



Ends & means:
human rights approaches
to armed groups



About this publication

Sri Lanka, Sierra Leone, Kosovo, Rwanda, the Philippines, Chechnya, Somalia, Northern Ireland, Spain. Armed groups are active in numerous civil conflicts. Considered "terrorists" by some, and "liberation fighters" by others, there can be no doubt that such groups have been responsible for serious abuses of human rights.

These abuses primarily affect civilians who are caught in the conflict, but they raise many concerns for organisations that work for peace, protect human rights, or provide humanitarian relief. Increasingly, those working in conflict situations, are faced with the problem of reducing or putting a stop to the abuses committed by armed groups. Human rights organisations, humanitarian relief workers, and staff with UN and other international agencies, are grappling with the issue of how to ensure armed groups (as well as states) respect international standards.

What can be done to influence the behaviour of armed groups? What obstacles are faced by those who undertake them? What factors make an armed group more or less likely to respect human rights and humanitarian norms?

Based on research in ten countries, an international meeting, and consultations in a number of countries, this report discusses these questions. It sets out a framework for analysing the problem of how to encourage armed groups to respect human rights.

"...congratulations on a carefully worded, comprehensive and rich report. I look forward to circulating the final version to staff, and using this to adapt into analysis and advocacy strategies."

Nicola Reindorp, Policy Department, OXFAM, UK

"I have read it with great interest and would like to congratulate you on your work, which will be very useful."

Marion Haroff-Tavel, ICRC, Geneva, Switzerland

"We have read through the report and we have found it excellent."

Henry Odraa Raga, Executive Secretary,
Fellowship of Reconciliation, (JYAK), Uganda

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PREFACE

Few human experiences can be compared to the condition of living through internal conflict. It creates a world of harrowing fear and mistrust, layered with dishonesty, in which social relations are corrupted by propaganda and clandestinity and intimidation, in which each person carries intimate burdens of guilt and collusion and self-disgust. Its demons are private as well as public.

In reading this report, we ask those who are now living in such conflicts to be tolerant. It cannot communicate their preoccupations or the nature of their experiences – personal, visceral, extraordinarily detailed; nor describe adequately what they have coped with – the death and betrayal of friends, the bitter dislocation of family and generations, the private collusions and sacrifices which haunt them in moments of dark reflection. Nor can it portray the enormity and frailty of belief that is involved – the realisation or corruption of ambitions and dreams for which they have risked their lives and the lives of those most close to them.

As great literature has shown, such wars strip people to their most heroic, tragic and inhumane essentials. They are passionate, life-threatening and life-changing events that frequently dominate and impose themselves on the lives of those who live through them.

Those who have not done so cannot mimic the experience and we make no attempt in this report to communicate it. The report should be read, not like a novel or a history, but like a map – for pointers and alternatives and options; ways to proceed. It makes no decisions for those who are confronted by the morally harrowing and often mortal choices that are forced upon them by insurgency and counterinsurgency and terror. In the end, such decisions can only be made by those who face them.

Robert Archer
Executive Director
International Council on Human Rights Policy

ACKNOWLEDGEMENTS

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Researchers were commissioned to write papers on civil conflicts in ten countries. Their papers provided a substantial part of the research base for the report. The Researchers are listed below. The countries they researched are in brackets:

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- Samuel (Kofi) Woods** National Director of the Catholic Justice & Peace Commission in Monrovia, Liberia (1991-98). Currently at the Institute for Social Studies in the Hague, The Netherlands.

We would like to thank those who have contributed but who, for security reasons, have not been identified. The Council also acknowledges the contribution of Ignacio Saiz and Carlos López-Hurtado, who translated research papers.

Consultation

The research for this project began in March 1999. In September 1999 a 3-day discussion of the issues was held in Geneva to compare the experience in different countries. A list of those who attended the meeting is included in Annexe I.

A draft report was completed in November 1999 and sent out for comments in December 1999. In all more than 600 copies of the draft report were circulated to groups and individuals in over 60 countries. During the consultation phase, which lasted until mid-April 2000, the report was discussed at meetings in Colombia, Egypt, the Philippines, South Africa, Sri Lanka, Turkey, and the United Kingdom, where members of the Research Team were present. In all, over 50 substantive comments were received. A list of those who provided comments is set out in Annexe III.

We wish to thank the Cairo Institute for Human Rights Studies, the Colombian Commission of Jurists, the Turkish Human Rights Foundation (and Helmut Oberdiek), the Civil Rights Movement in Sri Lanka, Quaker Peace and Service, UK and the Institute for Popular Democracy (and Myrna Alejo) in the Philippines for arranging discussions on the draft report (and in some cases for providing translated versions of the draft report to facilitate those discussions).

We wish to thank all those who have contributed to the project to date. This report, however, and the opinions expressed in it, are the sole responsibility of the International Council.

One: INTRODUCTION

Violent and deadly conflicts are currently taking place in at least 25 countries¹. In many others, there is potential for violent conflict. As numerous studies have made clear, a key feature of these conflicts is the widespread violation of human rights. Civilians are attacked and bombed, refugees are massacred, and whole populations summarily deported or terrorised into fleeing. Civilian property is destroyed or plundered, relief supplies stolen and crops deliberately burnt and those who depend on them are left to starve. Women and children in particular are at the mercy of soldiers who might rape them or forcibly recruit the children. Captured soldiers risk being summarily shot, or imprisoned in sub-human conditions. The wounded and those who care for them are attacked. Anyone suspected of collaborating with the opposing side is at risk too of being shot or detained indefinitely. Journalists and others who try to report on the war or its effects are often silenced through intimidation, imprisonment and murder.

Most of these conflicts take place within and not between states. In 1998, only two of the 25 major conflicts in the world were wars between states. As a result, in addition to forces under the control of governments, a bewildering variety of organisations, in widely different contexts, have taken up arms against the state (or are armed and outside state control). These armed groups are a key feature of modern conflict.

