concerns over terrorism, piracy and security than the protection of civilians.

The occasionally contradictory strategies employed by regional actors and the international community have so far concentrated on boosting the legitimacy and capacity of the Transitional Federal Government (TFG); designating and isolating the militants as 'terrorist' groups; expanding provision of humanitarian assistance even if that means working with networks and groups which violate civilians' human rights; and seeking to re-establish peace and stability including by supporting

the fledgling African Union's peacekeeping mission in Somalia (AMISOM). Recently, however, some of these actors have taken some steps – albeit fragmented and limited in scope – to focus on the protection of civilians including those uprooted from their homes.

The ongoing conflict between groups such as al-Shabaab and Hizbul Islam on the one hand and the weak TFG and its military allies on the other continues to cause the death of numerous civilians and to displace hundreds of thousands of civilians from their homes and livelihoods. For example, in January 2010 over 25,000 civilians were displaced by fighting over the control of the town of Beledweyne in central Somalia.

While they are not the only guilty party, al-Shabaab has been particularly brazen in its use of civilians as human shields; recruiting children and young persons;

suicide missions; attacking and shelling civilian areas; exacting extreme forms of *shari'a* penalties even for minor offences; attacking and intimidating journalists, humanitarian workers and peacekeepers; and imposing undue restrictions on humanitarian access.

The UN and other humanitarian organisations run their operations from outside Somalia, mainly from Kenya, relying heavily on nationals for the actual delivery of aid within Somalia. According to the former Special Representative of the Secretary General (SRSG) on the human rights of IDPs, this approach has resulted in a disproportionate exposure of local staff to danger and remains unsustainable in the long run.

Though the autonomous regions of Somaliland and Puntland had been spared from some of the worst violations by armed groups, they are now increasingly being infiltrated by members of armed groups, triggering a phenomenon of forced return of IDPs by authorities who fear that al-Shabaab forces are hiding among

displaced persons. These groups are also seeking to expand their horizons outside Somalia, increasingly recruiting the Somali diaspora.

Sanctions and accountability

In April 2010, the UN Security Council designated al-Shabaab for targeted sanctions for its obstruction of humanitarian aid. UN Security Council Resolution 1844, adopted in November 2008, had expanded the arms embargo with targeted sanctions against those who impede and obstruct delivery of humanitarian assistance. The Somalia Sanctions Monitoring Group has presented a list of individuals and entities to be considered for targeted sanctions.

Designation of such groups as terrorist organisations and the imposition of sanctions including freezing of their assets have specific operational consequences for attempts to extend 'humanitarian space' through engagement with these groups. There are numerous instances where al-Shabaab has asked humanitarian organisations to sign agreements which would allow the latter to distribute aid; such a relationship, however, may risk the use of aid for political purposes and undermines efforts at accountability for abuses. On 19 March 2010, the UN Security Council adopted Resolution 1916 lifting restriction on funds "necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia". This was done to ensure that humanitarian operations in areas under the control of al-Shabaab and Hizbul Islam are not construed as violating UN sanctions if humanitarian organisations are forced to make payment to the insurgents.

There are a number of developments taking place to impose some sort of accountability and responsibility on armed groups in Somalia, including al-Shabaab. Among these are the revival of discussions on Somalia at the Human Rights Council; the strengthening of the role of the Independent Expert¹; the Office of the High Commissioner for Human Rights (OHCHR)'s plan to document human rights violations; the decision of the African Commission on Human and Peoples' Rights

to conduct a fact-finding mission to Somalia; increasing attention to civilian protection by the UN Security Council and the Peace and Security Council of the African Union; the possibility of transnational justice and accountability mechanisms through an international inquiry or a possible role by the International Criminal Court; and the inclusion of accountability and impunity in current discussions on constitutional arrangements for Somalia after the TFG.

Recently, the Security Council has been further refining and building on these measures. In 2010, for instance, it held a "stand-alone interactive dialogue" on human rights situations in Somalia which brought together the SRSG on Somalia, the Independent Expert, representatives of UN agencies, of governments, and of the TFG and AMISOM.² The outcome of the dialogue included the adoption of a resolution condemning the attacks on civilians, humanitarian workers and peacekeepers by al-Shabaab and Hizbul Islam; expressing concern over the plight of displaced persons uprooted by the conflict; calling for a better accountability mechanism; and urging closer cooperation between the SRSG and the Independent Expert.³ OHCHR recently announced that it will work on documenting human rights violations including by these militant groups.

All regional and international efforts in Somalia have sought to address the issue of impunity but with very limited success. It is included as an issue to address within the internationally funded constitution-forming process but so far domestic accountability mechanisms have not produced any concrete outcomes – and there is little hope of solutions from the international criminal justice establishment in a context where the national framework is extremely weak. The need to address impunity should remain an important component

of the new constitutional debate as a reflection of political commitment on the part of the stakeholders.

Conclusions

Though all parties to the protracted conflict in Somalia have been implicated in violations of human rights and humanitarian law, the armed groups continue to engage in egregious abuses that have claimed numerous innocent lives and led to the displacement of hundreds of thousands of civilians. These groups threaten and directly attack humanitarian organisations and peacekeepers. They have also restricted humanitarian assistance by limiting the operation of humanitarian organisations and even expelling them from Somalia. Holding al-Shabaab and its allies accountable for these violations has been extremely challenging but recent developments appear to offer concrete opportunities to highlight al-Shabaab's failure to ensure protection of civilians and to further refine the tools for accountability.

Allehone Mulugeta Abebe (allehone@gmail.com) is a doctoral researcher at the University of Bern, Switzerland. Opinions expressed here are those of the author and do not necessarily reflect the views of organisations with which he is affiliated.

1. Appointed by the UN Secretary-General on the situation of human rights in Somalia http://ap.ohchr.org/documents/dpage_e.aspx?m=48

2. Stand-alone interactive dialogue on Somalia, 29 September 2010. See <http://www.ohchr.org/en/countries/africaregion/pages/soindex.aspx>.

3. Human Rights Council, Resolution 15/28, Assistance to Somalia in the field of human rights, 7 October 10.



Sheikh Omar IDP camp in Jowhar, Somalia.

Support for al-Shabaab through the diaspora

Mitchell Sipus

While the presence of non-state armed group al-Shabaab is primarily concentrated in Mogadishu and central Somalia, their influence has extended beyond the borders out into the lives of Somali refugees who sought to escape the violence.

After 20 years of war, Harakat al-Shabaab¹ is the dominant military force in opposition to the UN-backed government in Mogadishu and the African Union military forces that support it. Promoting the vision of the *ummah*, a unified Islamic state under *shari'a* law, al-Shabaab attracts both popular support and scathing criticism among Somali people within and outside the country. Al-Shabaab is considered both the instigator of ongoing conflict and also the most viable means to peace. And al-Shabaab's vision of Islam over tribalism unifies those whose displacement may have been caused by this organisation itself. Yet while the military presence of al-Shabaab is concentrated within Somalia, its capacity is directly linked to the global flow of remittances and particularly the Kenyan neighbourhood of East Leigh.

Located just outside Nairobi's central business district, East Leigh is a well-known economic and community centre for displaced Somalis. Over the last twenty years, this neighbourhood

has moved from being a lower middle-class Nairobi suburb into a bustling hub for commerce and an important conduit for the flow of remittance monies. The remittance flow through East Leigh is primarily for displaced Somalis living in Nairobi, the Dadaab camps in Kenya's North Eastern Province, and family members who remain within Somalia.²

It is well known throughout East Leigh that al-Shabaab utilises incoming remittance flows to fund its operations in Somalia and has direct financial involvement with many of the businesses in East Leigh; indeed, the majority of shops and businesses are thought to be owned by or affiliated to al-Shabaab. Many of the shops also sell al-Shabaab propaganda videos produced by local East Leigh studios. In this way al-Shabaab can advertise their message, provide revenue to local businesses, and reinforce their position within the community.

Al-Shabaab provides opportunities and support to the residents of East Leigh while indoctrinating members by more than the mere ownership of shops and tea stalls; they also invest large sums of money in the construction and operation of mosques within East Leigh to attract the support of religious clerics. By influencing the preaching within local mosques, al-Shabaab promotes the idea of a Somalia founded on Islamic principles rather than on political or tribal affiliation.

School programmes that promote al-Shabaab within their teaching may also receive monetary or material support. Some of the schools supported by al-Shabaab even provide children with school uniforms modelled on al-Shabaab uniforms.

Although, surprisingly, the benefits offered to newly recruited youth are minimal, young men in East Leigh continue to join al-Shabaab in response to, among other things, indoctrination, poverty and lack of opportunity. Unfortunately, al-Shabaab rarely provides the necessary or desired support to these often vulnerable young men, as the organisation considers membership

a nationalistic duty in order to save and unify the nation of Somalia.

The most obvious negative effect of the al-Shabaab presence within East Leigh is the level of censorship felt by the displaced community. Within some areas young women must fully cover themselves. The presence of censorship is felt among men as well; as it is often difficult to determine who in the community is an al-Shabaab member, individuals are careful not to say or do anything to draw unwanted attention to themselves.

Conclusion

Not all Somalis share the vision of an aggressive Islamic state but the possible end of violence, the reunification of the state under a Somali government and the vague possibility of return all maintain broad appeal. Al-Shabaab is considered a better option for long-term peace than the UN-backed government in Mogadishu which is seen as financially wasteful and some fear that the current foreign support for the government may mean strong foreign influence on Somalia in the long term. Most importantly, the success of al-Shabaab has become understood as the opportunity for any man to rise above the traditional restraints of tribalism and a means to take up new opportunities for a population tired of the violence of war and the frustrations of displacement.

Mitchell Sipus (mitchell.sipus@gmail.com) is an independent researcher and consultant (<http://www.mitchellsipus.com>). He is a graduate from the American University's Center of Forced Migration and Refugee Studies and from the University of Cincinnati. Field research was conducted in East Leigh, Nairobi, Kenya, in October 2010.

1. Arabic for 'young men'

2. Lindley, Anna, 2007 'Protracted displacement and remittances: the view from Eastleigh, Nairobi', *New Issues in Refugee Research*. UNHCR <http://www.unhcr.org/46ea519d2.html>



IRIN/Manocheh Deghatti

Militia in DRC speak about sexual violence

Jocelyn Kelly and Michael Vanrooyen

A recent study sought to explore the internal dynamics of the Mai Mai militia in eastern Democratic Republic of the Congo, and to consider what factors might be most influential in restraining violence.

Non-state armed groups (NSAGs) in DRC have been implicated in perpetrating egregious human rights abuses, particularly acts of sexual violence, against civilians for more than two decades. These groups range from organised Congolese military units to small groups of armed militias from Rwanda and Burundi, to locally organised Mai Mai militias. Information emerging from the region underscores the pivotal role these groups play in perpetrating violence against civilians and precipitating mass displacement.

Recent research confirms the high number of rapes conducted by armed groups, citing between 54% and 88% of all such attacks reported by women being perpetrated by NSAG combatants.¹ The number of armed groups and the shocking levels of violence beg the question as to whether we can better understand how NSAGs view violence, their motivations for fighting, and possible points of leverage for improving their treatment of civilians. Work by Elisabeth Wood reveals that NSAGs can be highly organised and governed by a wide range of principles and motivations, suggesting that both the perpetration of violence, as well as restraint from using it, varies across groups and conflicts.²

Attitudes towards women and sexual violence

Mai Mai militia are a powerful force in eastern DRC and have been implicated in the looting, raping, abduction and mass displacement of civilians. Our study focused on two different sub-groups of the Mai Mai – the Shikito and the Kifuafua.³

Interviews with Mai Mai combatants revealed that soldiers hold generally highly stereotypical and dismissive views of women. Soldiers interviewed

for the project describe women's roles as cooking, cleaning, raising children and undertaking small commercial activities or farming to help support the family. In contrast, men are seen as the protectors of the family and the decision makers. Despite similarly rigid views about gender and the role of women, however, these two Mai Mai sub-groups seemed to differ in their attitudes towards sexual violence.

Interviewees from the Shikito consistently denied that they raped women. Soldiers cited both ideology – describing themselves as the protectors of the populations – and pragmatic reasons for this restraint. One Shikito soldier said, "Rape is forbidden since we know that we are here to protect the population." Another interviewee said, "... [I]f one person from the group decides to rape, or a fellow soldier rapes a woman, people will say that the group of Mai Mai is raping women. It becomes a problem for the whole group."

On a more practical side, a number of soldiers noted that rape could undermine their grass-roots support from host communities. Soldiers described how vital community support was for the Shikito. "There are women there who grow food in their fields in the surrounding villages; they assist us with food."

In contrast, interviewees from the Kifuafua were much more likely to describe raping women, kidnapping them for themselves or their commanders, or undertaking rape for individual reasons. Respondents described abducting women to be "given" to commanders as a spoil of war, noting how women were distributed according to rank. "[The commander] will have his [girl] brought first before he can ask

me to bring mine. ...if you refuse, it becomes an open conflict."

Kifuafua interviewees did not describe relying on the goodwill of civilians for support. While both groups tended to portray themselves as the "protectors" of the population, it was only the Shikito who talked about this in practical terms, citing the goodwill of civilians as a condition for getting vital resources like food and shelter.

Soldiers within both groups said they had heard information about sexual violence from the radio, suggesting that soldiers may have access to certain forms of popular media. Some soldiers also said they were aware of risks associated with sexual violence, both from potential infection and potential punishment from commanders. While soldiers may have offered biased or amended versions of what they actually believe, the consistency of information across interviews suggests a certain level of reliability and provides insight into possible points for intervention.

Leverage for change

These results speak to the importance of realising that NSAGs may differ greatly in their philosophies, practices, uses of violence, and attitudes towards the treatment of civilians. Recognising these differing attitudes and motivations may lead to more effective approaches to protecting civilians. It is also important to recognise that behaviours can change over time and space, just as they can vary from unit to unit within the same larger structure. For example, the attitudes of commanders and inculcation of soldiers about what is and is not acceptable behaviour all play a role in creating a sub-culture within units of command.

Questions remain about how best to engage groups that, by definition, lie outside traditional structures of law and political influence in order

to better promote the protection of civilians. In cases where NSAGs rely on civilian populations for access to resources, this dependence may act as an incentive to restrain the use of violence against civilians. The results of our research suggest that sexual violence and other forms of violence against civilians perpetrated by the Mai Mai occur for a variety of reasons, and that violence may be opportunistic or strategic.

Communicating the risks of perpetrating sexual violence through media like radio can get

to groups that seem difficult to reach. Reinforcing messages about the risks of violence – to both the perpetrators and the affected communities – may be a point of leverage to decrease sexual violence.

Groups may want to view themselves as the ‘defenders’ of a population, but this may not translate into protective behaviour without other concrete changes in attitude and behaviour. More research is needed to understand what factors are most influential in restraining violence.

Jocelyn Kelly (jtdkelly@gmail.com) is Research Coordinator and Michael Vanrooyen (MVANROOYEN@partners.org) is Director, Harvard Humanitarian Initiative (<http://www.hhi.harvard.edu>).

1. Harvard Humanitarian Initiative, 2009. *Characterizing Sexual Violence in the Democratic Republic of the Congo: Profiles of Violence, Community Responses, and Implications for the Protection of Women*. Boston: <http://tinyurl.com/HHI2009DRC> and Harvard Humanitarian Initiative and Oxfam International, 2010. ‘Now, the world is without me’: An investigation of sexual violence in eastern Democratic Republic of Congo. <http://tinyurl.com/HHIandOxfam2010DRC>

2. Wood, E J, ‘Armed Groups and Sexual Violence: When Is Wartime Rape Rare?’ *Politics & Society*, vol. 37, no. 131 (2009).

3. Interviews conducted in three field sites in 2008 and 2009 by Congolese social workers trained in qualitative research techniques.

Drug cartels in Mexico

Jessica Keralis

Drug-related violence in Mexico has escalated to catastrophic levels and is driving Mexican people from their homes and cities in droves.

When President Felipe Calderón launched his offensive against the drug cartels in 2006, the cartels struck back viciously, murdering politicians, journalists and civilians and terrorising the Mexican people. Over 28,000 people have been killed in the past four years. While the situation has captured attention in the US and internationally as a border-control and immigration issue, few have commented on the internal displacement crisis that the conflict has created in the border region.

More Mexicans are applying for political asylum in the US and Canada, and business visa applications from Monterrey, Mexico’s industrial centre and wealthiest city, rose 63% between 2006 and 2010 compared to the previous five years. A much larger, and mostly uncounted, number are being displaced internally.

