

The Guiding Principles and armed non-State actors

Carla Ruta, Héloïse Ruaudel and Pascal Bongard

Millions of internally displaced persons live in areas controlled by armed non-State actors. Direct humanitarian engagement with these actors is required in order to help them improve their understanding of and compliance with the Guiding Principles on Internal Displacement.

Armed non-State actors (ANSAs) are present in most countries where there are high levels of internal displacement and have in many cases themselves forcibly displaced people.¹ They control territory where internally displaced persons (IDPs) live, sometimes ‘manage’ camps, and can block humanitarian access or facilitate aid delivery, or directly provide assistance. Since the Guiding Principles on Internal Displacement are designed to be observed by “all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction” (Principle 2), they give guidance and recall the responsibilities not only of States but also of ANSAs.

Since 2012 Geneva Call has included the prohibition of forced displacement in its training with ANSAs on the main obligations of international humanitarian law. Recognising the complexity of the normative framework, and following a 2013 study² and consultations with a number of humanitarian organisations and ANSAs, in 2017 Geneva Call decided to deepen its engagement work on the norms pertaining to displacement.

A training module to raise awareness among ANSAs on their responsibilities towards displaced persons – based on the Guiding Principles, the 1951 Refugee Convention and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) – has been developed and tested with four ANSAs in Syria, the Democratic Republic of Congo (DRC) and Myanmar. Some among these four ANSAs have allegedly committed acts of unlawful forced displacement, forced return or prevention of return, confinement of IDPs in camps or other abuses such as the recruitment of displaced children. While sometimes denying having committed violations themselves, each of the ANSAs responded positively, recognising their limited knowledge and showing interest in learning more. Many ANSAs with whom Geneva Call has engaged in dialogue recognise that they have a role to play in the protection of displaced people and in ensuring that IDPs have access to basic services.



Geneva Call

Geneva Call conducts training with armed non-State actor NDC-R in the Democratic Republic of Congo on their responsibilities towards displaced persons.

Geneva Call will now include and mainstream training on displacement in its engagement work with other ANSAs. It will also target civilian branches (of ANSAs) which are managing and/or controlling camps. Additionally, tools through which ANSAs can commit to the protection of displaced persons (such as a standard unilateral declaration) will be developed and Geneva Call will seek collaboration with specialised humanitarian agencies in order to support its action in the field. With those ANSAs already engaged on this topic, further dialogue will aim to achieve concrete changes of behaviour by these actors in order for violations to stop and positive practices to be reinforced.

Evaluating compliance

The extent to which an ANSA complies with international norms, and more particularly with the Guiding Principles, is difficult to evaluate as it depends on many factors, such as the motivations or objectives of the ANSA and the type of relationships it has with civilian populations. While some ANSAs are known to have committed violations, others have taken protective measures towards displaced people. For example, in the Philippines, the women's wing of the Moro Islamic Liberation Front played a role in giving advance warning to the local population of government

attacks and in facilitating civilian evacuations. Furthermore, many ANSAs are known to facilitate and/or give humanitarian assistance to displaced populations, as in Myanmar where the Pa-O National Liberation Organization has been supporting IDPs with direct assistance (mainly food), the building of two new schools and payment of some teachers, and facilitating humanitarian access. Many ANSAs are known to demonstrate both good and bad practices. Some ANSAs in Iraq, for example, although facilitating humanitarian access, giving direct assistance to displaced populations and

supporting their return by helping with reconstruction of houses, at the same time gave priority to some IDPs over others on a discriminatory ethnic and/or religious basis.

A number of ANSAs have made commitments related to the protection of displaced persons.³ A review of these shows three main trends: first, most form part of peace or ceasefire agreements concluded between ANSAs and States; second, within these commitments reference is made to both IDPs and refugees; and third, the bulk of the commitments are concerned with issues of return and reintegration. Few of the commitments reviewed contain references to the prohibition of unlawful forced displacement and to the protection of the rights of displaced people. One exception is the 2008 statement of the Justice and Equality Movement and Sudan Liberation Movement⁴ in which both actors commit to refraining from forcibly displacing civilian populations and to curtailing the militarisation of IDP/refugee camps. Various factors could motivate ANSAs' compliance. For example, protecting displaced persons in an armed conflict can help ANSAs attract greater support from the civilian population and increase their legitimacy in the eyes of the international community. Moreover, facilitating the return process of displaced persons can enhance the post-conflict resolution process.