Increasingly, people living or working in situations of internal conflict must engage with these groups. Usually, they need to be involved in peace settlements if these are to be successful. Where they control territory, they are *de facto* the "government" and their agreement is needed to conduct economic activity or deliver humanitarian relief. In many instances, other governments make alliances with them and foreign organisations link up with them out of sympathy for their cause. Whether or not they embrace their ideals or objectives, populations living in areas controlled by armed groups must accommodate their political and economic demands.

In these circumstances, it is not surprising that human rights organisations often find themselves faced with the problem of human rights abuses committed by armed groups². Humanitarian organisations too are increasingly preoccupied with

¹ According to the *SIPRI Yearbook 1999*, in 1998 there were 27 major armed conflicts in 26 different locations and all but two of these were wars inside, not between, states. *SIPRI Yearbook 1999, Armaments, Disarmament and International Security*, Oxford University Press, 1999.

² The use of the term "human rights abuses" is explained further on in this chapter. We use the term as a shorthand way to describe conduct that is prohibited under standards of international humanitarian law and/or international human rights law. There is disagreement about whether non-state actors like armed groups can "violate" human rights law, or whether this law applies only to states. We look at this and other legal issues in Chapter Five.

the need to ensure armed groups respect their operations, or the safety and dignity of the populations they assist. This is true of national and international bodies, from large United Nations (UN) agencies to small local non-governmental organisations (NGOs).

For all these organisations, dealing with armed groups has raised difficult questions. How should armed groups be judged? Should human rights and humanitarian organisations apply the same standards that are used to judge and restrain the behaviour of states? Is such an approach appropriate or likely to be effective? Can the techniques used to encourage states to respect human rights be applied with the same effect to armed groups? Are armed groups vulnerable to international embarrassment in the same way as states? Are some armed groups so far beyond the pale that there should be no dialogue with them? Does dialogue imply recognition and therefore legitimacy? Is a national NGO able to criticise an armed group without appearing to support the government which itself may be guilty of grave abuse? If human rights organisations begin or increase work on abuses by armed groups, what effects will this have on the status of their relationships with states? Do human rights organisations risk undermining efforts to hold states accountable for human rights violations if they devote increasing attention to abuses by armed groups?

Methodology

This report tries to answer these questions. It is the result of a 14-month research project that addressed three questions:

- What types of action have been taken, by different actors, to influence armed groups to respect human rights?
- What types of action have been successful?
- What have been the obstacles to taking action, or to making that action effective, and how might these obstacles be overcome?

In the first phase, researchers in ten countries were commissioned to report on efforts that had been made at national levels to encourage armed groups to respect human rights, and the problems that had been encountered³. Papers were submitted on experiences in Colombia, El Salvador, Northern Ireland, the Philippines, South Africa, Somalia, Sri Lanka, Sudan, Turkey and Uganda. The research papers focused on efforts undertaken by national actors.

In the second phase, these papers were discussed at a meeting with the authors where international organisations contributed their perspective. In addition, we invited people with experience of countries other than those covered in the first phase⁴. A draft synthesis report was then prepared which drew on this discussion and the papers.

³ The list of questions used to guide the country research papers is set out in Annexe II.

⁴ The list of participants at this meeting is set out in Annexe I.

To encourage broader debate and reflection the draft report was distributed for comment in December 1999. The draft was sent to over 600 individuals and organisations in over 60 countries, including national and international NGOs, staff in intergovernmental organisations (such as the UN), academic and research institutes and government officials. We sent the draft report to those working on issues related to human rights, humanitarian relief, and peace and conflict resolution. Meetings were also held in a number of countries to discuss the draft report, including Colombia, Egypt, the Philippines, Sri Lanka, Turkey and the United Kingdom. In this final report we have incorporated points raised in these discussions as well as comments we received from individuals who read the draft.

Purpose of the report

The purpose of this report is to provide a framework that will be useful to those grappling with the problem of reducing or ending human rights abuses committed by armed groups. The report sets out a list of actions that might be taken to influence the behaviour of armed groups, and assesses their relative strengths and weaknesses. It further suggests the factors that should be considered when deciding which actions are likely to be most effective in any given set of circumstances.

The report provides few examples and does not describe any country situation or armed group in detail. Some of those commenting on the draft report argued that case studies and greater use of examples would make the report less "theoretical" or "abstract". This is a fair point. We have not taken it up for two reasons. First, since the intention is to suggest a general framework, we felt detailed case studies might detract from the overall purpose. Discussion of particular situations inevitably leads to debate about facts and the conclusions drawn. Second, since the report is directed at a very diverse group of actors, we cannot assume even basic knowledge about the history and context of particular internal conflicts. As a result, the introduction of examples would lengthen the report considerably. Most of the comments we received suggested the framework itself was helpful⁵.

This report is written, first of all, for national organisations working in conditions of internal conflict that are trying to limit abusive practices by armed groups or are interested in doing so. We hope too that non-governmental organisations at the international level will find the report useful. It may also be of interest to governments and intergovernmental organisations, like the UN, that have become increasingly preoccupied by the abuses committed by some armed groups. Finally, the report may be read by people linked to armed groups, who wish to introduce procedures that ensure the movements they support respect the rights of civilians and the laws of war.

⁵ For those interested in more detail, the country reports prepared as part of the research process can be found as working documents on the web site of the International Council on Human Rights Policy at www.international-council.org.

A number of recommendations are set out in a concluding chapter that we believe might guide further action and research in this area.

Heroes and demons

The issue of violence by armed groups, and the human rights abuses they commit, evoke strong passions and disputes. People are bound to disagree about whether it is legitimate to engage in armed violence in order to bring about change, even when the motive is to end injustice.