Those fleeing the violence are primarily middle-class professionals (police officers, business owners, journalists, etc.) from large or mid-sized cities who are either directly threatened by the cartels or who simply leave when the situation becomes unstable. Ciudad Juárez has seen 10% (200,000) of its population flee the city because of fighting between Mexican police and military and the drug gangs. Unfortunately, while the Mexican

government accepts refugees and asylum seekers from South America and other nations, it has historically paid very little attention to displaced individuals within its own borders. For example, indigenous populations driven from their homes due to discrimination and targeted violence have received little attention from the Mexican government, and it currently does not recognise the drug war as a cause of displacement. The situation also receives very little attention from the media. As a result, there are no reliable figures for the number of IDPs in Mexico and no incentive to assess the extent of the problem.

A number of experts contend that criminal organisations such as the drug cartels in Mexico should be defined as non-state armed groups as they are challenging the authority of the Mexican government. They have many of the same goals and use many of the same tactics as traditional ‘political’ non-state groups. Just as, for example, there are groups in Africa’s Great Lakes region who fight for control of diamonds and precious metals, the cartels in Mexico fight to control the drug-running corridors. However, they are different from politically motivated armed groups in that they are purely profit-driven, and their strategy is to disable the state’s law-enforcement capacity so as to make it easier to carry out their illegal activities. This

makes it difficult, if not impossible, to approach them as one would other NSAGs. They do not seek any formal recognition or legitimacy, so they will not respond to pressure to comply with international humanitarian law, nor can they be engaged in drawing up treaties. Their end goal (transporting and selling drugs) is illegal and inherently harmful, so officials cannot offer any concessions regarding their activities.

The drug war in Mexico has therefore been approached primarily as an issue of legality and of national security by both the Mexican and US governments. Yet it has, in addition, been the cause of not only many deaths and much social disruption but also a great deal of population displacement. The drug war has already begun to spread into the interior of Mexico and threatens to affect other populations in Central America as the cartels expand their operations south. This makes it even more necessary and sensible to pay more attention to the internal displacement crisis already existing in the border region.

Jessica Keralis (jmkeralis@gmail.com) is a Public Health Surveillance Specialist with McKing Consulting, working with the Texas Department of State Health Services in Austin, Texas. This article is written in a personal capacity and does not reflect the views of McKing or Texas DSHS.

Resisting displacement by the Taliban in Pakistan

Farhat Taj and Jacob Rothing

Local tribal councils have organised traditional forms of militia to resist displacement caused by the Taliban in Pakistan's borderlands with Afghanistan.

The maintenance of local peace and order in the Federally Administered Tribal Areas of Pakistan (FATA) bordering Afghanistan is the responsibility of traditional tribal councils (*jirgas*). A *jirga* commonly resolves disputes peacefully but it also has the authority to form an ad hoc armed militia (known as a *lashkar*) in order to enforce its settlement of local disputes. The *jirga* obliges every family or clan to provide a number of men to fight. As such, a *lashkar* is made up of a broad cross-section of the male community.

Orakzai Agency (Tribal Area) has a population of some 225,000 and suffers from economic depression, corruption and bad governance. Violence is sometimes attributed to these factors, as well as to other less visible causes such as family, land and water disputes and struggles for control over markets and trade. However, human rights abuses by the Taliban and aerial bombing during Pakistani military operations are the main drivers of large-scale forced displacement.

The Taliban chose the Ali Khel tribe as its conduit for entering Orakzai. Ali Khel is the biggest tribe in the Agency, numbering 40,000 people of whom 5% are Shi'a. Militants entered the Ali Khel area in 2008, supported by two local Ali Khel tribal leaders. Local supporters of the two leaders joined them, as did other members of the tribe linked to *madrassas* (religious schools) and still others who took part in the war in Afghanistan, including local thugs. They organised intimidating public gatherings where young militants with covered faces stood alongside spirited jihadist speakers.

The Taliban appointed local judges to resolve disputes according to *shari'a* law, recruited local men and boys and set up jihadist *madrassas*.

The militants threatened and killed the area's tribal leaders and those who opposed their authority. They stripped the *jirgas* of their authority to settle disputes and banned all public meetings. Local people were also banned from carrying weapons. Punishment for opposition – particularly public beheadings – terrorised people into submission.

Taliban-endorsed kidnappings for ransom became common, and the Shi'a community was particularly targeted. Militants kidnapped and sometimes killed those who failed to pay a special tax that was imposed on Shi'a families, and/or ransacked their homes. Under these circumstances, Shi'a women and children fled the area, leaving the men behind. After the Taliban imposed a complete economic boycott on the Shi'a community and beheaded several Sunni tribesmen for failing to comply with it, the Shi'a elders decided to leave the area as well. Taliban followers looted the property they left behind, sold their crops and butchered their livestock.

Sunni and Shi'a people had by and large lived peacefully together in the same area for a long time, and so both Sunni and Shi'a tribesmen decided to act together in an effort to protect their communities from further abuse.

Attempts to prevent displacement

A grand *jirga* of 5,000 Ali Khels decided to form a *lashkar* to destroy all Taliban centres around the main Ali Khel towns of Daboori and Khadayzai. Its ranks comprised 2,000 farmers, labourers, local traders and other tribesmen. Following the formation of the *lashkar*, the *jirga* leaders sent a message to the displaced Shi'a that they could return to their homes. Within a few days, the Ali Khel *lashkar* had destroyed all Taliban centres in and around

Daboori and Khadayzai. Most of the militants fled; others were killed.

A *jirga* was then convened to decide how to treat, fine or punish the Ali Khel tribesmen who had supported the Taliban. A decision was reached to impose a fine of 200,000 Pakistani rupees (\$2,300) on each supporter. They were also given the choice of handing over a Kalashnikov or vacating their houses before they were burned down by *lashkar* men. As the *jirga's* deliberations came to an end, a Taliban vehicle loaded with explosives rammed into the *jirga*, killing some 200 people, including the Sunni-Shi'a Ali Khel leadership.

In spite of insistent requests, the security forces did not provide protection to the Ali Khels, and most families made a collective, *jirga*-backed decision to leave and were displaced, mainly to the homes of relatives in nearby towns. The tribal leadership would normally be expected to play a role in providing displaced families with basic needs but insecurity caused by targeted killings in the areas where the IDPs sought refuge meant that the Ali Khel *jirga* had little capacity to do so.

The IDPs also became a security liability in their areas of refuge, attracting unwelcome attention from both the Taliban and the Pakistani security forces. Members of the Taliban travel as civilians, some of them posing as IDPs, which means that the latter become targets of the security forces. And the Taliban also sometimes attack IDP targets, such as the suicide attack in April 2010 on an IDP aid distribution point. After this, Shi'a Ali Khel IDPs organised themselves in order to ensure security in places where they congregated.

The Story Khel is a small tribe of both Sunni and Shi'a from Lower Orakzai with 5,000 members. The Taliban established control in the Story Khel's Sunni-majority area after the assassination of the Ali

Khel leadership in October 2008. The nearby Shi'a Story Khel placed armed guards at checkpoints set up at the main entry points to their neighbourhoods, ensuring that Taliban fighters could not enter without alerting – and triggering a response from – their *lashkar*.

Early in 2010 the Sunni population of a village situated on the border between the Sunni and Shi'a areas had a confrontation with the Taliban. Interestingly, it was the women who initiated violent resistance against the Taliban. A group of female relatives of men who had been killed by them avenged their deaths by capturing five militants and beating them severely with farming tools. Despite an intervention by community elders, it became clear that the Taliban would avenge this incident and attack the village. A number of men armed themselves to defend the village, and a neighbouring Shi'a village supplied them with Kalashnikov rifles and ammunition. Sporadic fighting took place over a two-week period, by the end of which the 'victorious' but angry Taliban burnt down all 80 houses in the village.

The *jirga* leadership in both villages had previously discussed the possibility of the people from one having to flee en masse to the other in the event of an attack. The whole community was granted asylum in the neighbouring village where the *jirga* decided that tribal rivalries should be set aside during displacement. These villagers were initially accommodated in hosts' houses and then offered places to stay in schools, mosques and 'guesthouses'. The IDPs were treated as guests and given food throughout their four-month stay. They were also given loans to pay for additional expenses such as healthcare.

The village leaders realised that the burden of hosting the entire village on a long-term basis would be unsustainable, and that it was

also important for their security that the IDPs' village be cleared of the Taliban. In response to a request by the *jirga*, who argued that the Taliban would establish a base there from which to launch attacks on neighbouring Shi'a villages, the army cleared the village and most of the villagers were then able to return home. Meanwhile, the tribesmen in both villages strengthened their own security to withstand future attacks and prevent new displacements in the event of new Taliban attacks.

Conclusions

FATA tribes have shown themselves able to overcome sectarian differences to form armed *lashkars* with a responsible line of command capable of controlling a defined territory. As demonstrated in the case of the Ali Khel, the local nature and legitimacy of such organisations can make them extremely effective. The Ali Khel *lashkar* destroyed large parts

mobilised to protect and assist those in need.

Today the Ali Khels are still displaced, while the Story Khels have returned home. One reason for this difference is that the Ali Khel *lashkar* had no state support, whereas in the other case the army intervened to clear the village of the Taliban. *Lashkars* have never had a regional or national agenda and are not trained to fight an organisation such as the Taliban by themselves. Although the Taliban leaders are not rooted in the local communities they can overpower *lashkars* that stand alone militarily.

Neither *lashkar* ever had wider ambitions; they sought only to protect their communities but Taliban commanders have a jihadist agenda with global resonance, and it is the responsibility of national actors to address such threats.

Farhat Taj (bergen34@yahoo.com) is a PhD research fellow at the Center for Gender Research, University of Oslo. Jacob Rothing (jacob.rothing@nrc.ch) is a Country Analyst with the Norwegian Refugee Council's Internal Displacement Monitoring Centre ([IDMC http://www.internal-displacement.org](http://www.internal-displacement.org)).



of the Taliban's infrastructure in their area in a couple of days, held the Taliban at bay and protected its territory and families.

Lashkars can also become IDPs and reorganise during displacement but tribal resources are mobilised differently in such a situation. In the case of the Ali Khel, they were

Sahwa's role in protecting IDPs and returnees in Iraq

Cherie Taraghi

The creation of the Sahwa forces, an unofficial armed group outside the control of the Iraqi government and state, was a convenient product of US military policy.

The factors leading to the improvement of the security situation in Iraq in recent years have been the subject of considerable political controversy; it is universally acknowledged, however, that the establishment of the Sahwa Council and Sahwa forces¹ was a crucial factor in the reduction of violence. Sahwa represents the remarkable change in the position of Sunni tribal elements from supporting the jihadi insurgents to cooperating with the US troops in fighting against al-Qa'eda and Shi'a militias. The decision was aided by enhanced military pressure on the jihadi movement and by the US military's decision to arm and pay members of the unofficially armed Sahwa forces – which eventually came to number over 100,000 militiamen. Sahwa remained overwhelmingly, though not entirely, Sunni Arab, tribal and local neighbourhood-based.

Iraqi IDPs are displaced for varied reasons. Most claim to have left their homes because of direct threats to their lives, although lack of security, fear and generalised violence are also often given as reasons. Given that lack of security is one of the primary push factors resulting in displacement, improved security in the place of origin is the reason most often offered by individuals and families who return. Other reasons are the availability of shelter or ability to return to abandoned property and access to services like food, healthcare and potable water.

The role of Sahwa

The role of the Sahwa forces was to cooperate with US forces in reducing violence in the areas where they were located. They helped take over neighbourhoods under the control of al-Qa'eda or the Mahdi Army² in order to ensure the safety and security of the local citizens. They set up road-blocks to

control passing cars and traffic, and patrolled the streets together with the US troops, arresting 'criminals', kidnappers and identified members of al-Qa'eda. They also guided US troops to road-side bombs and IEDs (improvised explosive devices).

Within months after the establishment of Sahwa forces there started to be a return of a sense of normality, particularly in the Baghdad neighbourhoods where Sahwa forces were based. Explosions and violence were considerably reduced, markets and shops re-opened, children could be seen playing on the streets, roads and street lamps were repaired.

The Sahwa forces were made up of local men who agreed to band together and fight against elements which threatened the security of their local neighbourhood, their families and friends. The same is true for members of the Mahdi Army and other local armed groups which sprang up in Iraq after the fall of Saddam Hussein's regime. Members of each of the militias felt loyal to their local neighbourhood, as well as sharing sectarian, tribal and other forms of loyalty. The local population in the same manner felt close to their local 'brothers' and 'sons', and cared for and supported them.

Much like the extremist militias, Sahwa's goals were to consolidate their territory and impose their authority on particular areas. In many ways they usurped and even replaced the government. Local government and the Iraqi army or police were either not present in these Baghdad neighbourhoods, or were not able to control (or in some cases supported or turned a blind eye to) extremist Shi'a militias who committed crimes against Sunnis. As a result the local people came to depend and rely on the Sahwa forces

for protection. At the same time the tribal leaders heading the Sahwa Council and forces furthered their own sectarian political interests by forming political parties and tried to maximise Sunni power and position.

Sahwa and IDPs/returnees

Sahwa forces were not as a rule directly involved in offering aid or social welfare to Iraqi citizens or IDPs. Their role was in the field of security. This is an important distinction between Sahwa forces and other armed militias, which filled, not always for altruistic reasons, the lacuna left by the inability of the Iraqi government, the UN and other humanitarian organisations to meet the humanitarian needs of Iraqi citizens, let alone of IDPs. At the height of the crisis in Iraq in 2006-07, only the ICRC and the Iraqi Red Crescent were able to effectively continue offering humanitarian assistance.³

The presence of the Sahwa forces helped restore relative calm and security to neighbourhoods where they were stationed, a precondition for the re-establishment of a normal life. They were hired by the US forces to fight and remove al-Qa'eda, the Mahdi Army and other militant armed groups. Sahwa forces were able to extract various neighborhoods from the stranglehold of militant armed groups, thus removing the source of threat and fear for sectarian, ethnic or religious minorities in those neighborhoods.

The process of sectarian segregation which was already underway was clearly encouraged and aided by Sahwa forces, together with the US forces. Sahwa forces, being mostly Sunni, offered passage and safety to fellow Sunnis fleeing harassment, threats and persecution.

In Baghdad, the security and calm created by the presence, road blocks, control and patrolling of Sahwa forces provided opportunities for humanitarian agencies to physically

enter and help some of the most dangerous neighbourhoods they were previously denied access to. Some Sahwa groups are known to have shared their local knowledge and information with the Iraqi Red Crescent, for example identifying IDPs or returnee households who needed assistance.

Membership in the Sahwa forces also provided a chance for IDPs to gain meaningful employment. What mattered for the US forces during 'the surge'⁴ was that locals, militant or otherwise, should stop insurgent acts against the US and instead join the US and Multi-National Force in fighting against al-Qa'eda and other armed militias. By 2006 US commanders acknowledged that a lack of jobs was a key factor in driving the insurgency – the biggest single cause of that being the early

and protection of IDPs' property and have been also been involved both in extracting or removing individuals or militants who have occupied houses abandoned by IDPs, and in ensuring that these properties are not rented or sold without the prior knowledge and consent of the original owners; they have even required proof of identity from the original owners prior to permitting them to resettle in their property.

Interestingly, surveys conducted with local people about the role and effectiveness of Sahwa forces repeatedly mention protection offered to women and children, particularly widows, households led by women and households of female-led returnee families. Sahwa forces are known to specifically patrol, control and protect households and areas with female-led households.

and find civil employment for the remainder of its members, action has been slow and the government does not hide its reluctance. The government finds it very difficult to disregard the fact that many of the members of Sahwa were active insurgents, engaged in fighting against the current Iraqi regime.

Both Shi'a and extremist Sunni insurgent groups have been equally vocal in their denunciations of Sahwa forces, depicting them as US stooges. These pressures and problems faced by the Sahwa forces, particularly the impression that they themselves have become the targeted victims of the sectarian conflict in the country, open the possibility that some may in fact rejoin the insurgency or turn against the current Iraqi regime. These defenders of security and civilian interests may become a threat to security once more, resulting in a reversal of the positive conditions established by Sahwa's presence for Sunni civilians, IDPs or returnees.

Sahwa tapped into different aspects of Iraqi society: continued respect for tribal leaders (especially in rural areas), exhaustion with the brutal violence and disturbance to daily life, and the community's acceptance of their local sons' attempts to protect them. Regardless of their former identity as thugs, insurgents or members of Iraqi al-Qa'eda, between 2006 and 2009 members of the Sahwa forces played an important role in the re-establishment of relative calm and security in Anbar province, in Diyala and in the neighbourhoods of Baghdad where they were stationed. They also played an especially important role in providing both physical and material protection to Sunni IDPs and returnees in the areas where they operated.

