

Engaging armed non-state actors in mechanisms for protection

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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.

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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>

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