It is not our intention to say that particular groups are “bad”, or “good”. Clearly, some armed groups have carried out horrifying human rights abuses that deserve to be condemned in the strongest terms. Other groups, while still responsible for condoning acts of murder, torture and rape, recognise the need to limit such abuses. Some have managed, indeed, to introduce procedures aimed at protecting rights and reformed themselves after abuses have occurred. In general, armed groups have a mixed record. Some have earned widespread respect and support at home and abroad, while others have destroyed their societies and committed apparently senseless and irrational violence. It seems clear from our research that no simple generalisation or moral judgement can easily be made about the behaviour or characteristics of armed groups as a category. It is equally clear, however, that people do make judgements, and that their willingness to criticise abuses by an armed group is very frequently influenced by whether they are sympathetic or unsympathetic to the cause it represents.

In short – it is an obvious statement – it is not easy to avoid the politicisation that colours much discussion of armed groups and human rights. This in itself is a serious obstacle to influencing their behaviour. Treating armed groups unquestioningly as “liberation movements” has clearly led some defenders of human rights to overlook abuses that should have been condemned. Stereotyping armed groups as “primitive” or “terrorists” has just as clearly prevented forms of action that, even in extreme conditions, can help to protect civilians and reduce abuses.

There is no escape from the fact that some armed groups do engage in extreme and unjustifiable violence. When civilians who pose no threat are massacred and when the limbs of children are hacked off, the killers do appear as “inhuman”. It is unreasonable to urge the victims or their family members to be tolerant or to be detached or objective. Nevertheless, strategies to change an armed group’s behaviour, however dehumanised that group may be, are not likely to succeed if they involve dehumanising the group even further.

Some of those who read and discussed the draft of this report argued that it was essential to point out that some armed groups are fighting wars of liberation or self-determination. Certainly, some groups who take up arms appear to many to be fighting for legitimate reasons (in some cases, even for reasons that might find

some support in international law). While this is so, however, few would argue that such legitimacy justifies abuse of human rights. The focus of our research, and this report, is not on the underlying causes of internal conflict, but rather on ways to reduce or put a stop to the abuses committed by those who take up arms against the state – whatever their motive. Nevertheless, the issue of legitimacy cannot be ignored and in Chapter Three we discuss how perceptions of the legitimacy of an armed group's struggle affect these efforts.

This report concentrates on abuses committed by armed groups. We should emphasise at the outset that this does not imply that abuses by states deserve less attention. Our starting point is simply that armed groups do commit abuses, and these should not be ignored. We discuss briefly in Chapter Two some of the reasons why, in the past, abuses by armed groups have not always been taken up by human rights and humanitarian organisations. For similar reasons, we have not attempted to compare the abuses committed by armed groups and those committed by states. The point is simply that abuses by armed groups deserve attention, whatever form they take and whatever their level.

There has been speculation about the relative level of activity of armed groups in the post-Cold War period, and the scale of the abuses they commit. Conventional wisdom is that these levels are rising. While we noted above that armed groups are a key feature of modern conflict, one should not assume that they are a new phenomenon or that their influence is growing. Though the number of internal conflicts did jump upwards in the early 1990s, it is at present either steady or declining. In addition, though it is difficult to count the number of armed groups accurately, as far as we are aware there is no evidence that the number has increased dramatically in recent years. It is, on the other hand, true that much greater attention is being given to the problems posed by armed groups. In other words, it is not so much the scale of the problem that is novel but the attention it receives.

One final point deserves mention. This report does not say that any particular organisation should take up the issue of abuses by armed groups. There is broad acceptance of the idea that in situations of internal conflict independent monitors ought to consider abuses by all parties to the conflict. However, it is equally clear that some organisations focus only or predominantly on abuses committed by states and do not focus at all on abuses committed by other forces. We do not wish to question the validity of such decisions. Organisations must be entitled to make their own decisions on this point.

Terminology and working definitions

Before proceeding, we should clarify the use of certain terms.

Armed groups

In this report, by “armed groups” we mean groups that are *armed and use force to achieve their objectives and are not under state control*. A number of other

terms are often used to describe such groups, including “armed opposition groups”, “non-state entities”, “non-state actors”, and “non-governmental entities”. What these terms have in common is an attempt to find a neutral terminology that captures the idea that the group uses force and operates beyond state control or authorisation.

The need for a neutral term should be clear. Those who oppose armed groups often describe them as “terrorists” or “bandits”. The groups often describe themselves as “liberation fighters” or “revolutionaries”. The terminology is partisan. We have therefore chosen a term that, we hope, is neutral. Both term and definition nevertheless, require further explanation.

Armed groups take numerous forms. Usually they operate in opposition to the existing state or government. Often their aim is to overthrow that government. Sometimes it is to achieve autonomy or independence for part of the territory of a state. This said, not all armed groups operate in clear opposition to a state or government. In Somalia, there is no recognised national government and various armed groups fight each other for resources and territory. In the Democratic Republic of the Congo, at least three distinct armed groups (as well as foreign armies) have been fighting government forces *and* each other.

Nevertheless, all these groups have a recognisable political goal. This distinguishes them from armed groups that pillage but appear not to have a coherent political project and also from organisations that are merely criminal, like the Mafia or triad gangs. Even here, classification is not simple. Some armed groups with stated political goals resemble criminal organisations in their behaviour, so that it is difficult to say what they are with any certainty. According to the ICRC:

*Amongst armed groups, the distinction between politically-motivated action and organised crime is fading away. All too often, the political objectives are unclear, if not subsidiary to the crimes perpetrated while allegedly waging one's struggle... . Are we dealing with a liberation army resorting to terrorist acts, or with a criminal ring that tries to give itself political credibility? Are we dealing with a clan-oriented self-defence militia relying heavily on criminal funding, or with a Mafia-like gang whose constituency is strongly intertwined with ethnic communities?*⁶

It may be argued of course that the behaviour of some governments is blurred in similar ways. Whatever the case, it is clearly unwise to categorise armed groups in terms that are too simple or too rigid. Precisely because of the blurring between “political” and “criminal”, we have not injected a distinctly political element into our definition, though most of our enquiries did concern groups that were, in one form or another, contesting political power.