Cherie Taraghi (shirin.jahangir@ka.com.tr) was a Cultural Orientation Trainer and Caseworker at ICMC Turkey from 2003-08 and is currently Senior Research Executive at KA Research Limited (<http://www.ka.com.tr>).

1. *Sahwa* is the Arabic word for 'awakening'.
2. Iraqi paramilitary force created by the Shi'a cleric Muqtada al-Sadr in June 2003.
3. A number of other organisations were also present and active in different capacities. See FMR Iraq Special Issue <http://www.fmreview.org/iraq.htm>
4. 2007 increase in the number of American troops in order to provide security to Baghdad and Al Anbar Province.



UNHCR/K Brooks

Displaced in Iraq, this woman fled her home town after a mortar attack that killed several children.

US decision to disband the old Iraqi army, providing thousands of potential recruits overnight.

Sahwa also provided the impetus for many to return home. Many Sunni returnees mention Sahwa's contribution to the neighbourhood as one of the reasons why they decided to return. Local citizens in neighbourhoods patrolled and controlled by Sahwa forces praised Sahwa forces for bringing the area back to life and for doing their utmost to ensure their safety and protection.

Potential returnees say that they got word from family members or tribal affiliates in the Sahwa forces about the status of the homes they left behind. Sahwa forces have been directly engaged in identification

The future of Sahwa

Responsibility for Sahwa forces was gradually handed over by the US forces to the Iraqi government and the transfer of responsibility was completed in 2009. As such the Sahwa forces can no longer be considered a 'non-state' armed group. The government of Iraq was sceptical about them from the outset, fearing they would serve as a refuge for unreformed insurgents or that they might challenge the dominant parties' hold on power. Although the government has acknowledged the importance and value of the role played by Sahwa, the sense of mistrust and concern remains. Consequently, although the Iraqi government has promised to incorporate 20% of the Sahwa forces in the national security forces

The Kampala Convention and obligations of armed groups

Katinka Ridderbos

The Kampala Convention imposes a number of obligations on armed groups in order to better protect IDPs; the challenge now is to encourage such groups to recognise these obligations.

The African Union Convention for the Protection and Assistance to Internally Displaced Persons, adopted in October 2009 – known as the Kampala Convention – reflects and builds on the existing frameworks of international humanitarian law (IHL) and international human rights law (IHRL), as well as on such soft law as the Guiding Principles on Internal Displacement. Thus the Kampala Convention imposes obligations on States Parties “to respect and ensure respect” for both IHL and IHRL. “Ensuring respect” means that States Parties must also ensure that non-state armed groups¹ (NSAGs) do not interfere with the enjoyment of IDPs’ human rights, and do not impede the protection of civilians, including IDPs.

In situations of non-international conflicts, the conduct of states and NSAGs alike is regulated by Common Article 3 of the four 1949 Geneva Conventions, the 1977 Additional Protocol II, and the key provisions of IHL which are considered to have become part of international customary law.²

Obligations of non-state armed groups

The Kampala Convention does not go so far as to impose positive obligations on armed groups to protect human rights. However in Article 7, entitled “protection and assistance to internally displaced persons in situations of armed conflict”, the Convention affirms the applicability of the pre-existing framework of international law, including IHL, stating that “The protection and assistance to internally displaced persons under this Article shall be governed by international law and in particular international humanitarian law”.

It recognises that in situations of non-international conflict armed

groups often exercise significant control over civilian populations, including IDPs. Article 7(5) imposes a number of negative obligations on armed groups, prohibiting them from engaging in a range of actions:

- carrying out arbitrary displacement³
- hampering the provision of protection and assistance to IDPs under any circumstances
- denying IDPs the right to live in satisfactory conditions of dignity, including the right to security, sanitation, food, water, health and shelter; and separating members of the same family
- restricting the freedom of movement of IDPs within and outside their areas of residence
- recruiting children or requiring or permitting them to take part in hostilities under any circumstances
- forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children
- impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to IDPs
- attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of IDPs or destroying, confiscating or diverting such materials
- violating the civilian and humanitarian character of the places where IDPs are sheltered, or infiltrating such places.

Article 5(11) imposes on States Parties the obligation to “... take measures aimed at ensuring that armed groups act in conformity with their obligations under Article 7”, which in turn stipulates that “The protection and assistance to internally displaced persons under this Article shall be governed by international law and in particular international humanitarian law” (Article 7(3)). The Convention also provides that States Parties must hold members of armed groups “criminally responsible for their acts which violate the rights of IDPs under international law and national law” (Article 7(4)).

Enhanced protection of IDPs

The Kampala Convention enhances the protection of IDPs in three important ways. First, the Kampala Convention does not provide for the possibility of derogation⁴ in times of national emergency, as the whole of the Kampala Convention remains applicable at all times. Neither States Parties nor armed groups can invoke the existence of armed conflict to avoid their human rights obligations under the Convention.

In addition, the Kampala Convention does not specify a threshold for the application of Article 7. Thus even in situations where armed violence does not reach the level of armed conflict leading to the application of Common Article 3, or the higher threshold for the application of Additional Protocol II, NSAGs are bound by their obligations under Article 7 of the Kampala Convention not to interfere with IDPs’ fundamental rights.

Finally, where displacement is caused by conflict between a state and one or more armed groups, these armed groups have a defined role to play in bringing displacement to an end. The Convention stipulates that States Parties shall “[e]ndeavour 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” (Article 3(2)(e)).

The way forward

A recent study by the ICRC found that while IHL remains an adequate legal framework for the protection of civilians in situations of armed conflict, it needs to be strengthened in some areas. One of these areas relates to the protection of IDPs at the hands of states and NSAGs alike. The incorporation into domestic law of the Guiding Principles, as required for example by the IDP Protocol of the Great Lakes Pact, is one possible mechanism for achieving this.⁵

The Kampala Convention offers another way for achieving this objective for the AU and its 53 member states. Attention must now focus on ensuring the entry into force of the Convention, which requires ratification by 15 member states⁶ and its timely implementation. At the same time,

States Parties and their partners, including UN agencies, civil society organisations and peace negotiators, must reach out to NSAGs to make them aware of their obligations under the Kampala Convention.⁷

As with other IHL instruments, the challenge will be to get NSAGs to take notice of an instrument in whose negotiation and adoption they were not involved but which nevertheless entails obligations for them. In many situations, the ICRC and national Red Cross/Red Crescent societies are best placed to engage with NSAGs to raise awareness of the existence of the Convention and the ways in which it constrains the actions of NSAGs, together with civil society organisations and advocacy groups representing people living in areas affected by internal conflicts.

Katinka Ridderbos (katinka.ridderbos@nrc.ch) is a Country Analyst with the Norwegian Refugee Council's Internal

Displacement Monitoring Centre (IDMC <http://www.internal-displacement.org>).

More information on the Kampala Convention is available at <http://www.internal-displacement.org/kampala-convention>

1. The Kampala Convention defines non-state armed groups as “dissident armed forces or other organized armed groups that are distinct from the armed forces of the state” (Article 1(e)).
2. ICRC, *Customary International Humanitarian Law*, Cambridge University Press, 2005 <http://www.icrc.org/eng/resources/documents/publication/pcustom.htm>
3. See also Maria Stavropoulou <http://www.fmreview.org/DR Congo/stavropoulou.htm>
4. Derogation of a law is the temporary revocation, in whole or in part, of that law under particular circumstances.
5. The Great Lakes Pact entered into force in 2008, and has been ratified by 10 of the 11 member states of the International Conference on the Great Lakes Region. <http://tinyurl.com/GreatLakes-IDP-Protocol>
6. As of January 2011, it had been ratified by four: Chad, Sierra Leone, Uganda and Zambia. See the list of signatories at <http://tinyurl.com/Kampala-Convention-status>
7. See section 5.4 of the Guide for civil society organisations on the Kampala Convention, published by IDMC and the AU's Economic, Social and Cultural Council: <http://www.internal-displacement.org/publications/au-guide> (available in Arabic, English, French and Portuguese).

Keeping schools open: education in conflict

Alice Farmer

Although some non-state armed groups protect and promote education, many others neglect it or even attack schools and students.

Conflict does not suspend the right to education, and non-state armed groups (NSAGs) have a duty to protect education in areas they control. Humanitarian law mandates the continuance of education in emergencies; the Fourth Geneva Convention, for example, obliges occupying powers to facilitate the “proper working of educational institutions in occupied territories”, and emphasises that for certain children affected by conflict “parties to the conflict must ensure [that] their education [is] facilitated in all circumstances.”¹ Education is a crucial factor in normalising the lives of children affected by conflict and providing skills with which to survive and thrive.²

Where populations have been displaced by conflict with NSAGs, the relevant authorities – whether the NSAG now in charge of

territory, or the state maintaining territorial control – are required to provide education as soon as possible. In the Guiding Principles on Internal Displacement, Article 23(1) stresses that educational facilities “shall be made available to internally displaced persons... as soon as conditions permit.”

More than half of the children who are currently out of school are in conflict-affected or fragile states. Given that modern conflicts are frequently internal armed conflicts, many of these states have NSAGs operational in their territory, and these groups can have a significant impact on access to education. While that impact can be extremely destructive, as with attacks on school, for example, it is not always uniformly negative. Education is one area in which NSAGs can have clear incentives to

fulfill basic rights – particularly for NSAGs with political agendas and some degree of territorial control.

NSAGs without territorial control

Internal armed conflicts involving NSAGs have a high impact on education through mass forced displacement (a factor which interrupts education through discontinuity of schooling, impoverishment of families, and increased insecurity for facilities and teaching staff); destruction of educational infrastructure (both human and physical); and impeding humanitarian access (including the provision of emergency education programming).

NSAG attacks on education can include not only physical attacks on schools but also abductions from class to join armed groups, and threats to students, teachers and administrators. In the Swat district of Pakistan, for example, NSAG attacks on schools were



IDP camp established in a school, District of Dir, North West Frontier Province, Pakistan.

prevalent in the years leading up to the recent displacement crisis, with more than 200 schools destroyed in that district alone by the end of 2008, of which 95% were girls' schools. An estimated 50,000 students were deprived of education as a consequence. And a Save the Children UK survey of a school in Kandahar, Afghanistan, found that "only about half of the girls attend school daily due to on-going threats on their lives."³ Attacks on schools or other facilities ordinarily used by children are prohibited by international law – yet they continue.

Fighting between NSAGs and others to control territory can have a drastic impact on access to education for displaced persons and others. For example, Save the

Children UK estimates that the majority of displaced children in eastern DRC have had no access to formal or informal education since 1998.⁴ NSAGs in DRC have further exacerbated access to education by impeding humanitarian access and destroying educational infrastructure. They often burn school furniture for firewood, and occupy schools.

NSAGs with some territorial control

Where NSAGs have some territorial control, they may be able to provide some kinds of social and economic services to the local population. For instance, Hezbollah is both an NSAG and a political player in Lebanon with control over a large number of municipalities in southern Lebanon. Hezbollah maintains

an Education Unit as part of their organised system of health and social services; according to a June 2009 report, the Education Unit "provides [an] indispensable service to the Shi'ite poor" by operating a number of primary and secondary schools serving approximately 14,000 principally Shi'ite students at low fees in areas where Lebanon's public school system is considered to be of poor quality.⁵ Here, the presence of an NSAG providing some degree of territorial control and social services has a positive impact on access to education, both for displaced and non-displaced children.

However, such a pattern is not always true when a NSAG controls territory; NSAGs can erode security to the point where education is impossible and/or completely neglected. In Afghanistan's Jawzjan Province, for example, the central government has largely neglected state services, and much of the area is affected by NSAG violence. Children face serious obstacles in attending the few schools that do exist – obstacles that include Taliban-laid landmines, and kidnappings en route to and from school. Here, the NSAGs are neither providing sufficient security to permit education to continue nor political support for education itself.

NSAGs have, as a minimum, an obligation not to attack education, and often, where they have some level of territorial control, have a positive obligation to provide access to education. It is clearly necessary, therefore, to engage NSAGs in issues of education, and to recognise the role they can play in damaging or promoting children's rights.

Alice Farmer (alice.farmer@nrc.ch) is Child Rights Advisor with the Internal Displacement Monitoring Centre/ Norwegian Refugee Council (<http://www.internal-displacement.org>).

1. Articles 50(1) and 24(1)

2. Graca Machel, *The Impact of War on Children*, 2001. http://www.unicef.org/publications/index_4401.html

3. Save the Children UK, *Barriers to Accessing Education in Conflict-Affected Fragile States, Case study: Afghanistan*, p 27 http://www.savethechildren.org.uk/en/docs/Afghanistan_Case_study_Final.pdf

4. Save the Children UK, *Barriers to Accessing Education in Conflict-Affected Fragile States, Case study: Democratic Republic of Congo (DRC)*, p18 http://www.savethechildren.org.uk/en/docs/DRC_Case_Study_Final.pdf

5. Middle East Policy Center, *Hezbollah's Social Jihad: Nonprofits as Resistance Organizations*, June 2009. <http://tinyurl.com/MEPC-Hezbollah-June09>

Darfur and the flaws of *Holder v HLP*

Christopher Thornton

When US Chief Justice Roberts handed down the judgment in *Holder v Humanitarian Law Project (HLP)*, he revealed the Supreme Court's tragic under-estimation of the potential of engagement with non-state armed groups.

In *Holder v HLP* the Supreme Court was asked to respond to complaints filed in 1998 and 2003 by several humanitarian organisations who felt that the US legal code's prohibitions under the Material Support statute (18 U.S.C § 2339B) were overly vague and violated the right to freedom of speech and association, protected under the First Amendment to the US Constitution:

“Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life.”

Rejecting the humanitarian organisations' claims, the Supreme Court found that the prohibition of engagement with “terrorist” organisations, even for humanitarian purposes, was entirely constitutional. In doing so it denied the possibility of assistance to millions of victims of human rights abuses. This assistance may come in many forms, for example, in advice provided to the leaders of non-state armed groups (NSAGs) regarding the peaceful resolution of disputes, or the negotiation of humanitarian agreements with NSAGs, such as that agreed between the Justice and Equality Movement (JEM), a Darfurian NSAG, and UNICEF in July 2010.

In most cases, under international law NSAGs cannot become parties to treaties which codify humanitarian and human rights norms. Although technically states are required to enforce their treaty obligations throughout their territory, in reality NSAGs often exert de facto control over swathes of territory, removing millions of people from the protection offered by these legal instruments. Humanitarian agreements are a

means to bypass this legal obstacle by allowing NSAGs to voluntarily subscribe to these norms.

For example, under the terms of the JEM-UNICEF agreement, the JEM agreed to abide by the requirements of a number of national and international human rights instruments prohibiting the use of child soldiers and protecting children generally. In another prominent example, many NSAGs have signed a Deed of Commitment which contains provisions akin to those found in the Ottawa Landmine Treaty, prohibiting the use of anti-personnel mines and agreeing to conduct and facilitate de-mining activities.¹ Although the statute is unlikely to be strictly enforced, *Holder v HLP* implies that the humanitarian workers and human rights advocates who negotiate these agreements may be subject to prosecution in the US under the ‘material support’ statute. Why?

Fungibility

The Supreme Court's first argument focuses on the supposed fungibility (i.e. ability to be traded or converted) of all forms of ‘assistance’ provided to “terrorist” organisations, including advice and training. The argument goes that any assistance frees up resources which can then be used for violent ends.

This argument does not withstand closer scrutiny. Humanitarian agreements often involve a significant commitment of personnel and resources. For example, under the terms of the JEM-UNICEF agreement, JEM agreed to designate a senior official to be responsible for oversight of its implementation, another official to liaise with the UN, and a number of officials to serve as emergency contacts for the UN and other external actors. It also agreed to facilitate monitoring of the agreement and to report periodically on its implementation.

As JEM is estimated to have fewer than 5,000 fighters, these officials constitute a significant proportion of its high-level personnel. Additionally, JEM guaranteed full security and access for UNICEF staff: another drain on resources and personnel.

Similarly, Geneva Call reported in 2007 that, out of 35 signatories to its Deed of Commitment, 29 fulfilled reporting requirements. Additionally, 20 groups facilitated monitoring missions, and most undertook and/or cooperated with mine action.² In return, the only assistance provided to these groups was related to mine action. None of these measures can be identified as directly freeing up resources that could then be put to violent ends.