October 2018

www.fmreview.org/GuidingPrinciples20

Some challenges and dilemmas

Firstly, although the Guiding Principles are a useful 'one-stop' piece of guidance based on existing standards, there is ambiguity around who or what falls under the classification of 'authorities', with attendant obligations. It is quite clear that certain obligations (such as the prohibitions on arbitrary displacement, sexual violence and recruitment) directly apply to ANSAs but others (such as ensuring that displaced persons – children in particular – receive education) are less clear. Additionally, the prohibition of arbitrary displacement is not absolute and what qualifies as "imperative military reasons" for ordering displacement (Principle 6) can be difficult to define. Furthermore, even if one agrees that ANSAs are included in "all other authorities", the question remains: what degree of organisation, capacity, resources and control of territory does an ANSA need to have if it is to constitute an authority – one that has not only negative obligations (to not displace, not recruit, etc.) but also positive obligations (including to provide services)?

Secondly, if it is difficult for experts in international public law to navigate the international legal and normative framework (refugee law and IDP laws and policies, including the Guiding Principles), it is even more so for ANSAs. Few ANSAs are aware of the Guiding Principles or any norms or guidelines they should implement regarding the prohibition of forced displacement or the protection of displaced persons. Consequently, certain violations are being committed due to lack of knowledge and not necessarily always with the intent to harm displaced persons.

Thirdly, the possibilities for implementing the Guiding Principles depend on ANSAs' capacities, resources and control of territory. Some have greater human resource capacities (such as civilian wings/administration) or greater material resources. Expectations are accordingly higher for these ANSAs to give direct assistance to displaced persons and provide basic health care and education. For those ANSAs with more limited means, engagement will therefore rather focus on facilitating humanitarian access and

preventing forced displacement. Defining in practice to what degree different ANSAs can, and should be required to, implement the Guiding Principles is a difficult balancing act.

Fourthly, the purpose of humanitarian engagement with ANSAs should not be to favour the creation of parallel services and the duplication or replacement of State-provided services, as this could further weaken State institutions already affected by the conflict or crisis. On the other hand, in the absence or very limited presence of State or other actors' services, having ANSAs offer basic services can be the only realistic solution.

Finally, some ANSAs with a very strong ethnic or religious agenda commit acts of forced displacement not for short- or medium-term military reasons but because this is one of their organisation's key objectives, as for some ANSAs in DRC whose declared objective is for a certain ethnic group to dominate an area and/or to expel another ethnic group. In cases like this, changing policy and practice with regard to preventing forced displacement is undoubtedly challenging.

Despite these challenges, direct engagement with these actors is critical for concrete changes to be achieved. It is key to building not only the requisite knowledge of the Guiding Principles but also the political will and accountability of ANSAs to fulfil their obligations towards IDPs.

Carla Ruta CRuta@genevacall.org
Thematic Legal Adviser

Héloïse Ruaudel heloise.ruaudel@gmail.com
Humanitarian Policy Analyst and Research Consultant

Pascal Bongard PBongard@genevacall.org
Head of Policy and Legal Unit

Geneva Call <https://genevacall.org/>

1. See *Forced Migration Review* issue 37 'Armed non-state actors and displacement' www.fmreview.org/non-state

2. Geneva Call (2013) *Armed Non-State Actors and Displacement in Armed Conflict* bit.ly/Geneva-Call-ANSAs-2013

3. www.theirwords.org

4. This statement was made in the framework of the Geneva / Darfur Humanitarian Dialogue, organised by the Geneva Centre for Humanitarian Dialogue. bit.ly/Geneva-Darfur-Hum-Dialogue-2008