⁶ “Holding Armed Groups to International Standards: An ICRC contribution to the research project of the ICHRP”, ICRC, 1999, Geneva, pp. 2-3.

The definition above refers to armed groups *not under state control*. Three issues need clarification here. First, certain armed forces have set up an autonomous “state” in territory they control but are not internationally recognised. Examples might be the Taliban in Afghanistan, the Kurdish Authority in northern Iraq, and northern Somaliland. Are the authorities in these areas to be treated as “governments” of “states” or as “armed groups”? Again, there is no easy answer here. At a certain point it will make sense to treat these authorities as “states”. Factors such as the extent of their *de facto* authority (is it uncontested?), the nature, stability and authority of the governing institutions they have established (are there police forces, a civil administration and courts?) and the amount of territory they control (is it politically and geographically viable?) are relevant. But the diversity of real-life situations works against establishing firm criteria.

A second problem concerns the classification of paramilitary forces that operate in apparent support of an existing government. Of course, where governments acknowledge their control over such groups it is the government that must be held accountable for their behaviour. But, in many situations where paramilitary forces operate, governments deny they have any control over them. In some conflicts, such militia forces have been responsible for some of the worst human rights abuses. Examples might be the paramilitary forces in Colombia (the *Autodefensas Unidas de Colombia*), which find their origin in self-defence groups set up and authorised by the state and that worked closely with the military. Even though they are now illegal, and the government regularly denounces their activities, the evidence of their continued collusion with state military forces leads many (though not all) to conclude that they should still be treated as *de facto* state forces.

It is not always easy to distinguish a paramilitary force that enjoys implicit state support from a genuinely autonomous armed group. In Northern Ireland, Loyalist armed groups have carried out attacks on the Catholic community, in opposition to the Irish Republican Army (IRA) and nationalism in general, and generally have not attacked state forces. It is clear that Loyalist armed groups are not under the control of the state, and they are treated by a number of human rights organisations as autonomous forces that deserve separate attention. At the same time, there have been reports of collusion between elements of state security forces and Loyalist armed groups in carrying out certain attacks.

In the draft of this report we suggested that, where evidence suggests that the government or army do exert control over paramilitary groups, it makes sense to hold the government accountable. We ruled that such cases were outside the scope of this report. However, several people wrote to us disagreeing with this approach, or suggesting our classification was too simple. Paramilitary groups set up and/or controlled by the state (but kept at arms length so as to deflect charges of responsibility) can acquire a life of their own. They may come to exercise

significant autonomy even where, broadly speaking, they continue to operate in ways that support the government or its armed forces (for example, by attacking groups opposed to the government). As one commentator noted (referring to Turkey):

“There are some armed groups which are established by state security officials and ‘controlled’ from a distance. These kind of ‘controlled’ groups are used for eliminating ‘uncontrolled’ groups and when government forces eliminate or begin to ‘control’ the ‘uncontrolled’ they focus on the ‘controlled’ group and also eliminate it.”

Other examples might be the Kamajors in Sierra Leone and the so-called “Ninjas” in Congo (Brazzaville). A different situation arises when a paramilitary group switches allegiance and turns against state forces that sponsored it — for example, where the government changes. No doubt other examples can be found that defy easy classification.

There are good reasons for continuing to hold the state responsible for the actions of paramilitary groups. Where these groups are set up precisely to deflect attention from the state, addressing the groups directly could undermine efforts to insist on state accountability. Where the degree of “control” is unclear or changing however, and it appears that the forces in question do have autonomy (even if they act in a way that lends support to the government), addressing the government alone may prove ineffective. It may be that, in addition to the question of control, a further test is one of effectiveness. Would direct approaches to the “armed group” prove more effective than holding the state alone accountable?

Finally, when we say that an armed group is “not under state control” we refer to control by the state in which they are fighting. As several commentators pointed out, it is certainly the case that many armed groups are sponsored by foreign governments that exert varying degrees of “control” over them. Some armed groups are little more than the proxy armies of such states. We look in more detail at this issue in Chapter Three. As with the problem of paramilitary forces discussed above, there will be situations where the degree of control exercised by a foreign state is such that direct approaches to the armed group it sponsors are pointless, or even counter-productive.

Human rights abuses

What do we mean by “human rights abuses”? To what abuses are we referring?

In this report, the term “human rights abuses” is used to describe *conduct or practices that clearly infringe standards of international law*. These standards are those set out in international humanitarian law and/or international human rights law.

International humanitarian law is the term used to describe the many treaties and rules that deal with the protection of victims of war (e.g. prisoners, the wounded

and sick, civilians) and set limits on the conduct of warfare. The most important rules are found in the Four Geneva Conventions of 1949 and their two Additional Protocols of 1977.

International human rights law is made up of many different treaties and standards. The most important are the Universal Declaration of Human Rights and the two International Covenants — on Civil and Political Rights and on Economic, Social and Cultural Rights. Human rights treaties also cover the rights of the child, the elimination of discrimination against women, racial discrimination, and the prohibition of torture. In addition, the UN has adopted many texts that are not formal treaties (which states sign and ratify): these establish principles or guidelines in certain areas, for example on the treatment of prisoners, or the investigation of arbitrary killings.

Though there are real differences in approach, international human rights and humanitarian law overlap in situations of internal conflict. In relation to armed groups, nevertheless, there are problems in applying either body of law. International human rights law was developed for the most part to regulate the conduct of states towards their own citizens. It is unclear to what extent it can be directly applied to armed groups. While international humanitarian law does apply to all parties to a conflict (including armed groups), its rules apply in internal conflicts only if the latter are of a certain intensity. Even when humanitarian law does apply, the rules in relation to internal conflict are somewhat sparse. We look at these legal issues in more detail in Chapter Five.