Chief Justice Roberts worried that “terrorist” organisations would find it easier to recruit members and raise funds, if they were publically engaged with reputable humanitarian organisations. In fact, the reverse is often the case. These agreements expose NSAGs to external scrutiny and may thus prevent groups who do not honour their commitments from presenting themselves as moral humanitarian organisations. Violations under the watchful eye of humanitarian workers will not go unreported and therefore transgressors risk jeopardising their reputation and support. The monitoring conducted by the organisations who work with NSAGs can also strengthen the case for international criminal liability, if the group clearly violates the agreement.

Legitimacy and misuse

If we are concerned that negotiation confers some legal legitimacy or status on NSAGs, we should not be. The instruments which NSAGs conclude with NGOs or international organisations do not officially transform their legal status and most, if not all, agreements contain a clause to this effect. For example, the JEM-UNICEF agreement states in Article 4.5 that “This Memorandum of Understanding shall not affect the legal status of any party to the armed conflict.”

If instead we are concerned that these negotiations confer political legitimacy on the group, I would suggest that, to the contrary, these negotiations send a clear message to NSAGs that if they want to be treated as legitimate actors, they must agree to abide by humanitarian and human rights norms. Is conveying the message that political legitimacy is contingent on respect for human rights a bad thing? I think not. Providing advice and guidance to this effect is a clear contribution to convincing NSAGs to renounce 'terror tactics'.

"The hang-up with legitimacy is a major stumbling block in peacemaking today."

Dennis McNamara, Senior Humanitarian Adviser at the Centre for Humanitarian Dialogue (involved in brokering the JEM-UNICEF agreement)³

Another of Justice Robert's arguments flies in the face of the prevailing trend in international relations since the end of the Second World War. He worries that, by informing these groups about mechanisms for the peaceful resolution of disputes, we will provide them with another avenue of attack or a stalling tactic to allow them to re-arm. Of course, these mechanisms may be abused but does this justify criminalising efforts to inform NSAGs of the existence of such mechanisms? It is our responsibility to make it clear that the world has human rights standards to which all actors, both state and non-state, are equally accountable.

"States may fear the legitimacy that such commitments seem to imply – but from a victim's perspective such commitments may indeed be worth more than the paper they are written on."

Andrew Clapham, Professor, International Law, Graduate Institute⁴

The value of engagement

One might argue that my examples are rather conveniently selected. JEM do not appear on the list of "terrorist" organisations and have demonstrated a willingness to improve their



human rights record,⁵ and indeed it is more difficult to find a basis for engagement with some NSAGs, for example the Lord's Resistance Army. However, this list does contain organisations which have conducted political and humanitarian activities: the FARC in Colombia, the LTTE in Sri Lanka, Hezbollah in Lebanon and the PKK in Turkey. Furthermore, the seeming irrationality of a particular NSAG should not be held necessarily to preclude engagement.

The ICRC has repeatedly demonstrated that improving respect for human rights and IHL is a process of persuasion and attrition. In dealing with the LRA, the ICRC recognised that beginning with the issue of child soldiers would be counter-productive, as abductions were integral to the LRA's methods of functioning. Instead, respect for the emblem of the Red Cross provided an entry-point into negotiations and allowed for the dramatic improvement of assistance to victims of the conflict.⁶ An NSAG's refusal to accept all humanitarian and human rights norms immediately does not justify the disqualification of this group as irredeemable; small steps can be made towards greater compliance over time.

Prohibiting any engagement with NSAGs that are considered terrorist organisations precludes the greatest gains which can be made from humanitarian negotiation. How can we get the worst organisations to improve their compliance with human rights and humanitarian norms if we do not talk to them? Successes like the JEM-UNICEF

agreement and the many Deeds of Commitment negotiated by Geneva Call demonstrate that this is possible without encountering the dangers of fungibility, legitimacy and misuse which Chief Justice Roberts fears. I hope that, despite the risk of prosecution, people will continue to dare to engage with proscribed groups, encouraging them to renounce brutal methods and strive towards the peaceful resolution of disputes. And, moreover, I hope that the US Supreme Court and Government will reconsider their definition of 'material support'.

Christopher Thornton (christopher.thornton@graduateinstitute.ch) is a student at the Graduate Institute of International and Development Studies, Geneva (<http://graduateinstitute.ch>) and has worked for various international NGOs including the Centre for Humanitarian Dialogue (<http://www.hdcentre.org>.) This article is based on a longer piece entitled 'A Dangerous Precedent: The Consequences of Prohibiting Engagement with Non-State Armed Groups', published in *Conflict Trends* 2010/3. Available at <http://www.accord.org.za>.

1. This initiative is conducted by Geneva Call; see article on pp10-12.

2. Bongard, Pascal, 'Engaging Armed Non-State Actors on Humanitarian Norms: The Experience of Geneva Call and the Landmine Ban' in *Exploring Criteria and Conditions for Engaging Armed Non-State Actors to Respect Humanitarian Law and Human Rights Law*, p114, <http://tinyurl.com/GenevaCallConf2007>

3. Personal interview with Dennis McNamara, January 2010, Geneva.

4. <http://www.coricle.com/clapham/publications.html>

5. See JEM-UNICEF memorandum of understanding <http://tinyurl.com/JEM-UNICEFmou>

6. Bangerter, Olivier, 'The ICRC and Non-State Armed Groups' in *Exploring Criteria and Conditions for Engaging Armed Non-State Actors to Respect Humanitarian Law & Human Rights Law*, p81.

Dealing with non-state armed groups and displacement: a state perspective

Espen Barth Eide

Norway's experience with its integrated foreign policy of engagement makes the case that better prevention, protection and assistance should be sought by states through international law and dialogue with non-state armed groups.

The overwhelming majority of today's armed conflicts are not fought between the armies of opposing states but between the government forces of a state and one or several non-state armed groups (NSAGs). While civilians have always had to suffer from the consequences of warfare, this trend implies a number of additional challenges.

Forcible and prolonged displacement is far too often a result of armed conflicts and violence today. Behind the stark numbers of millions who find themselves on the road or in precarious living conditions, far away from home and often in a foreign country, there are stories of tremendous loss, suffering and perseverance. Civilians are affected in a myriad of ways, whether as the victims of direct attacks – including by the use of sexual violence as a method of warfare, or forcible displacement – or as indirect victims through conflict-induced increases in disease, hunger and malnutrition. Landmines, cluster munitions and other explosive remnants of war all too commonly play a vicious role in these stories, forcing people to flee and standing in the way of return, thus creating protracted displacement situations. These are some of the unacceptable humanitarian consequences for which NSAGs, as well as states, are responsible.

International law and accountability

We see too many examples today of parties to conflict conducting their military operations in disregard of fundamental rules of international humanitarian law. Lack of respect for the rules may be the result of conscious policy decisions, or due to a lack of knowledge or understanding of the rules, or even lack of capacity to enforce them. This may manifest

itself both in the conduct of NSAGs and in the conduct of states.

Another challenge we face is that a number of these conflicts do not fit neatly into the traditional categories of international or non-international armed conflict. Further complicating matters, there is often a blurred line between situations of non-international armed conflict and situations with a combination of political and criminal violence, where armed actors with mostly criminal motivations are contributing to insecurity and attacks on the population.

How are we to address these challenges? First of all, there is a need to increase the parties' knowledge of and respect for the international rules that apply. Although conventions are mainly negotiated by states, a principle of individual criminal responsibility applies in the case of those fundamental norms enshrined in international humanitarian law, which are also binding on NSAGs. Non-state armed groups can also be bound by, and be held accountable by states to, the fundamental norms enshrined in human rights law and refugee law. The respective mandates of the ICRC, UNHCR and other UN bodies as custodians of this order are crucial to uphold.

Governments are under clear treaty obligations to take appropriate steps to ensure the protection of civilians under international humanitarian law or, when they have failed to prevent violations, to investigate, punish and redress human rights abuse.

There is a need to reinforce the principle that those responsible for violations of international norms are held accountable, through the active strengthening and rebuilding of national legal

systems; through the resolutions of the UN Security Council and other international institutions; and through the International Criminal Court and special tribunals.

We have seen that NSAGs may be convinced, through dialogue and outreach, to act in conformity with international norms. One example is the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines. Through extensive use of dialogue by the organisation Geneva Call, a number of NSAGs have signed deeds of commitment explicitly binding them to the provisions of this convention. Norway has also supported Geneva Call's pilot project aimed at NSAGs and the protection of women and girls in armed conflict. At a meeting in December 2010, members of eight Asian NSAGs came together to discuss conflict-related sexual violence and committed to work towards complying with international standards on the issue

The case for dialogue

Norway has for the last two decades pursued a policy of engagement. The overriding objective is to help the parties to armed conflicts find peaceful solutions, or at least help to reduce the level of violence and move towards political solutions.

In all cases where Norway has been invited to play a role, the parties have comprised at least one armed group and a state. Engaging NSAGs through dialogue on compliance with international norms has to be done step by step depending on the dynamics and stage of the conflict. Where the parties are in dialogue with each other (often facilitated by a third party), partial agreements – sometimes linked to permanent or temporary cease-fires – can serve as important confidence-building measures in addition to easing the suffering of the civilian population.

Norway has since 2001 assisted as a facilitator in the peace process between the Government of the Philippines and the National Democratic Front of the Philippines. An agreement between the parties on respect for Human Rights and International Humanitarian Law (CARHRIL) has been reached, including on forming a mechanism for monitoring its implementation. The parties are now, alongside the resumption of formal negotiations taking place in February 2011, endeavouring to accept complaints through the established mechanism, and to investigate and report on violations of human rights and international humanitarian law allegedly committed by either party.

The visible results of our policy have varied – but measuring Norway's individual role in a given conflict may not be very meaningful. Our contribution tends to be part of a larger effort together with others, and the ingredients for success or failure are mainly found among the parties themselves.

Our main tool is contact – dialogue – based on confidence. This approach necessarily raises important questions. Will allowing an armed group the opportunity to engage in talks legitimise that group's use of violence to push for its demands? Will the parties simply take advantage of the dialogue to buy time for their armed struggles? While these are valid questions, Norway has chosen to help facilitate dialogue because it has seemed the best way to make clear to the parties what would be required to achieve a political solution.

With whom are you going to discuss a conflict and the possible end to it if not with the parties involved, including non-state armed groups? Norway's position is to talk to everyone, including organisations such as Hamas in the Palestinian Territory and Hezbollah in Lebanon.

In such dialogues, the parties' self-interest in abiding by the law of armed conflict and other legal norms may be detected and encouraged. The parties' quest for legitimacy may be a potent driver behind this. When political legitimacy is the armed group's goal, it enhances, in

relative terms, the opportunities for constructive engagement for the reduction of violence and the promotion of peace. Of course, a balance must be struck between the NSAG's interest in political legitimacy and the concerned state's reluctance to convey such implicit legitimacy through dialogue. Ideally one should work to depoliticise issues concerning fundamental international norms and to avoid states preventing dialogue on human rights issues on the grounds of wishing to limit dialogue with NSAGs.

Indeed, understanding what drives the parties, and in particular a non-state armed group, is a crucial argument in favour of dialogue. It is, alas, also an increasingly convoluted affair. Non-state actors tend not to be monolithic organisations. Indeed, fragmentation, links between groups and criminal networks, links with elements of state structures, and third-state sponsorships – these are all facets of the complex reality of today's NSAGs. Sometimes, this fragmentation is even due to a state's military success against an armed group, paradoxically creating a situation less conducive to effective dialogue. These complexities make it difficult to gauge the parties' interests and identify their main drivers.

Humanitarian disarmament

By 'policy of engagement', we mean making full use of our foreign policy apparatus, aid funding, networks and willingness to take political risk in order to bring about change at the international level – change that is in line with universal values such as protection of humanitarian principles, promoting human rights, disarmament and conflict resolution. Norway's development cooperation and humanitarian efforts are part of such a policy of engagement.

Let me illustrate this by an example that is of relevance to the topic of NSAGs and forced displacement: the 1997 Anti-Personnel Mine Ban Convention. While originally developed for warfare between states, landmines – whether industrially produced or improvised – have become a common feature of 'asymmetric' armed conflict between one or more NSAGs and

a state. Regardless of who is using such weapons, the humanitarian consequences are unacceptable, which is why Norway was among the most active proponents of the total ban embodied in the 1997 Convention. For the same reason, under the umbrella term of 'humanitarian disarmament', Norway is deeply engaged in a broad range of efforts (directly and by providing political and financial support to others) to ensure that the convention is being implemented so that mine-fields are cleared, the victims assisted, and the weapons destroyed and no longer produced.

The Mine Ban Convention would not have been possible without the intrepid efforts of humanitarian organisations such as the ICRC and a number of NGOs, and the very significant involvement of landmine survivors. Norway and other concerned states cooperated very closely with these actors which proved crucial to the process as it kept the negotiations grounded in the stark reality of the true impact of landmines. Norway later used this model of cooperation between states and civil society in the successful process leading to the 2008 Convention on Cluster Munitions.

The Mine Ban Convention, and later the Convention on Cluster Munitions, established a forceful precedent in international law and policymaking for addressing disarmament issues based on humanitarian criteria. This has had, and will continue to have, wider ramifications for the security policies of states. At the same time, the harnessing of the humanitarian argument through these conventions has also contributed to a global dialogue on the protection of civilians in which non-state actors, including armed groups, are taking part. Even in a globalised world where there are many governance gaps – particularly resulting from the actions of non-state armed groups and the inability of states to fully assert themselves – progress is still possible through a combination of international law and dialogue.

Espen Barth Eide is State Secretary, Norwegian Ministry of Foreign Affairs. For more information please email post@mfa.no

Walter Kälin on the outlook for IDPs

There are – on a regular basis – new instances of displacement. This suggests that it is in preventing internal displacement that governments and the international community are failing.

When I was appointed by UN Secretary-General Kofi Annan as his Representative on the Human Rights of Internally Displaced Persons in 2004, the number of persons displaced within their countries stood at an estimated 25 million.¹ In late 2010, when I handed over my mandate to Chaloka Beyani, the new Special Rapporteur on the Human Rights of Internally Displaced Persons, the number had grown to more than 27 million. During these six years, it had also become clear that the number of those displaced in the context of natural disasters was even greater, reaching an estimated 36 million in 2008 alone.²

Many of the internally displaced persons I met on my missions early in my mandate still remain in protracted displacement; others were able to return but continue to struggle to rebuild their lives; and still others have become victims of arbitrary displacement since I came into office. I know of hardly any case where those responsible for arbitrary displacement were prosecuted and punished. Too many internally displaced women and girls remain exposed to sexual and gender-based violence or other forms of abject exploitation, too many displaced children have no chance to access even basic education or are recruited into armed forces and armed groups, and too many men have lost any hope of regaining their ability to care for their loved ones.

On first sight this looks as if there had not been any progress during these years and the international community, despite its many efforts, had failed. A closer look, however, reveals that not only have countless lives been saved thanks to humanitarian assistance and protection activities but also

that between 2004 and 2009 an estimated 24.4 million IDPs have been able to return to their areas of origin. Among the countries I visited, improvements in the security situation or peace agreements have allowed large numbers of people to return to their homes in southern Sudan, Nepal, Timor-Leste, Uganda and Sri Lanka, and to a lesser extent in Ivory Coast, Central African Republic and Kenya. Although return does not automatically mean that people find a durable solution, this is an impressive figure.

At the same time, many people remain in displacement over many years or even decades, pointing to an inability or unwillingness to address the underlying causes behind so many internal displacement situations around the world. What we need in this regard is more commitment of the international community and political will on the part of affected states, something that is often lacking.

Progress and achievements

Clear progress can be seen regarding the normative framework guaranteeing the rights of IDPs. When I came into office, a group of states still contested the validity of the Guiding Principles on Internal Displacement because they had not been negotiated by states. The breakthrough came with the 2005 World Summit in New York, when Heads of State and Governments unanimously recognised the Guiding Principles as an important international framework for the protection of internally displaced persons, language which has since then been repeated in several UN General Assembly and Human Rights Council resolutions.

The Great Lakes Protocol on Protection and Assistance to Internally Displaced Persons, adopted in 2006, obliges its ten member states to incorporate the Guiding Principles into their domestic law. 2009 saw the adoption of the AU Convention on the Protection and



Walter Kälin served for six years as the UN Secretary-General's Representative on the Human Rights of Internally Displaced Persons. On the occasion of his retirement from this post, we publish his reflections on those six years and the future for IDPs.