Uncertainty about the law even creates problems in choosing the correct terms to describe intolerable conduct. Without pre-judging the legal debate, in this report we speak of “human rights abuses” or “abuses” to cover conduct or practices that are prohibited by humanitarian law or by human rights law or by both bodies of law⁷.

⁷ It was suggested to us that using the term “human rights abuses” does pre-judge the legal debate as to whether international human rights law applies to armed groups because it implies that human rights norms are more significant than humanitarian law. This is not our intention. We could, of course, avoid this impression if throughout the report we used the term “abuses of human rights and humanitarian norms”, but that would be cumbersome. We could also just refer to “humanitarian abuses”. We feel the term “human rights abuses” is justified both because it is common practice (it is for example the phrase Amnesty International uses) and because the wider public thinks of armed group abuses in these terms. On this last point, the ICRC’s international survey *People on War* is revealing. The survey found that most people conclude that certain kinds of conduct in warfare are “wrong” because they infringe human rights and human dignity. Overall, 49% of respondents explained judgements they made about wrongful conduct in terms of “human rights”, by far the highest reason cited. See *The People on War Report: ICRC worldwide consultation on the rules of war*, ICRC, October 1999, at p. 15.

The following list includes some of the most common human rights abuses attributed to armed groups:

- *Arbitrary deprivation of the right to life.*
Includes killing or massacres of civilians, indiscriminate attacks leading to civilian deaths, killing of captured combatants, killing of suspected “informers”, “traitors” or independent critics (e.g. journalists), civilian deaths resulting from starvation and disease due to deliberate destruction of crops or withholding or preventing access to relief supplies.
- *Disregard for the protection owed to civilians caught up in conflict.*
Destruction of civilian property, (homes, crops, livestock), attacks on civilian buildings like hospitals and schools, or property with religious or cultural significance, disregard for protection owed to medical and religious personnel, interfering with delivery of relief supplies, attacks on humanitarian workers, blockades of civilian settlements.
- *Interference with freedom of movement.*
Forced movement and deportation of people, expulsions of populations on grounds of racial, ethnic, or religious background, denying access to safety to internally displaced persons or refugees, or forcing them back into unsafe areas, detention of refugees or displaced persons.
- *Interference with freedom of expression, assembly and association.*
Preventing independent organisations from operating, banning meetings and gatherings, using fear and intimidation to silence critics, denying journalists access to areas, closing independent media, using media to spread hatred or to incite violence.
- *Torture, ill-treatment.*
Torturing captured soldiers or suspected informers to extract information, holding prisoners in inhuman or degrading conditions, mutilations, beatings and other cruel punishments to sow fear, enforce orders, punish delinquents, or indoctrinate recruits, using villagers as forced labour.
- *Abuses against children.*
Forced separation from family, forced abduction into the armed group as combatants or labourers, deliberate denial of access to education, sexual abuse.
- *Abuses against women.*
Rape, abduction into forced prostitution or sexual slavery, reprisal attacks against family members, gender-based discrimination.
- *Arbitrary deprivation of liberty and due process.*
Mass detentions of suspect groups or populations, taking and holding of hostages, forced disappearance of persons, “trials” against informers without due process.

Two: TRENDS IN HUMAN RIGHTS ADVOCACY

Though there are some exceptions, those national and international human rights organisations that work on abuses committed by armed groups have begun such work relatively recently. The fact that human rights law has historically focused on the responsibility of states partly explains why they did not begin to deal much earlier with the suffering caused by armed groups. After all, armed groups are not new phenomena – they have existed, and have committed abuses, throughout history. Understanding why such abuses have not been addressed seriously in the past, and why they are attracting attention now, is important to understanding how to work on them more effectively in the future.

The traditional focus of human rights advocacy has been on governments and forces acting under government control. The very idea of “human rights” has been defined, broadly speaking, by two sets of actors – governments and international non-governmental agencies. Under pressure from the latter, governments have drafted an increasingly comprehensive set of international standards that spell out their human rights obligations. The structure of international human rights law, including its mechanisms for implementation, is almost wholly focused on the conduct of states, not armed groups (or indeed other non-state actors such as business).

Seen in its historical context, this focus made good sense. Efforts to ensure that human rights were protected in international law began in earnest when the UN was founded at the conclusion of the Second World War. It was the atrocities committed in that war which moved Member States of the UN to commit themselves to developing and abiding by an international standard of human rights. By and large, the atrocities uppermost in drafters’ minds were committed by all-powerful states. The negative force that needed to be held in check was the unbridled exercise of state power.

Today there are many signs that this emphasis is changing. Governments are increasingly using the language of human rights to express concern about the behaviour of armed groups. Discussions and decisions in UN bodies (like the Security Council and the Commission on Human Rights) sometimes refer to or make demands upon armed groups. New treaties developed in the last few years include armed groups within their scope (this is true of the treaty banning landmines, the treaty establishing the International Criminal Court, and the new protocol banning the participation of those under 18 in combat)⁸.

With notable exceptions, UN Member States are more willing now to deal with conflicts *inside* countries. The old shield of sovereignty (used to prevent international scrutiny of internal conflicts) is weakening. It follows inevitably that

⁸ The way these and other legal standards address abuses by armed groups is discussed in Chapter Five.

the UN and its Member States need to address the role played by armed groups in such conflicts and the abuses they commit.