Assistance of Internally Displaced Persons in Africa, the first legally binding regional instrument of its kind.³ Several countries have either adopted or are in the process of developing national legislative frameworks, programmes and policies which incorporate or refer to the Guiding Principles, and these are increasingly becoming more detailed and operational.

There have also been normative and conceptual advances with regard to specific aspects and types of internal displacement – for example, on displacement due to natural disasters and climate change, on the process for achieving durable solutions, and on how to include the rights of internally displaced persons in peace processes and agreements.

These are achievements that cannot be underestimated. They have helped to improve our understanding of internal displacement, and to ground policies and programmes in a set of common standards which are based on a human rights framework. I know of many instances where such improvements have meant a better life for real people.

One effect of these developments is a greater readiness of states to discuss their displacement situations. There are still countries like Myanmar or



IDP camp being dismantled, Gulu, Uganda, July 2009.

Pakistan which deny that people displaced by military operations are IDPs but overall I felt a growing willingness of governments not only to discuss IDP issues but also to take at least some steps to better assist and protect them. Some countries, in particular Georgia and Azerbaijan and to some extent also Bosnia, Serbia and Colombia, have started to address their protracted displacement situations with measures to improve the living conditions of their IDPs while awaiting return or other durable solutions; however, problems remain, particularly in the area of livelihoods and for IDPs with special needs.

For the future

Despite the progress made, much work remains to be done in an increasingly difficult environment. I believe we must face up to eight major challenges:⁴

Moving beyond 'camps and conflicts' – internal displacement in all its forms:

An IDP is typically perceived as somebody living in destitution in a camp after fleeing violence and armed conflict. The reality, however, is far more complex. The majority of IDPs live outside camps with host families or are dispersed in urban areas. We need to be more creative in our efforts to assist and protect them. Such efforts should reach all displacement-affected communities, i.e. not only the IDPs but also host communities or communities that have to re-integrate returnees. As regards the causes, every year more people are displaced by natural disasters than by conflicts. Climate change is contributing to this phenomenon as well. In addition, displacement resulting from forced evictions linked to development

projects is also on the rise. I feel strongly that responses to such types of displacement remain inadequate.

Addressing multiple layers of vulnerability and discrimination:

All IDPs are vulnerable in ways that non-displaced persons are not. However, certain groups of IDPs require particular attention. These include women (especially women heading households), children, the elderly, persons with disabilities or chronic illnesses, and those belonging to ethnic and religious minorities and indigenous peoples. While this is accepted in theory, the specific concerns and needs of these groups are still often overlooked in practice.

Supporting states with limited capacity:

Sovereignty entails responsibility. Addressing internal displacement is therefore first and foremost a responsibility of governments. However, much internal displacement today occurs in states with limited capacity to prevent or respond to displacement. The challenge lies in supporting these states' efforts to adopt and implement comprehensive policies and laws on internal displacement, while ensuring that donors and humanitarian and development agencies assist them with the necessary expertise and resources.

Strengthening the international response:

The introduction of the cluster system has led to progress in the coordination of humanitarian action. Yet, humanitarian agencies can still do more to assume their joint responsibilities in respect to the protection of IDPs, especially in the area of disaster-related displacement. Humanitarian agencies can also improve their capacity to make the concept of protection more operational.

Bridging the gap between emergency assistance and long-term reconstruction and development:

It is unacceptable and shameful that IDPs are often in a worse situation many years after a crisis than they were during the emergency phase. More flexible funding mechanisms as well as a readiness by humanitarian and development actors to work hand in hand early on in crises are a necessity.

Defending humanitarian space:

IDPs and other crisis-affected populations will continue to suffer the consequences of diminished or compromised humanitarian access unless we develop new, innovative approaches such as assistance by 'remote control' or development interventions in the midst of a crisis that strengthen the resilience of communities at risk of displacement or the absorptive capacities of host communities.

Ensuring accountability for arbitrary displacement:

Arbitrary displacement is a violation of the Guiding Principles and the binding international norms they reflect. In its most egregious forms, arbitrary displacement may amount to crimes against humanity or war crimes. If we are serious about preventing arbitrary displacement, we have to end the impunity prevailing in many displacement situations and bring perpetrators of such crimes to justice and ensure that victims receive appropriate reparations, including compensation.

Ending the politics of protracted displacement:

In many countries, people languish in situations of protracted displacement due to a lack of political will to find durable solutions for them. Durable solutions, based on voluntary and informed decisions of those concerned, are the best way to protect the human rights of internally displaced persons and to provide a measure of reparation for the violation of these rights.

Walter Kälin (walter.kaelin@oefre.unibe.ch) was the UN Secretary-General's Representative on the Human Rights of Internally Displaced Persons from 2004 to 2010. He continues to teach international and constitutional law at the University of Bern, Switzerland.

1. For this and other figures, see IDMC's annual publication *Internal Displacement, Global Overview of Trends and Developments* <http://www.internal-displacement.org/global-overview>.

2. Office for the Coordination of Humanitarian Affairs, Internal Displacement Monitoring Centre and the Norwegian Refugee Council, *Monitoring Disaster Displacement in the Context of Climate Change: Findings of a Study by the United Nations Office for the Coordination of Humanitarian Affairs and the Internal Displacement Monitoring Centre* (Geneva, September 2009).

3. See also article by Katinka Ridderbos, pp36-7.

4. For more details see my 2010 report to the Human Rights Council, UN Doc A/HRC/13/21, paras. 39 ff.

Global migration: in need of a global response

Sergio Marchi

In 2009 the International Catholic Migration Commission (ICMC) launched the first phase of its 'Conversations' process with meetings with several heads of key agencies interested in aspects of migration (IOM, UNHCR, ILO, UNITAR, UNDP). Much of this article is based on these discussions.¹

Despite its global nature, national responses to migration continue to take precedence over globally shared ones, although many nations still do not even have a comprehensive domestic programme to deal with migration issues. The exception is the refugee regime which has generated an international system. However this is not well integrated with other forms of migration, and any global response to migration needs to connect with the challenges and particularities presented by forced migration as a sub-category. There are, for example, profound issues of identity and typologies of migrants.

On migration policy we generally persevere with largely national strategies. Numerous initiatives in the past² made a convincing case for a more cooperative and collaborative global approach to the management of international migration but, in the end, all have fallen by the wayside. How can countries help one another to find mutually reinforcing international measures with which to more effectively address their respective local migration pressures?

An international framework

The idea of 'global governance' may sound intimidating to some, and others may fear that this would inevitably lead to the creation of a new, supranational agency. Simply put, however, establishing an international framework for migration policymaking is not principally about governments ceding or losing authority. The reality is that in an era of still accelerating globalisation, employers, smugglers, migrant networks, agents and individual migrants themselves have already taken things into their own hands. Improving and establishing new governance measures is needed to rationalise, improve and supervise these ad hoc initiatives.

And this challenge is not just for some governments, or for the well-to-do nations. Nor can nations any longer be divided strictly into 'sending' and 'receiving' countries.

As an issue, international migration will only gain in political and policy importance. In the view of many, we need an improved institutional framework, complete with normative foundations and coherent regional processes. Such a global governance structure would need to build on existing national, bilateral and regional agreements and processes, which currently provide 'soft' governance in global migration: bilateral, regional, and global dialogues; supranational structures and cooperation (e.g. the EU); multilateral agencies; and international legal frameworks.

A formal permanent international forum – where migration policy would be regularly discussed and where appropriate collective action could be decided on – would help countries establish coherent and comprehensive migration policies at the national level, including better integrating migration issues into countries' foreign and development policies. It should sponsor regular international meetings of ministers responsible for migration where they could engage with their peers on legislation, regulation, practice and experience relating to migration policy. It should also create opportunities for parliamentarians to discuss migration-related issues, in an effort to formulate better strategies for engaging their respective citizens.

An essential step would be articulating and documenting the specific advantages that would benefit countries adopting an international framework to migration policymaking. This in

turn would require a constructive public advocacy campaign to promote the importance of global governance for migration to political leaders, policymakers, the media and the public.

There is also room to improve current processes, such as the Global Migration Group³ and the Global Forum on Migration and Development⁴, relationships between the leading migration agencies and partnerships with civil society and the private sector. And it is necessary to ensure that the UN High-Level Dialogue on Migration and Development planned for 2013 is an interactive, results-oriented dialogue, and not just a series of independent statements.

There is a darker, more dispiriting side to migration. Some people who do migrate find it a disappointing experience. Others use the migration process for untoward purposes, while all too many profit unscrupulously from the desperation that leads so many to wish to migrate or be forced to migrate.

That said, migration remains largely an opportunity – for both migrants and nations. Migrants are dreamers and entrepreneurs. They often risk everything – including their lives – for a different and better future. And in turn, the richness of their ideas, experiences and energies helps to renew, re-energise and rebuild societies. But the subject of migration is also very emotive, causing fears and dangerous perceptions that create anxieties for citizens of all backgrounds, in all lands.

For all these reasons and contradictions, governments need to avoid the pitfalls of a go-it-alone migration strategy and they need to be candid and courageous where realities and pressures demand that they re-think policy. To help nations to maximise the opportunities that migration offers, while better addressing the challenges that

accompany it, political leaders must guide our governments and institutions by providing the international vision and leadership that global migration demands.

Sergio Marchi (smarchi@ictsd.ch) is Special Advisor to the Secretary General of the International Catholic Migration Commission. He is also a

Senior Fellow with the International Centre for Trade and Sustainable Development, and teaches in the International Relations Department at Webster University. He was Canadian Minister of Citizenship and Immigration, Canadian Ambassador to the UN and WTO in Geneva, and Commissioner on the UN Global Commission on International Migration.

1. *Connecting the Dots* available at <http://www.icmc.net/pubs/connecting-dots> More roundtables and government meetings have since been held in Brussels, New York and Washington, including a session with UN Ambassadors in New York.

2. Willy Brandt Commission in 1980; Commission on Global Governance in 1993; New International Regime for Orderly Movement of People in 1997; Berne Initiative in 2001; Commission on Human Security in 2001; Social Dimension of Globalization in 2004; Global Commission on International Migration in 2005.

3. <http://www.globalmigrationgroup.org>

4. <http://www.gfmd-fmmd.org>

What's in a label?

Jackie Pollock

The profiling of people who move is being increasingly institutionalised. They may be labelled the 'migrant worker', the 'refugee' or the 'trafficked person' but people's life experiences resist being so neatly categorised.

Demarcations between a trafficked person, a smuggled person, a refugee, a documented migrant and an undocumented migrant are spelled out ever more painstakingly in international conventions and in domestic laws and policies but the reality of people's lives is far more complex than one label can encompass.

A migrant worker from Burma in Thailand will nearly always explain the cause of their migration as economic but probe a little deeper and the repressive nature of the military dictatorship quickly emerges as the root cause of poverty and migration. They could return home but they would find it difficult to survive if they did.

These economic migrants use brokers to reach the Thai-Burma border in order to avoid the landmines and the check-points, and then they use brokers in Thailand to find employment, because without documents they cannot travel within the country. They are found jobs working for 10 hours a day in garment factories, as domestic workers, and in other manual jobs, paid US\$2-4 a day (the legal minimum wage is \$5-7 a day), and threatened with deportation if they make any demands for their rights. Have these migrants committed the crime of being smuggled and are thus deserving of punishment and deportation or are they victims of trafficking and therefore deserving of protection and compensation? Or should they be respected as

people taking responsibility for their own survival and for the survival of their communities?

International law will never be able to respond effectively to the infinite combinations of experiences of migrants when the root causes are not addressed and when some of the responses themselves create new categories of people. Those who arrive on rickety boats in unsafe waters do so because they have been excluded from the normal routes and legal means to travel.

Resisting categorisation

Because of the different legal protection regimes for refugees and trafficked persons and the general lack of one for migrants, the three groups are also treated as if they keep themselves apart. There are indeed situations and policies which do separate them. In Thailand, the 140,000 recognised refugees from Burma housed in camps along the Thai-Burma border are not allowed to leave the camps and so have no interaction with either migrant workers from Burma or the local Thai population. The estimated two million migrant workers from Burma currently living and working in Thailand are encouraged to live on their work sites. Factory workers live in dormitories where hundreds of workers claim a space the size of a mat, and where the gates are firmly shut with a security guard keeping a watchful check that no outsiders enter the compound. Construction workers live in shacks in the shadow of the mansions they are building.

Trafficked persons are confined in isolated private houses cleaning, cooking and on call 24 hours a day for abusive employers, or in atrocious conditions on fishing boats. The different categories of migrants are both isolated from each other and segregated from the local population.

However, despite these segregations, migrant workers, refugees, trafficked and smuggled persons do sometimes move together and they do sometimes work together. A raid by anti-trafficking officials of a seafood processing factory in Thailand exposed sleeping quarters in the roof rafters for trafficked persons while other workers in the factory lived in another area. Brothels may have sex workers who come to work and leave to go home and a group who are kept there permanently even if they want to leave. Migrant workers know if there are trafficked victims among them; if migrants were given protection and assurances that they themselves will not lose their own legal status or be deported, migrant workers could be the key players in addressing trafficking.¹ To cite a recent example, on 24 January 2011, the *Bangkok Post* carried a story of how Burmese migrant workers had reported the fate of a Ukrainian man who, it appears, had been detained in a state of servitude in a factory in Bangkok for 14 years. The migrant workers who were also working in the factory looked after him; when they left the factory they wrote to his family and later led embassy officials to the factory to free the man.

Eliminating the culture of tolerance of exploitation of all migrant workers would help ensure that working conditions for all workers were

decent and dignified – and would also free trafficked persons from exploitation. If a migrant worker could report any instances of exploitation or abuse without fear of repercussions, employers would find it much harder to traffic or abuse migrants, and working conditions would be improved. Migrant workers would have more bargaining power to improve their conditions knowing that employers could not replace them with forced labour. If migrant workers are to be recognised as important agents in the fight against trafficking, they must be recognised and supported by anti-trafficking groups as well as by migrant rights groups.

Migrant rights groups

In Thailand, a network of women called Women Exchange² brings together women migrants from diverse backgrounds, ethnicities and occupations – including manual workers, labour activists, political exiles, sex workers, refugees and human rights activists. They meet monthly, in various locations along the border, in order to break down the barriers created between the different categorisations, to develop unity and to strategise collectively for ways to promote their rights.

Today there is pressure on rights groups to define and demarcate their territory. Anti-trafficking groups, refugee groups and migrants groups each define their own messages, services and advocacy. Governments and local populations react differently to each of these groups. Migrant groups are at best tolerated and at worst are banned by countries of origin. Failed states do not want their failures broadcast; migration is a direct response to social and economic failures and they prefer to keep it hidden.

Migrants rights groups based in Thailand cannot set up sister organisations in the country of

origin to inform migrants of their rights prior to departure because the migration of millions of Burmese citizens over the last 20 years has been ignored by the regime, and all migrants have had to migrate without any documents. Only since early 2009 has the regime agreed to issue documents (in the form of a temporary passport valid only for crossing into Thailand) to some migrants but this has been a purely administrative procedure and there have been no corresponding



measures to educate and empower the migrants. Refugees also expose political and civil failures and thus suffer a similar response from the governments of the countries of origin. Anti-trafficking groups, on the other hand, receive public acknowledgement and recognition of their work although on the ground they often face a complete lack of cooperation by local authorities who may be involved in trafficking.

One anomaly, however, is that the Burmese military regime seems to welcome discussions and diversions about a handful of unscrupulous traffickers or about the exploitation of their citizens in another country. The regime which has long used forced porters, child soldiers and other forms of forced labour entered enthusiastically into the Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT), hosting many of the meetings and pledging to combat trafficking through prevention measures, prosecution and protection. The anti-trafficking framework, unlike forced labour,

allows them to lay the blame on someone else. It also rewards what authoritarian governments do best: enforcing the law, arresting, detaining. In addition, such regimes can earn some praise in the international arena by addressing a gross human rights violation such as trafficking, where generally the rights agenda is far from their priority.

Anti-trafficking, refugee and migrant rights groups need to face this hypocrisy head on. They need to join forces to expose the conditions which result in people having to leave their countries of origin, whether for violations of economic, political or civil rights. They have to unite in challenging the restrictive migration regimes which increase migrants' and refugees' risks of death, abuse and trafficking. They need to come together

to confront the policies which use categorisation to segregate people and which make insecurity and impermanence a part of so many people's lives. They must join with unions and local workers to protest against the exploitation of manual and service workers. Migrant workers, refugees and trafficked persons and their support groups must start to question the labels that are assigned to people but which reflect only a small portion and time of a person's life.

Jackie Pollock (jackiezaw@gmail.com) is Director of MAP Foundation, a Thai NGO working to promote the rights of Burmese migrant workers (<http://www.mapfoundationcm.org>).

This article has been adapted from a longer article published in *GAATW Alliance News* <http://tinyurl.com/GAATW-Alliance-News-July2010>

1. See 'Beyond Trafficking Jams: Creating a Space for Trafficked Women', Jackie Pollock, *The Irrawaddy Magazine*, Feb 2001, Vol 9, No 2 http://www.irrawaddy.org/article.php?art_id=2140.

2. Supported by MAP Foundation.

Renewable energy in the camps of Tamil Nadu

Florina Benoit-Xavier

The Organisation for Eelam Refugees Rehabilitation is promoting solar energy in all the refugee camps in Tamil Nadu with the aim of encouraging those returning to Sri Lanka to take the commitment and technology with them.

This is an important moment in the history of Sri Lanka. With most of the Sri Lankan refugees in the camps in Tamil Nadu in India wanting to return to their homeland, the Organisation for Eelam Refugees Rehabilitation (OfERR¹) is working to prepare them for the return in ways that will benefit the community at large.

The state of Tamil Nadu used to be known as a power surplus state. However, over the last few years, increased industrial growth has led to an increased demand for power. As a result, the rural areas where most camps are located have regular power cuts. Refugees are mostly dependent on the free electricity provided in the camps and are not able to invest in expensive alternatives such as generators. Community life and educational activities are forever being interrupted – especially

in the evenings – by the power cuts and low voltage periods.

Solar energy is one of the main energy sources available in abundance in both Tamil Nadu and Sri Lanka. OfERR's solar energy project aims to enable and encourage the refugees to cultivate a habit of renewable energy, which will be useful to them on their return to Sri Lanka as well. The project is working to:

- install solar lights in communal places
- provide hand-held lanterns for women and children
- build awareness of environmental issues and solar energy in particular
- create awareness among the refugees of eco-friendly

agricultural techniques and income-generation opportunities, both for the present and for their future in Sri Lanka

The project targeted all 20,358 households, comprising approximately 72,789 Sri Lankan Tamil refugees housed in 112 refugee camps spread over 25 administrative districts in the southern Indian state of Tamil Nadu.² The population is almost entirely ethnic Tamils, with just a small group of some 400 Muslims. 79.75% are Hindus, while 19.5% are Christians. The refugees come from several areas in the North and East of Sri Lanka. This is a community of people who remain dependent on the Indian government's support for care, shelter, food and financial support in order to survive. Generally, those refugees who were able to support themselves left the camps after a short stay and continue to live independently outside the camps.

Some 75% of the refugee population are already beneficiaries of OfERR's on-going work. 95% of OfERR's



workers are themselves refugees from camps while the remaining 5% are refugees who live outside the camps.

Solar lighting

Following a needs assessment of the camps, solar lighting systems have been installed in 80 communal tutorial centres in order to provide a secure and suitable environment for students to continue their education. Solar lighting was also installed in the communal areas of some camps where there was either no electricity or a permanent problem of low voltage.

OfERR also provided about 100 solar lanterns for the women and children in the camps. Often women and girls are afraid to venture out in the dark to go to a dark toilet. This can result in a variety of illnesses including urinary tract infections. These lanterns can be carried by hand or hung from a hook, and so can also be used at home during the night and during power cuts.

OfERR bought an additional 40 solar lanterns, giving ten to each of four women's groups. These lanterns will then be sold by the women's groups to the people in the camps on an instalment basis. They will then purchase more lanterns with the income generated and continue the process. In this way the women's groups will become agents of

promoting solar appliances in the camps and it will also be a means of income generation. Camp residents currently use kerosene lanterns but these emit unhealthy fumes and also present a heightened risk of fire as camp huts – made of thatch and tar sheets – are highly flammable.

OfERR conducts camp-level and district-level training for both students and youth³ on environmental protection and alternative sources of energy. These programmes will be undertaken through the camp-level student forums and youth groups which are already active in the camps.

Training for the future

OfERR has a proven track record in establishing processes and practices which are cost-effective having been developed over a long period of working with limited financial resources. OfERR also makes best use of the most available resource – the refugees themselves. It takes into consideration the sensitivity of both the refugee population and the host local communities while maintaining good interaction with the government and its workers. Refugee workers and communities have worked with OfERR for several years to set up representative committees at camp level. These committees coordinate rehabilitation activities in the camp, and they include students' forums,

advocacy groups, self-help groups of women, sports groups, health teams and a body with representatives from each of these groups called the camp coordination committee. Through the committee, refugees are able to take part in deciding what activities are implemented in their camps as well as how they should be implemented.

For those wishing to return to Sri Lanka, OfERR taps into the refugees' culture of self-sufficiency, helping them to learn sustainable, low-energy technologies. Cleaner, renewable technologies are the only way forward in both developed and developing countries. In developing this renewable energy programme, OfERR is able to provide eco-friendly suggestions to the refugees who will use it in the camps and then take these concepts and know-how with them to the island to which most of them want to return. Not only is there light at the end of the tunnel for them but also light for the tunnel itself.

Florina Benoit-Xavier (florinabenoit@gmail.com) is the Operations Manager with OfERR. This project was made possible by the generous support of the Chelvanayagam Foundation.

1. <http://www.oferr.org>

2. Number of refugees and the camps is fluid, depending on the number of returns. This was the status as of December 2010.

3. School and college students plus those who have completed their education and are under 35.



All photos: OfERR



Gang persecution as grounds for asylum in the US

Gracye Cheng

A substantial group of Central American immigrants have been filing asylum cases in the USA based on fears of gang-based persecution.

Reflecting US preoccupations over the past decade, the debate over immigration there has generally been framed in terms of economics and security. The history and political climate surrounding US immigration policy make asylum cases based on fears of gang-based persecution notoriously difficult to win but recent changes might signal the beginnings of a more expansive humanitarian policy.

The US remains without an animating vision on immigration but President Obama's campaign platform – the last time the current administration set out a coherent view on immigration – mainly conceptualised immigrants as “undocumented workers” or as part of a “flow of illegal traffic” that must be regulated and stopped.

Daniel Sharp, legal director of the Central American Resource Center,¹ says that the US government operates on the assumption that anyone coming from south of the border is seeking a better life economically. But, he estimates, half or more of the asylum cases being filed by Central American immigrants are related to street gangs, an observation that is unsurprising given the actual situation in many of these countries.

In 2007, a UN report presented the drastic problem of growing gang membership and influence. According to this report, Guatemala had 434 gangs with a total membership of 14,000, while in Honduras there were 112 gangs with 36,000 members. Gang membership per 100,000 people was calculated as: Belize 36, Panama 43, Costa Rica 62, Nicaragua 81, Guatemala 111, El Salvador 152 and Honduras 500. For Honduras this means that 5% of the entire male population aged 15-24 is a gang member.

In 2009 a US State Department report on Guatemala estimated that 3,000 children nationwide were involved in street gangs: “criminals often recruited street children for purposes of stealing, transporting contraband, prostitution, and illegal drug activities.”² The International Crisis Group released a report in 2010 noting that “Guatemala has become a paradise for criminals” and pointing out the effect of gangs on entire segments of the population: “Criminal organisations traffic in everything from illegal drugs to adopted babies, and street gangs extort [from] and terrorise entire neighbourhoods, often with the complicity of [the] authorities.”³

Applicants for asylum include men and women who fear, and have been victims of, gang-based violence, young men targeted for recruitment, and former gang members. Taken together, their claims form a litany of miseries and fears that tend to follow a pattern – repeated threats and instances of brutality, family members disappeared or killed – that depicts their lives in these countries as imbued with terror and violence.

Some asylum cases that came to court in the US in 2010 include: a young Mayan who had protested about low wages in the sugarcane fields and had been threatened and beaten three separate times, during which one of his assailants said “the next time, we will kill you if you [have] not gone back to work”; a woman whose uncle's military connections led to her receiving threats; young men who had resisted gang recruitment and been threatened; and former gang members who had left and were afraid to return. All of these cases were denied.

One problem is the difficulty in establishing persecution. According to previous case law, fear of “general

strife” is not by itself enough to make a case for asylum. One established precedent defines persecution as an “extreme concept ... mere harassment does not amount to persecution.”

Furthermore, even if persecution is shown to have occurred, applicants must show that it is based on one of five grounds: race, nationality, religion, political opinion and/or social group. Gang-based asylum cases are usually argued on the grounds of the last two, either where opposition to or refusal to join a gang is depicted as a political opinion or where young women and men are construed as a social group targeted for violence or recruitment by gangs.

According to a lawyer who has worked with such asylum cases, “Political opinion that has qualified in the past for asylum... such as cases where people resisted the Shining Path [in Peru]... these organisations had a more explicit political agenda but the amount of power that they wielded ... is comparable to that of gangs.”

Secondly, government complicity in the reinforcement of, or their inability to protect against, persecution must be established. While nationwide efforts to combat violence and crime in Central American countries are not certain to succeed, and collusion on the part of local authorities has been noted, such bare facts are often not sufficient in court. Immigrants must show how repeated efforts to elicit help from the local police resulted in a refusal or clear-cut failure to help; being too afraid to contact police in the first place or external difficulties that render an investigation futile have not counted as substantial evidence in past cases. Additionally, asylum seekers must show why they cannot just move to another part of the country in order to escape persecution.

It is no surprise then that it is extremely difficult for applicants to obtain asylum if their claims

are based on gang- or drug cartel-related violence.

Humanitarian asylum reforms

The near impossibility of securing asylum based on fears of gang-based persecution calls into question the seemingly humanitarian aspirations of the law. The practice of an expansively humanitarian asylum policy in the US has a long history of being mixed up in politics. Even during the height of their civil wars and the aftermath, Guatemalans and Salvadorans were characterised as economic migrants as a result of a political stance by the Reagan administration, which denied that civil rights violations were being perpetrated by governments that were allies of the US. In 1984, only 3% of asylum cases for Guatemalans and Salvadorans were granted.

“When I read articles and I hear how people in general in the [US] talk about south of the border, I hear that most people come here for economic reasons,” an immigration lawyer says. “In the field I work in that’s not really the case; it’s an issue of the breakdown of the country or widespread violence.”

This generalisation feeds into the floodgates argument, the fear of letting in more immigrants when the

general perception is that there are already too many. If fear of gangs is grounds for being granted asylum, a huge number of people would suddenly qualify, it is argued.

In terms of reform, legal theorist and lawyer Matthew Price believes in confining asylum, in practice, to a more restrictive definition when government involvement in persecution can be proved. For cases such as gang-based persecution, which reflects a breakdown of the state rather than persecution by the state, he recommends expanding the definition of Temporary Protected Status (TPS) which is currently used primarily in the case of environmental disasters such as Hurricane Mitch.

This would allow immigrants facing threats and violence to enter on the grounds that they can then return if the situation in their countries improves. If there is no improvement within a specified amount of time, such as five years, immigrants can then apply for permanent status. The current TPS model does not have a pathway to permanent residency, meaning that immigrants can be stuck in limbo for years. Such a change, however, is unlikely to happen without a shift in public sentiment. Anti-immigrant groups

already criticise TPS because they feel that it allows immigrants with this status to remain indefinitely.

Price acknowledges this major obstacle: “The issue is that to change TPS in a way that is more generous is not something that’s going to be politically palatable when there’s a lot of anti-immigrant sentiment.” The only thing to do is to continue attempting to file asylum cases in the hope that change comes through the courts. There have been, for example, two recent cases in the US courts where ex-gang members have been recognised as a particular social group, which seem to be setting legal precedents and offering the potential for a change to a more sympathetic and flexible approach by the courts.⁴

Gracye Cheng (gcheng@jd13.law.harvard.edu) is a student at Harvard Law School. She was a reporter at *Central American Report*, a political weekly magazine based in Guatemala City.

1. CARECAN was founded in 1983 in the midst of the Central American wars to help refugees from El Salvador <http://www.carecan-la.org>
2. US Bureau of Democracy, Human Rights, and Labor, 2009 Country Reports on Human Rights Practices, <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136114.htm>
3. *Guatemala: Squeezed between Crime and Impunity*, <http://tinyurl.com/ICG-Guatemala>
4. *Benitez Ramos v Holder* (2009, 589 F.3d 426) <http://caselaw.findlaw.com/us-7th-circuit/1499189.html> and *Urbina-Mejia v Holder* (2010, 597 F.3d 360) <http://caselaw.findlaw.com/summary/opinion/us-6th-circuit/2010/03/05/168573.html>

Organised gangs: UNHCR Guidance Note

In response to a growing number of asylum claims connected with the activities of criminal gangs, in March 2010 UNHCR issued a Guidance Note on Refugee Claims relating to Victims of Organized Gangs. The phenomenon of gangs and gang violence is increasing in various countries of the world, including in El Salvador, Guatemala, Honduras, Jamaica, Brazil and the Russian Federation, and has proved difficult for many states to address. The result has been a steady outflow of people from these countries seeking asylum in countries including the US, Canada, Mexico, Australia and the European Union.

The Guidance Note provides legal interpretative guidance for governments, decision-makers, practitioners and UNHCR staff carrying out refugee status determination. Its scope is not limited to a particular type of gang or region but it is intended to be relevant for a wider range of claims relating to organised criminal groups, including street gangs, youth gangs and other types of criminal organisations such as drug cartels. The Guidance Note provides an overview of gangs and their practices, describes how different groups and individuals in society may be affected and targeted by gangs, and sets out guidance on how the elements of

the refugee definition contained in Article 1A of the 1951 Refugee Convention apply to gang-related asylum claims.

One of the central legal questions addressed in the Guidance Note is the establishment of a link between the persecution feared and one or more of the Convention grounds i.e. race, nationality, religion, membership of a particular social group and political opinion. It has been argued by some jurisdictions that victims of common crime are not protected by the 1951 Refugee Convention and that such individuals are simply targeted for their money or for reasons of retribution. However, as UNHCR explains, while gang violence may affect large segments of society, certain individuals such as marginalised young people from poor backgrounds and those who refuse to comply with gangs are at particular risk and can constitute a ‘particular social group’. Victims of gangs can also be persecuted because of their political opinion, especially where criminal and political activities overlap, thus qualifying as refugees under the 1951 Convention.

UNHCR’s Guidance Note on Refugee Claims Relating to Victims of Organized Gangs is available at: <http://www.unhcr.org/refworld/docid/4bb21fa02.html>.

Unaccompanied asylum-seeker children: flawed processes and protection gaps in the UK

Katia Bianchini

My experience of working as an immigration lawyer on unaccompanied asylum-seeker children's cases has highlighted a number of serious flaws in the processes which determine their futures.

Every year an unknown number of unaccompanied migrant children enter the United Kingdom.¹ In some cases, these children have been trafficked for labour or sexual exploitation. In other cases, they have left their countries at their own instigation or at the wishes of their parents or guardians for safety from persecution or for economic reasons. Some are victims of domestic violence or even accusations of witchcraft.

The UK, like other European countries, treats 'unaccompanied asylum seeker children' (UASC)² more favourably than other asylum seekers, both in terms of reception services and asylum procedures.

Reception services: UASC are the responsibility of the social services department of the local authority in whose area they are for the time being. Social services carry out an assessment and immediately provide assistance. UASC under the age of 16 are normally placed with a foster parent or in residential care. Those of the older age group might be placed in more independent living arrangements, for example in shared flats or supervised accommodation. Once a child is accommodated, the local authority has further ongoing duties to safeguard and promote the child's welfare, provide an appropriate package of support and conduct reviews on a regular basis to ensure that the child's needs are being met. Overall, UASC should not be treated differently from British children who have been taken into care.

Asylum procedures: UASC are subject to an asylum determination procedure which is designed to be more appropriate for a child than the normal procedure. They also have the

right to receive legal aid to prepare their cases, to be accompanied to interviews and to be represented at asylum appeals, and to have their claims assessed by a specialist children's unit. Furthermore, they should not be subject to immigration detention. The consequences of an adverse decision (refusal of their claim for asylum) are also less extreme in the short term for a child than for an adult because children are normally granted discretionary leave to stay until they are aged 17 and a half if there are no adequate reception arrangements in their country.³ This means that they will be entitled to live, study and work in the UK until that age.