International non-governmental agencies also shape the human rights agenda. Their concerns often define the public's perception of "human rights". Yet international human rights groups did not begin to *systematically* monitor and report on abuses by armed groups until about ten years ago, for reasons which are similar to those that explain the lack of UN attention to such abuses⁹. International human rights NGOs also built their work round the standards and structures of international human rights law. Moreover, states were the strongest opponents of their aim to create a regime of *international* human rights protection. It therefore made sense at that time to concentrate on state abuses, to win the argument that domestic state policies should be subject to international control. There was also the legitimate fear that putting the spotlight on armed groups would undermine these efforts. Far fewer states now claim, on grounds of sovereignty, that the UN or outsiders should be barred from examining their human rights record. This partially explains why international human rights organisations are now more willing to look at abuses by armed groups, though fears remain about how states might manipulate this work. Additionally, just like the UN, international human rights organisations now monitor internal conflict more actively and therefore face the issue of abuses by armed groups more often.

As we said above, the purpose of this report is to provide a framework helpful to organisations that wish to engage with armed groups on human rights issues. As such, it is not directly concerned with whether or not organisations should engage. This question nevertheless preoccupies staff in many organisations working on human rights, whether they work in NGOs, national human rights commissions or humanitarian relief organisations. When commenting on the draft of this report some people expressed concern that by identifying and legitimising a "trend" in favour of giving more attention to abuses by armed groups, our report could call into question their own decisions not to take up abuses by armed groups.

There are a number of good reasons why an organisation concerned with human rights and/or humanitarian issues might choose to limit its monitoring and advocacy work to cases where the government is responsible. Issues such as the safety of staff, resource and capacity constraints, the risk of government manipulation, and the general political context are all relevant. So too is the concern that actions taken might appear as giving recognition or legitimacy to the armed group. In addition, some groups fear that confusion over the applicable legal rules means there is no solid normative basis for any actions they might take. In Chapter Three we look at some of the constraints faced by different actors, and

⁹ During the 1980s the Americas division of Human Rights Watch did report on abuses committed by armed groups when monitoring the civil wars in Central America.

in Chapter Five at the legal issues. At this stage, it is perhaps only worth noting that national organisations and international organisations face different constraints. With regard to the former, consultation on the draft of this report confirmed to us the importance of not making judgements from the outside about what particular organisations should be doing.

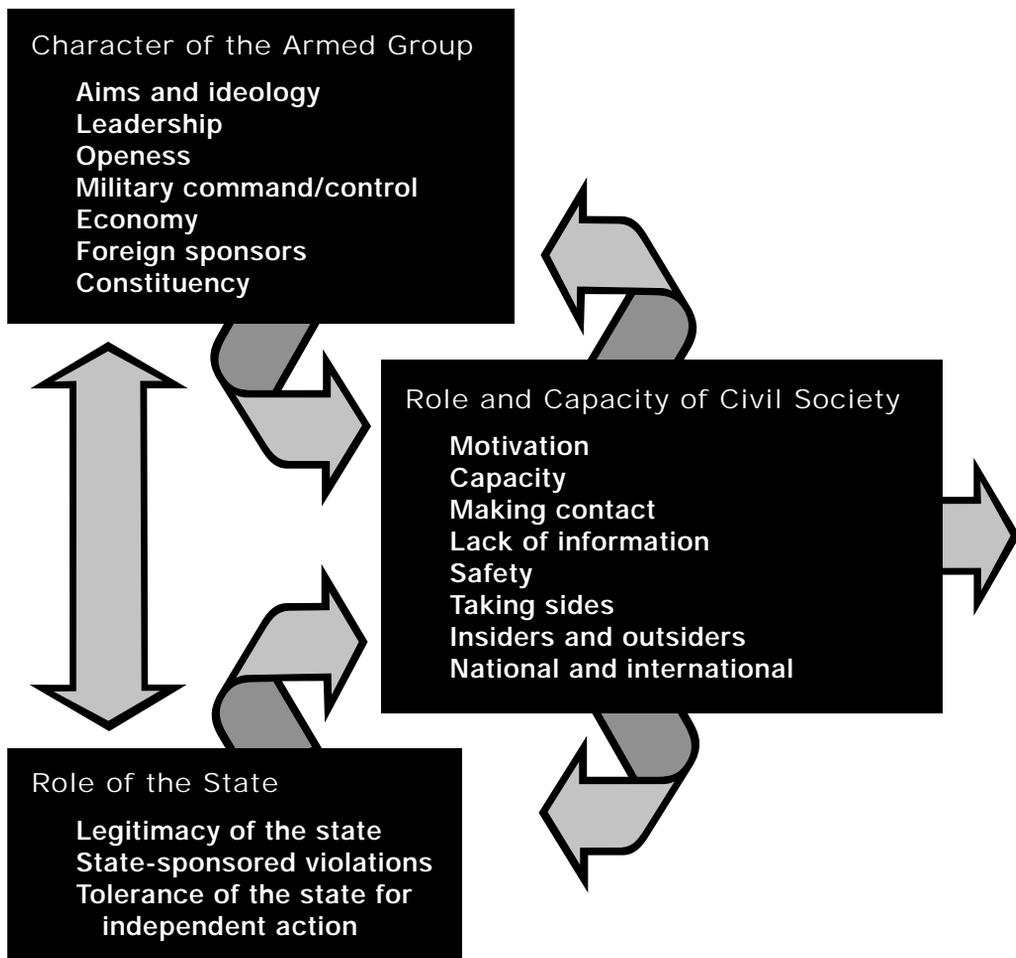
A point should be made about humanitarian organisations. Though there are important areas of common ground, the humanitarian tradition differs in many respects from the human rights tradition. Historically, those who provided humanitarian relief placed the delivery of the assistance above all other considerations. Their aim was to help those who needed it, rather than ask what circumstances had caused their plight. For many, the tradition was one of service, involving strict neutrality, unlike the campaigning tradition that marked out the human rights movement. Only some, most notably the International Committee of the Red Cross (ICRC).

This separation has become less clear as time has passed, and many humanitarian organisations now emphasise protection and human rights concerns. The humanitarian and development agencies of the UN are “mainstreaming” human rights, thereby accepting that their policies and objectives will reflect international human rights law. Many NGOs, perhaps most prominently the Oxfam family and *Médecins sans Frontières*, have publicly adopted a pro-rights approach to their work. Almost inevitably, therefore, humanitarian and development organisations are giving closer attention to the role of armed groups, because the latter frequently threaten the security of their operations and their staff as well as endanger the welfare of those the agencies protect.