Problems with current practice

One of the issues often arising with respect to UASC is whether they are indeed children. Where the age is disputed, UASC may be treated as adults. Many of these disputes remain unresolved. The Home Office suggests that the main problem is that of adults pretending to be children in order to access services and support to which they are not entitled. However, it is often in the economic and practical interests of the local authorities not to accept young asylum seekers for long-term care. It is the local authorities that carry out age assessments, which are then forwarded to and relied upon by the Home Office in the context of asylum determinations.

The local authorities' competence to carry out age assessments raises serious conflicts of interests. The procedure is notoriously subjective, and is known to be fallible for a number of reasons: age documentation is often regarded with suspicion; it is difficult to obtain consistent testimonies from children who have to speak through

interpreters, have a different calendar system from ours, and have little or no education; some social workers do not have sufficient skills and expertise to make reliable assessments, relying too heavily on physical appearance or socially constructed ideas of appropriate behaviour to determine age; sometimes children are scared, do not trust adults and only repeat what smugglers or family members have told them to say.

There are also flaws in an asylum decision-making process that does not take into sufficient account that child asylum seekers are children, particularly when it comes to believing a child's story. In its sixth Quality Initiative report, UNHCR UK reports that: "Some Case Owners are particularly adept at creating an optimal interviewing environment for a child and questioning a child in an appropriately sensitive way so as to facilitate expression and disclosure of evidence. However, UNHCR's assessment of 21 interviews found some erroneous practices that go against the child's best interests, deny the child the opportunity to freely express their reasons for claiming asylum, or fail to ensure that any vulnerabilities or special needs of the child are taken into consideration."⁴

Until recent litigation, it was common practice for immigration lawyers to obtain paediatric (i.e. medical) reports on age. However, it is now accepted that as medical reports have a margin of error of two years either way, they cannot be conclusive evidence of age, and should only be taken into consideration with all the evidence presented.

Age assessment results may have serious consequences for a large number of UASC as it can determine how long they are entitled to support and remain in the UK. In 2008, 8% of UASC were granted asylum and 53% were granted

discretionary leave to remain in initial decisions.⁵ Furthermore, if asylum is refused and discretionary leave granted for less than one year, such a child has no right of appeal. If children are determined to be adults and treated as such, they can be detained, more easily transferred to another EU country under the Dublin II Regulation⁶ or, if their asylum is refused, returned to their country of origin or left destitute and vulnerable in the UK.

The difficulties that many UASC face in relation to being aware of their rights and accessing appropriate care and support are exacerbated by the fact that these children, including those who have been granted discretionary leave, are not provided with a legal guardian (i.e. a court-appointed individual to represent the child's best interests), unlike in other European countries.⁷

Upon reaching the age of seventeen and a half, UASC can apply for further leave to remain. This application is usually refused by the Home Office unless it can be shown that removal from the UK would be in breach of the European Convention on Human Rights, typically their right to private and family life under Article 8. The common reasons for refusal are that the applicant is now an adult and no longer needs care, has not established private or family life (because only a short period of their life has been spent in this country), and has no family members living here. At this point, the Home Office orders their removal, and warns that overstaying is an offence. The Home Office also provides information on voluntary returns, arranged with the International Organization for Migration. Many, if not most,

former UASC whose applications for further leave to remain are refused remain unlawfully in the UK with no support, unable to continue their education, and usually out of contact with the local authority or their lawyers.

Recommendations

Children and young people subject to immigration control are especially vulnerable as their welfare and development are strictly linked to obtaining and maintaining lawful status. However, despite the special provisions applicable to UASC, the approach is still to treat them as migrants first and children second. In order to establish an effective protection regime for UASC and young adults, the following steps should be taken:

- Review age assessment procedures. For instance, the assessment could be conducted over a period of several days to allow observation of the child's/young person's behaviour and relationships. Social workers involved in age assessment should receive appropriate guidance, training and support. The process of age assessment should allow for input from all who play a role in the child's life – health professionals, psychologists, teachers, youth workers, etc – and should include all the information that might be relevant to the decision, including paediatric and medical evidence where this is available. An independent age assessment panel could help the regional assessment centres to deliver a consistent and credible service which is less likely to be challenged by others.
- Provide local authorities with sufficient funds to deliver an

appropriate package of support and care.

- Foster cooperation between immigration officers and solicitors representing UASC.
- Address the legislative gap on how best to protect young people when they have exhausted all their rights to appeal and no longer have any legal status.
- Grant permanent protection to UASC who are victims of trafficking.
- Establish a formal system of guardianship for UASC. The guardian would have a statutory role and should be appointed by a statutory body to safeguard the best interests of the child and provide a link between all those providing services and support. The guardian should be expected to intervene if public bodies act in contravention of their legal duties towards a child.

Katia Bianchini (kb726@york.ac.uk) is an immigration lawyer at Turpin & Miller Solicitors, Oxford, UK, and a post-graduate researcher at the Law School of York University, UK.

1. Statistics are only available for those who make an asylum application (5,685 in 2008). Of these, 1,400 (24.6%) had their age disputed and were treated as adults.

2. Children under the age of 18 who arrive in the UK, claim asylum, and are without close adult family members either accompanying them or already present in the UK whom they can join.

3. Heaven Crawley, *When is a child not a child? Asylum, age disputes and the process of age assessment*, Immigration Law Practitioners' Association 2007, p152. <http://tinyurl.com/ILPA-Crawley2007>

4. UNHCR Quality Initiative project. *Key observations and recommendations April 2008 – March 2009* <http://tinyurl.com/UNHCRQI6>

5. The Children Legal Centre, Fact Sheet, <http://tinyurl.com/CLCFactSheet>

6. Dublin II Regulation determines which EU Member State is responsible to examine an asylum application. <http://tinyurl.com/DublinIIRegulation>

7. *European Migration Network Synthesis Report: Policies on the Reception, Return, and Integration Arrangements for, and Numbers of, Unaccompanied Minors: An EU Comparative Study*. May 2010. p53 <http://tinyurl.com/EMNMay2010>

Young and out of place: FMR 39 call for articles

Being displaced involves not just a change of physical location but a dislocation of many aspects of normal life. Families are divided, social relations are broken, education is disrupted, and access to familiar meeting places is no longer possible. But life goes on and someone who is forcibly displaced has to try to find ways to re-create what is lost or to find substitutes for it.

Young people can be susceptible in particular ways to the stresses of being physically and socially dislocated at a time when they face important changes, rites of passage and formation of adult relationships. The society from which these young people come and on which they depend may no longer exist

for them in a meaningful way. Local, or 'host', communities are often ill-equipped to support them. Camps or collective centres create opportunities for damaging or exploitative behaviours and are poor substitutes for a normal social environment. And outsiders' responses to the needs, and rights, of displaced people rarely cater for the social needs of young people.

The FMR editors are looking for practice-oriented articles (focusing on situations of forced displacement) addressing this theme.

See <http://www.fmreview.org/young-and-out-of-place/> for full details. Deadline for submissions: 17 October 2011. Due out February 2012.

The road to recovery: education in IDP communities

Amy S Rhoades

There has been a marked failure to incorporate youth and adult education as a standard component during displacement.

Currently, the bulk of educational humanitarian assistance is directed towards primary education, relegating youth and adult education to a marginal status. This is reflected in both political priorities and resource allocation.

A survey conducted by the Women's Refugee Commission found that education programmes beyond primary level are few and far between in states affected by conflict.¹ Additionally, at present no international agencies dealing with displaced people have a specific policy or strategy directed at literacy or adult and youth basic education.² Considering that the period of displacement for most IDPs now lasts over a decade, the need for comprehensive educational programming during this time is critical.

Three main areas within youth and adult education merit further development: basic literacy, secondary education, and technical and vocational training.

Basic literacy education for youth and adults is a critical area of need among displaced communities. In December 2009, the Belem Framework for Action was adopted at the Sixth International Conference on Adult Education in Belem, Brazil.³ It called for "redoubling of efforts to reduce illiteracy by 50 percent from 2000 levels by 2015." Additionally, it emphasised the need for increased mobilisation of resources and expertise, provision of relevant curricula and quality assurance mechanisms, and a reduction in the literacy gender gap. Currently, there is a shortage of effective literacy programming, particularly in conflict-affected areas where it is so widely needed. Basic literacy is an important tool for people to be able to comprehend the world around them and make informed decisions.

Furthermore, literacy is not only a human right but also an 'enabling' right – the key that unlocks the door to the enjoyment of many other human rights, including the right to freedom of expression, the right to participate in public affairs, the right to work, and the right to participate in cultural life.

Access to secondary education is another area that needs to be improved in conflict-affected areas across the globe. According to the Women's Refugee Commission, fewer than 6% of displaced youth are enrolled in secondary education worldwide. Secondary school provides a setting in which young people learn valuable cognitive and social skills to become productive members of society. It can also decrease vulnerability to recruitment into paramilitary groups or human trafficking which often target marginalised youth. Youth are the future leaders of their communities and their countries. They require adequate skills to assume this responsibility and become economically competitive.

Technical and vocational training also has a vital role to play in IDP communities. Many displaced persons have lost their primary source of livelihood and must develop new skills in order to become economically sufficient. For others, they may find themselves for the first time needing to earn an income following displacement. Non-formal and flexible approaches are an important consideration within this sector so as to provide greater options to youth and adults juggling different roles and responsibilities. Although technical and vocational training programmes have not been widely implemented in displaced communities, those which have been carried out report largely positive results. Inclusion of women needs to be consciously

integrated into programmes since they are frequently at a disadvantage in receiving information about such programmes, particularly in traditionally patriarchal cultures.

Today the right to education remains an unfulfilled promise for IDPs across the globe. In January 2010, UNESCO published its *Education for All Global Monitoring Report 2010: Reaching the Marginalized*.⁴ This report assessed the global progress made over the past 10 years towards the six goals set by the World Conference on Education for All (hosted in Dakar in 2000). One of the major challenges highlighted in the report was achieving progress towards Goal 3: 'Promote learning and life skills for young people and adults'. The UNESCO report notes that, "Unlike other parts of the Dakar Framework, Goal 3 has been the subject of quiet neglect. It has been conspicuous by its absence not just from the agendas of high-level development summits, but also from the campaigns of non-governmental organizations."

According to the UNESCO report, there has also been minimal progress made towards the goal of halving adult illiteracy – a condition that affects an estimated 759 million people over the age of 15, approximately one in every five adults. Two-thirds of the world's illiterate adults are women. Additionally, as literacy is very language-centric, illiteracy disproportionately affects those speaking minority and indigenous languages worldwide as they have fewer opportunities to acquire and use literacy skills.⁵

Intersections

To understand the underlying educational challenges, it is vital to recognise the intersection between poverty, illiteracy, and vulnerability to emergencies. Often it is those with the least resources who are the most adversely affected. A disproportionate number of those affected by armed conflict are

functionally illiterate. Presently, over half of the 25 countries with the lowest adult literacy rates worldwide are either facing conflict or recently emerging from conflict. Additionally, 10 of the 25 countries with the lowest rates of female adult literacy are conflict-affected countries.

The intersections among disadvantaged groups extend even further. Though global demographic statistics for IDPs are challenging to ascertain, national surveys conducted in states with high IDP populations demonstrate that those living in poverty, ethnic minorities and women are disproportionately affected by displacement.⁶ According to the UNESCO EFA report, these are precisely the same sectors of the population among which low levels of educational attainment prevail. This intersectionality further illustrates the widespread

need for youth and adult education in IDP communities. Primary education offers great value but by itself is not sufficient to provide displaced persons with the skills needed to navigate this transitional time and prepare to rebuild their lives after resettlement.

Youth and adult education and vocational training need to be integrated into the humanitarian assistance framework as vital components of the recovery process. Not only does education deliver life-sustaining support and stability to those displaced by conflict but it also provides crucial skills to prepare IDPs for sustainably rebuilding their lives, their communities and their countries.

Amy S. Rhoades (ed4idps@gmail.com) works in the Skills and Employability Department of

the International Labour Organization (<http://www.ilo.org>). The views expressed here are those of the author and not necessarily those of the ILO.

This article is extracted from the author's longer paper *Displaced Futures: Internally Displaced Persons and the Right to Education* http://www.right-to-education.org/sites/r2e.gn.apc.org/files/displaced_futures.pdf

1. WRC, *Untapped Potential: Displaced Youth* (2007) <http://womensrefugeecommission.org/programs/youth/79-untapped-potential-displaced-youth>
2. Ulrike Hanemann, *Literacy in conflict situations* (2005) <http://unesdoc.unesco.org/images/0014/001460/146003e.pdf>
3. UNESCO, *Belem Framework for Action* (2010) <http://tinyurl.com/Belem2010>
4. UNESCO, *Education for All Global Monitoring Report 2010: Reaching the Marginalized* (2010) <http://unesdoc.unesco.org/images/0018/001866/186606e.pdf>
5. UNESCO, *The Global Literacy Challenge* (2008) <http://unesdoc.unesco.org/images/0016/001631/163170e.pdf>
6. IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2008* (2009) <http://tinyurl.com/IDMCCGlobalOverview2009>

African refugees in Israel

Rebecca Furst-Nichols and Karen Jacobsen

A scoping study conducted by the Feinstein International Center (Tufts University) in November 2010 explored the interaction between migration, debt repayments, remittances and livelihoods among Sudanese and Eritrean asylum seekers in Israel.¹

African refugees began migrating across the Sinai Peninsula to Israel in search of asylum and work from about 2006, with numbers increasing in 2007.² By the end of 2010, there were 33,273 African migrants in Israel, up from 17,000 in 2008, and November 2010 saw the highest ever number of arrivals.³ Most new arrivals are fleeing desperate circumstances at home, and are seeking protection – not just jobs – in Israel. Eritreans and Sudanese make up the two largest African groups in Israel. Most have temporary protection in the form of ‘2A5 conditional release visas’ which are renewable every three months but they live under the constant threat that protection will be revoked. Officially, holders of the visa are not allowed to work although some employers overlook this provision.

Asylum seekers finance their journeys in a range of ways. Most borrow money from friends and family to pay smugglers to get to

Israel, and repaying this debt is a priority once their basic needs are met. Any money left over is sent to their families in the home country – but most do not have money left over to send.

Many migrants began their journey with an agreed-upon amount and then were passed to other groups who demanded additional payment. We heard of cases where groups of Sudanese or Eritreans in Israel pooled money to secure the release of a friend or relative who was being held for ransom in the Sinai.

Most migrants borrow money prior to their departure but we heard of people setting off for Israel knowing they did not have enough for the full payment. One woman said that if she had asked her family in advance they would have refused to give her the money for the journey but she knew they would send it if she called in distress along the way. She felt the risk of running out of money

was worthwhile because getting to Israel was her best hope for safety.

Getting to Israel is becoming increasingly dangerous and expensive. Cases of serious abuse and torture by Bedouin smugglers in the Sinai have been reported, including rape, kidnapping and killing of those who are unable to come up with additional payments. Our respondents reported being taken by smugglers to within 50 metres of the border fence, and told to run and climb the fence. In the final stage of the journey several hundred migrants have been shot and killed by Egyptian police.

Economic migrants or asylum seekers?

The Israeli government claims that the majority of those who enter are economic migrants rather than asylum seekers, and indeed many respondents said they came because they were unable to support themselves and their families in Eritrea and Sudan. However, there is a close relationship between persecution and lack of livelihoods in Sudan and Eritrea, and migration decisions are influenced by a



Rebecca Furst-Nichols

Asylum seekers calling home from Tel Aviv.

combination of factors.⁴ All our respondents mentioned their desire to earn money and send it back home but none cited this as the main reason for leaving; rather they fled the “very serious” situation in their homelands.

New arrivals to Israel try to find temporary or day labour jobs through employment agencies or by standing at the corner of Levinsky Park in south Tel Aviv. Many do not find jobs, and many more are underpaid or not paid at all for work done, with little recourse. Since the end of 2008 when the government began granting temporary protection to Eritreans and Sudanese, some asylum seekers have opened small businesses including restaurants, internet shops and clothing stores catering to an African clientele.

New or recent arrivals expressed relief at being in Israel where they are physically secure, and many of our respondents said that they appreciate the lack of police harassment and

generally safe environment. However, they also expressed frustration at being unable to support themselves.

Implications

Israel is seen as a destination of last resort; refugees coming there do not have the money or social networks to get to Europe or America, and it is likely that the number of asylum seekers in Israel will grow. The Israeli government should clarify its asylum policy by defining temporary protection and the conditions under which protection would be revoked.