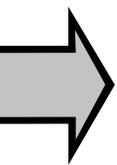
Three: INFLUENCING ARMED GROUPS – A FRAMEWORK FOR ANALYSIS

What types of action are possible for those seeking to ensure armed groups respect human rights? What factors should be considered in choosing between different types of action? These questions are discussed in this and the following chapter. The framework we are suggesting can be simply stated: first analyse the context, then consider what actions are appropriate. The following diagram sets this out schematically:

CONTEXT



ACTION



Punishment

Shaming and Persuasion

Working with Armed groups

International criminal
prosecutions
Sanctions

Fact-finding and denunciations

Use of media

Dialogue

Points of entry

Engaging constituencies

Assistance for reform

Developing codes of conduct

Direct services

Conflict resolution/peace campaigns

Any organisation that is developing a strategy in relation to armed groups needs to analyse the context in which that strategy will be applied. What is the nature of the armed group? What is the character of the conflict (what level of risk is involved)? What is the nature of the government and armed forces? What is the role and influence of international actors and other states? What are the organisation's own strengths and weaknesses (what are the strengths and weaknesses of "civil society" as a whole)?

In the diagram above, these questions are organised under three headings:

- the character of armed groups;
- some indicators in relation to civil society; and
- questions regarding the role and behaviour of states.

Each heading is discussed in more detail below, and the various factors that arise are explained. The headings are inter-related: the character of the armed group is conditioned by the legitimacy of the state (and vice-versa), the ability of civil society groups to engage is dependent on the state's tolerance of their actions, etc.

The aim is not to form simple conclusions or prescribe procedures for action, but to suggest ways of thinking about the issues that may help human rights work in relation to armed groups to be more successful.

Character of the armed group

To start with, as we have said already, armed groups take numerous forms. They have different ideologies and command structures and histories and leaders. Their bases of support differ as do their economic and political organisation. No list will adequately reflect their variety. But what is it about an armed group that makes it more or less likely to respect human rights – or listen more open-mindedly to complaints about abusive practices? Is it possible to identify characteristics that will predispose armed groups to respond positively (or negatively) in relation to human rights? What is the role of ideology? What is the role of the military command structure? How important are factors such as the legitimacy of the armed group in relation to the communities in which it operates?

Aims and ideology

What is the armed group fighting for? What sort of political programme or ideology (if any) does it espouse?

Many armed groups have some sort of end-goal as their stated aim. Some aim to establish an independent state, in the manner of anti-colonial liberation movements. Some are secessionist movements. Some aim to change the government of an existing state. In all these cases the aim is compatible with the international norm that divides the world into sovereign states. Such groups may well be sensitive to human rights norms since they will understand that a certain conduct is expected of states that expect to join the international community.

Other armed groups have vaguer aims, or do not express their purpose in conventional political terms (for example, the Lords Resistance Army (LRA) in northern Uganda). Yet others subordinate their proclaimed goals to more immediate purposes, including criminal interests in drug-trafficking or racketeering. Such groups are likely to be less sensitive to human rights.

Finally, some armed groups deliberately and consciously reject prevailing international norms. This is true of certain Islamist armed groups. Radical revolutionary movements may also reject the idea of individual human rights, or only partially accept them (for example, by recognising only the rights of peasants or workers). Even where armed groups deliberately reject international norms however, other arguments may influence them to exercise restraint. In the case of Islamist armed groups – or indeed any group basing its struggle in religious precepts – religious norms too generally provide rules for ethical behaviour in warfare (though they might not be as comprehensive as international law).

In some cases, an armed group's statement of aims will include a formal commitment to human rights. This might refer to past violations of human rights to justify the use of arms, and pledge respect for human rights when the group achieves power. For example, in South Africa, the African National Congress' (ANC) "Freedom Charter" included such commitments.

Where there is an explicit commitment to human rights in founding documents, it will obviously be easier to take up such issues with the group. For example, the language in the ANC Freedom Charter proved useful (for those arguing for restraint) when internal debates took place about methods used. Even in the absence of such a commitment, however, elements in the group's ideology may allow human rights issues to be raised.

History becomes an important matter in such cases. Even new groups have a history and that of some armed groups goes back over decades. Many groups claim to represent a secular history of national or ethnic resistance to oppression. Since all historical narratives contain an explicit or implicit vision of justice, these legitimising claims can provide a basis for raising arguments concerning rights and justice. This might apply particularly to revolutionary groups that reject international law.

Of course, the aims and ideology of groups change over time, and armed groups that endure can drift away from their original purpose.

In thinking about a group's ideology it is worth remembering too that armed groups and the movements they represent are not monolithic. Most armed groups are a composite of different political and ideological tendencies, hard-liners and reformers, the war camp and the peace camp, fundamentalists and pragmatists.

An *official* aim or ideology that appears hostile to respect for human rights and

humanitarian norms might be little more than a veneer, beneath which lie many different points of view.

Leadership

Leadership is a particularly important factor. Who is in charge? What determines who has leadership? What intellectual qualities and moral values are leaders expected to represent?

Armed groups are under military or political (civilian) control. In either case they can be authoritarian. Many armed groups are led by a single individual or a small cadre of leaders. In others, by contrast, the leadership is accountable to its members to a significant extent and could be considered democratic. Compare the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka, which is controlled in effect by a single leader with cult-like status, to *Umkhonto We Sizwe* (MK – the ANC’s military wing), which was always under the ANC’s political control and had internal mechanisms of accountability. Where the military leadership is accountable better opportunities exist for advancing human rights claims.