We believe it would be in Israel’s interests to include social and economic rights for those who hold temporary protection visas. Granting asylum seekers the right to work would be in line with international refugee standards and would reduce the state resources needed to support them in detention centres. If they had the right to work, asylum seekers would be able to contribute to their communities both in Israel and in

their homelands. The government is currently planning measures to block arrivals – including constructing a fence along Israel’s border with Egypt, building a 10,000-person detention centre in the Negev, and imposing fines on employers – but these measures are unlikely to stem the migration flow. Instead, asylum seekers will turn to increasingly dangerous routes. Well-established social networks and smuggling routes will facilitate continuing arrivals, even if the risks increase.

At the time of writing (February 2011) two unfolding political events will have important ramifications for African migration to Israel. The vote in the January 2011 referendum on South Sudan has been for secession, and the new state of South Sudan will come into existence in July 2011. Reportedly, small groups of southern Sudanese have already voluntarily returned to South Sudan from Israel, and this return movement is likely to continue. The creation of a southern Sudanese state might reduce future migration from the south but it is unlikely to influence those fleeing from Darfur. Secondly, the political changes of February 2011 in Egypt create a space for its new government to address serious human rights violations being committed in the Sinai and on its border with Israel. It remains to be seen how such sweeping changes will influence the Egyptian smuggling routes.

Rebecca Furst-Nichols (rfurst.nichols@gmail.com) is Assistant Researcher and Karen Jacobsen (kjcbesen@gmail.com) is a Research Director at the Feinstein International Center, Tufts University (<http://fic.tufts.edu>)

This article is based on a longer report that can be found at: <http://tinyurl.com/FIC-African-migration-Israel>

1. The research was based on 24 interviews with Sudanese and Eritrean asylum seekers, five focus group discussions and ten key informant interviews with staff of refugee-serving organisations, all in Tel Aviv.
2. Human Rights Watch, *Sinai Perils: Risks to Migrants, Refugees, and Asylum Seekers in Egypt and Israel*. New York, November 2008. <http://www.hrw.org/en/reports/2008/11/12/sinai-perils-0>; Karin Fathimath Afeef, *A promised land for refugees? Asylum and migration in Israel*. UNHCR Policy Development and Evaluation Service, December 2009. <http://www.unhcr.org/4b2213a59.html>.
3. Hotline for Migrant Workers, November 14, 2010. See also ‘Infiltration record: 1,940 illegal aliens entered Israel in Nov’, *Ynetnews*, 1 December 2010 <http://www.ynetnews.com/articles/0,7340,L-3992729,00.html>
4. H Young, K Jacobsen and A Osman, *Livelihoods, Migration and Conflict*. Feinstein International Center, April 2009. <http://tinyurl.com/Tufts-April09>

Report cards on refugees' rights

Bruce Forster

The US Committee for Refugees and Immigrants has provided valuable data in its Refugee Rights Report Cards but further analysis produces even more useful information.

Refugees have rights, as stipulated in the 1951 Convention Relating to the Status of Refugees. Unfortunately, these rights are frequently breached. In order to measure the degree of compliance with the Convention by host countries, the US Committee for Refugees and Immigrants (USCRI) evaluated 52 host countries on four components of refugee rights. The result is a set of four Refugee Rights Report Cards, one for each Rights component, and with each containing 52 countries with their respective score.¹ The USCRI Report Card for the *Refoulement/Physical Protection* category is given below for illustrative purposes.

This data is interesting but using some system of analysis – as discussed overleaf – would facilitate the assessment of refugee rights compliance for individual countries and for the entire set of countries surveyed.

The four components of the Report Cards, and their respective grading schemes, are as shown opposite:

Refoulement²/Physical protection

- A: No *refoulement*; fair asylum system
- B: No *refoulement* but faulty asylum systems
- C: Some *refoulement* but not systematic; governmental harassment and serious physical risk
- D: Systematic *refoulement*; governmental violence against refugees
- F: 100+ *refoulements*; severe governmental violence

Detention/Access to courts

- A: No arbitrary detention; access to courts and documentation
- B: Little detention
- C: Significant detention; faulty access to courts and documentation
- D: More than 100 arbitrarily detained
- F: More than 200 arbitrarily detained; no access to courts

Freedom of movement and residence

- A: No restrictions in policy or practice
- B: Almost no restrictions in policy or practice
- C: Restrictions in policy but wide tolerance
- D: Restrictions in policy and practice; harassment
- F: Severe restrictions in policy and practice

Right to earn a livelihood

- A: No restrictions in policy or practice
- B: Almost no restrictions in policy or practice
- C: Restrictions in policy but wide tolerance in practice
- D: Restrictions in policy and practice; harassment
- F: Severe restrictions in policy and practice

Table 1: *Refoulement/Physical protection*

Grades	A	B	C	D	F
Countries by grade	Botswana	Burundi	Algeria	Chad	China
	Brazil	Canada	Bangladesh	Europe	DR Congo
	Costa Rica	Rep. of Congo	Cameroon	Iraq	Egypt
	Malawi	Ivory Coast	Ghana	Israel	Israeli-occupied territories ³
	Niger	Ecuador	India	Pakistan	Iran
		Ethiopia	Jordan	Panama	Kenya
		Guinea	Mauritania	Russia	Lebanon
		Kuwait	Nepal	Saudi Arabia	Libya
		Senegal	Rwanda	Sudan	Malaysia
		Serbia	Venezuela	Syria	South Africa
		Tanzania	Zambia		Thailand
		Uganda			Turkey
				US	
				Yemen	

Source: USCRI, *World Refugee Survey 2009*

While the four tables contain valuable information for assessing the accountability of host countries, the data, as presented, is not very convenient for further analysis. Analysts or other interested readers need to go through each of the four tables picking out the set of scores of their country or countries of interest. In order to make this more convenient, a single Report Card for the set of host countries along with their respective scores can be generated using the data contained in the four tables. A stylised version with selected countries (for reasons of space) is given in Table 2 below.⁴ This table makes it very easy to examine individual countries since all scores appear with the respective country.

Notice that Brazil is the only country to score A for every component. As most countries have scores that vary across the four components, how does one assess the overall performance of a particular country? One method could be to use the Grade Point Average (GPA) system commonly used to measure students' academic performance. Each letter score is associated with a numerical one: A=4; B=3; C=2; D=1; and F=0. The average score across the set of scores is calculated for each country, which gives a measure of the average performance of the country. Country-specific GPAs are given in the far right-hand column of Table 2.

If the information in Table 2 is rearranged not alphabetically but rather in descending order by GPAs, the analyst can then select an appropriate cut-off GPA and see how many countries score above that point. This number, or the proportion of countries scoring above the cut-off point, can serve as indicators of the overall performance of the group. An alternative approach is to compute the average GPA for the group and this becomes the indicator of the overall performance.

There is another factor that could be taken into consideration, however, in grading countries' performance. In a 2007 Introductory Note to the 1951 Convention, UNHCR states that the principle of *non-refoulement* is considered to be sufficiently fundamental that no deviation is acceptable. If this condition is invoked in the grade assessment process then any country that scores a C, D or F on the question of *refoulement* receives a failing grade overall. This means that we can start with the *non-refoulement* component, and consider only those countries scoring an A or a B. As can be seen from Table 1, only 17 of the 52 countries survive this first test. For these 17 countries, GPAs can be computed using all four components, and these GPAs are their grades. (The average grade for the 17 acceptable countries is 2.77.) The rest

of the countries – approximately two thirds – receive failing grades, having deviated from the *non-refoulement* requirement.

The results presented here could not be gleaned by merely looking at the four tables in USCRI's report. Those tables provide the raw data. The GPA is a vehicle for extracting additional penetrating information and analysis of the refugee rights compliance of individual countries and of the set of host countries together.

Bruce A Forster (forsterba@unk.edu) was Professor of Economics and Dean of Business at the University of Wyoming, Arizona State University's West campus, and the University of Nebraska at Kearney from 1991 to 2009, and is now Professor emeritus at UNK and ASU.

1. 2009 World Refugee Survey

<http://tinyurl.com/2009-WorldRefugeeSurvey>

2. The protection of refugees from being returned to places where their lives or freedoms may be threatened

3. Consisting of the West Bank, the Gaza Strip and much of the Golan Heights.

4. The full set of data, arranged alphabetically by country and ranked by performance, is available on the FMR website at

<http://www.fmreview.org/non-state/forster.htm>

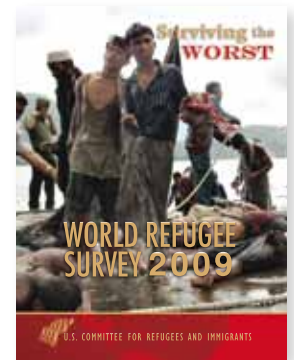


Table 2: Measures of host country compliance with refugee rights

Country (in alphabetical order)	Refoulement/ Physical protection	Detention/ Access to courts	Freedom of movement and residence	Right to earn a livelihood	Grade Point Average
1. Algeria	C	D	F	F	0.75
2. Bangladesh	C	D	D	C	1.5
3. Botswana	A	B	C	B	3.0
4. Brazil	A	A	A	A	4.0
.....					
25. Jordan	C	D	A	D	2.0
26. Kenya	F	D	F	D	0.5
27. Kuwait	B	A	B	D	2.75
.....					
50. Venezuela	C	C	C	B	2.25
51. Yemen	F	D	C	C	1.25
52. Zambia	C	B	D	D	1.75

Source: Author's creation based on USCRI, *World Refugee Survey 2009*

New research project: Stateless diasporas in the EU

Part of the Oxford Diasporas Programme funded by the Leverhulme Trust, this two-year project – starting in May 2011 – will explore the extent to which members of three ‘stateless diasporas’ (Kurds, Palestinians and Roma) construct, negotiate and mobilise notions of shared belonging in the EU. The research team, led by Nando Sigona and Elena Fiddian-Qasmiyeh at the Refugee Studies Centre, will conduct a comparative investigation of the ways in which specific migration and citizenship regimes have an impact on stateless migrant communities resident in the EU. Recognising the variety of legal statuses held by individuals of these backgrounds, the research will explore the intersection of policy regimes and migrants’ settlement experiences and strategies, transnational engagement and diverse modes of mobilisation. More broadly, the research project will discuss how ‘land’ and ‘state’ (and their absence) are currently conceptualised, and why this may lead to a problematisation of the categories of, and policy responses to, *de facto* and *de jure* statelessness.

For more information, please visit the RSC website at <http://www.rsc.ox.ac.uk> The Diasporas Programme will also shortly have a dedicated webpage at <http://www.migration.ox.ac.uk/research.shtml> Or email nando.sigona@qeh.ox.ac.uk or elena.fiddian-qasmiyeh@qeh.ox.ac.uk

New Policy Briefings now online

No 6: Responding to protracted refugee situations – lessons from a decade of discussion

Dr James Milner, Assistant Professor at Carleton University in Canada, and Prof Gil Loescher, Visiting Professor at the RSC, analyse the impact of protracted displacement on the human rights and access to livelihoods of millions of people and examine how protracted displacement situations accentuate the risk of chronic regional insecurity, fragility and conflict spillover. Through tracing the history of international responses to protracted refugee situations (PRS), they examine the complexity of the negotiations process that led to the adoption of the 2009 UNHCR Executive Committee Conclusion on PRS while suggesting steps that will be required from a broad range of actors if there is to be an adequate response to PRS in the future.

No 7: Sahrawi refugees’ protracted displacement – challenges and opportunities beyond encampment?

Dr Elena Fiddian-Qasmiyeh, Departmental Lecturer in Forced Migration at the RSC, analyses the challenges and opportunities – after 35 years of protracted displacement and encampment – for the Sahrawi refugees, their political representatives and international actors (including humanitarian agencies, state actors and non-state actors). She challenges assumptions and representations of conditions and dynamics in the camps. Dr Fiddian-Qasmiyeh also calls for a careful analysis of the diverse alternative solutions to encampment in Algeria which have been adopted or proposed by Sahrawi refugee families and their political representatives and for the development of accountability mechanisms to monitor the implementation of relevant programmes and projects.

Both Policy Briefing papers are online at http://www.rsc.ox.ac.uk/pub_policy.html. Series editor Héloïse Ruauudel (rscpolicy@qeh.ox.ac.uk) would welcome your feedback on the series.

Re-launch of the RSC website

The RSC is launching an updated version of its website on 16 March. The site offers clearer access to the RSC’s latest news, publications, events and activities. The research section is organised around a collection of newly developed themes with improved links to related conferences, workshops and staff presentations and publications. The site also includes a sign-up sheet for those interested in receiving email updates and event invitations. Please take a few minutes to explore the site at <http://www.rsc.ox.ac.uk>

2011 International Summer School in Forced Migration 11-29 July 2011

The Refugee Studies Centre’s acclaimed International Summer School fosters dialogue between academics, practitioners and policymakers working to improve the situation of refugees and other forced migrants. Deadline for applications: 1 May 2011. Full details at http://www.rsc.ox.ac.uk/teaching_summer.html

FMR International Advisory Board

Board members serve in an individual capacity and do not necessarily represent their institutions.

Diana Avila

Diálogo Sudamericano

Paula Banerjee

Mahanirban Calcutta Research Group

Nina M Birkeland

NRC/IDMC

Mark Cutts

OCHA

Eva Espinar

University of Alicante

Rachel Hastie

Oxfam GB

Lucy Kiama

Refugee Consortium of Kenya

Khalid Koser

Geneva Centre for Security Policy

Amelia Kyazze

Save the Children UK

Erin Mooney

Independent consultant

Dan Seymour

UNICEF

Vicky Tennant

UNHCR

Richard Williams

Independent consultant

Roger Zetter

Refugee Studies Centre

Thank you to all our donors in 2010-2011

FMR is wholly dependent on external funding to cover all of the project’s costs, including staffing. We are deeply appreciative to all of the following donors both for their financial support and their enthusiastic collaboration.

Australian Government Department of Immigration and Citizenship
• Brookings-Bern Project on Internal Displacement • Catholic Relief Services • CBM • CIDA
• Commonwealth Foundation
• Concern Worldwide • Danish Refugee Council • DFAIT Canada • DHL • European Union • Feinstein International Centre, Tufts University •

Generalitat Valenciana/Consellería de Educación • Handicap International
• International Alert • International Rescue Committee • Norwegian Ministry of Foreign Affairs
• Norwegian Refugee Council/ Internal Displacement Monitoring Centre • Open Society Initiative for Southern Africa • Open Society Justice Initiative • Oxfam GB • RAISE

Initiative • Refugees International
• Sightsavers • Spanish Ministry for Science and Innovation • Swiss Federal Department of Foreign Affairs
• UK Department for International Development (DFID) • UNAIDS • UNDP
• UNFPA • UN-HABITAT • UNHCR • US Department of State, Bureau of Population, Refugees, and Migration
• Women’s Refugee Commission

Facing facts

We know that real people's faces are important to bring to life the words – facts, thoughts, ideas and feelings – that are in Forced Migration Review (FMR). We have always sought out images that show the personal reality of forced migration, trafficking and statelessness.

You will notice, however, that in this issue we have taken steps so that the people shown in the photos generally cannot be recognised, and we want to explain our reasoning.

We know that many, if not all, of the photographers and agencies who generously provide photos for FMR's use seek permission from those being photographed. However, we have begun to question our assumption that it is therefore always appropriate for us to use these photos in FMR.

FMR is distributed around the world in print and is freely accessible online on our website; however, it is also made available on other websites and in public libraries and on CD-ROMs. In reality, we ourselves have no way to be sure that the people in the photographs could have given truly informed consent for their image to be used by us. Would they have understood that their image might be seen by people all around the world, and that it would live on in the virtual world for potentially many, many years?

We think that there are cases where individuals would not wish their image to be used in such a way that they might be identifiable for ever in a situation that is, in all likelihood, a temporary one that catches them at a low point in their lives. We cannot be sure either that showing their image will not – at some time and in some way that could not be foreseen – damage them or undermine their dignity. We therefore need to act with caution.

We have decided that we should whenever possible protect the identity of people shown in FMR – unless it is obvious that this precaution is unnecessary – by avoiding close-up images of faces and/or, where necessary, pixellating faces.

We realise that there is no perfect, correct way to do this. The people in the photos may feel that this robs them of their full identity; they may feel that we are playing into the hands of those who would typecast refugees as second-class citizens or as 'undesirables'. It may also lessen the impact of the words. But we have come to the conclusion that this is a route we should try to follow.



We know that some of you will also have faced this dilemma and we would very much like to hear from you. Please do let us know what you think. You can use the feedback form on our website at <http://www.fmreview.org/feedback.htm> or email us at fmr@qeh.ox.ac.uk



FMR, Refugee Studies Centre, 3 Mansfield Road, Oxford OX1 3TB, UK