Other aspects of leadership need to be considered. What are the intellectual reference points of those in charge? Some armed groups are led by professional soldiers, intellectuals or politicians with many years’ experience of government. Other groups are led by junior officers, by students or by farmers. Levels of education do not determine the moral qualities of leadership (Pol Pot graduated from the Sorbonne) and poor education does not rule out good decision-making. Nevertheless, where the leadership is poorly educated and has little experience of governing, it is likely to be less sophisticated at many levels. It will be less aware, for example, of legal procedures that are important to protect rights. The question of women’s role (or lack thereof) in the leadership is also relevant. Does the absence of women in either political or military leadership positions make it more likely that abuses against women – or gender discrimination – go unchecked? Or, where women are present in a leadership role, are abuses against women less likely?

How a group is led is often determined by where it originated. Groups like MK in South Africa that originated in a political (and non-violent) opposition are likely to maintain some form of political control. Groups that have only ever had a military logic are more likely to have a military leadership. This is not to say that in every case political and “democratic” leadership will necessarily be more willing to protect human rights, and military, authoritarian leadership less so. In fact, a “supreme commander” may stop certain practices (such as the use of anti-personnel landmines) more quickly and effectively than a more democratic leadership. Where leaders are military, however, internal procedures that enable a review of decisions are less likely to exist.

It seems to be the case that room for discussion of human rights and related matters increases with the historical importance of the political wing of an armed

group. It was suggested in the consultation process that independent actors could usefully urge armed groups to establish some form of democratic and accountable leadership. This will not always be a welcome suggestion, though where the state itself is undemocratic and tyrannical it will be one means of proving a claim to offer an alternative.

Openness

Closely related to the leadership factor is the issue of openness. Is the group open to new members (and are existing members allowed to leave)? Is it tolerant of dissent?

Some groups tightly control membership. There may be rituals of entry; recruits may be forced to separate from their families; they may be required to prove their loyalty by acts of violence or courage. In some cases, mastering the ideology (for example, Maoist doctrine) is itself a sort of test. Groups that tightly control who can join (and leave) often display some of the features more commonly associated with a religious cult. It may be that such "closed" and sect-like groups are more resistant to forms of dialogue.

Some armed groups clearly tolerate dissent more than others. Many factors appear to enter into play on this question. Organisation is one factor – whether the group is organised in small clandestine units, or in larger forces; whether the leadership draws on a wide range of intellectual references or on a closed or narrow ideology. Does the group have international representation (offices abroad) or is it geographically and culturally isolated? Education is another factor. Does a political elite rule over a majority that is largely illiterate? Then there are factors associated with the style of war that is being waged. If the armed group is extremely clandestine, it is easier for leaders to suppress dissent without members becoming aware. Extreme danger, in addition, promotes tolerance of intolerance. Where the leadership of a group has established a tradition of intolerance, it will obviously be more difficult to promote debate that is questioning of authority or make calls for reform of current practice.

Where armed groups form part of a broad movement, containing various tendencies, and arguments about aims and means are allowed or cannot easily be suppressed, more opportunities to advance human rights concerns are likely to arise. There is a better chance that at least some members in the group will be sympathetic to human rights values. If some are convinced that abusive practices should be stopped, they can more easily argue for reform without immediately being branded as traitors.

Many armed groups experience periods of extreme crisis, when the leadership becomes convinced that the group has been penetrated and purges "spies" and "traitors". Our research revealed how frequently such purges have occurred, and how traumatic and sometimes violent they are. Purges appear to run out of

control very easily and sometimes destroy armed groups altogether. Abuses of this kind are prevalent in closed and tightly-controlled armed groups. Where internal dissent is permitted, groups are no doubt less likely to engage in runaway purges and abuses associated with mistrust of their own members or their constituency.

In fact, many armed groups do have a distinctly authoritarian character. Some could be described as totalitarian in that their leadership – often a confined group with a narrow political vision – demands absolute adherence of members to the party line and deals ruthlessly with all real or imagined deviations.

Much of the work on armed groups that has been done by human rights organisations has concentrated on acts of physical violence against civilians or unacceptable treatment of enemy combatants. A strong case can be made for saying that human rights organisations should give more attention to the political control exercised by armed groups and the suppression of basic freedoms. Certainly work should be done to protect and defend the basic liberties of non-combatants living in territory controlled by authoritarian armed groups. But efforts should also be made to influence the internal workings of the groups themselves – to improve respect for freedom of thought and speech and to improve respect for the right to dissent. Of course, all military organisations (whether state or non-state) will want to maintain discipline, and no successful armed force will resemble a debating society. Soldiers will always face restrictions on their freedom. Nevertheless, international standards grant soldiers in state armed forces a right to conscientious objection and a right to disobey orders that would lead to abuses. Some similar concepts are needed for armed groups.

Where armed groups remain intolerant of dissent, it will be much more difficult to raise human rights concerns effectively or improve their behaviour. On this point, some commentators worried that raising issues like freedom of speech and tolerance within armed groups would be perceived as too political, and might appear to privilege (and put at risk) some elements within the group or in its constituency. This is a danger, not least because there are no clear international legal rules for raising issues of “political” freedom with armed groups (as discussed below in Chapter Five). But staying silent on these issues carries its own risks. Pressure from within the group is one of the surest means to encourage restraint, whether such pressure comes from those doing the fighting or the constituency they claim to represent. Ways should be found to provide greater protection for those within the group at risk if they speak out in favour of human rights.

Military command and control

To operate, armed groups naturally adopt a military culture and forms of military discipline. In some cases, the group is led by highly trained officers. Some movements attach considerable importance to rank, while others pride

themselves on an informal hierarchy (in which discipline may be no less strict). Armed groups that can train large contingents of recruits in safe camps across a friendly border will adopt quite different forms of organisation than mobile guerrilla units, living off the land without safe bases – or than urban units working in strict clandestinity, living undercover and in safe houses. The values of officers will also vary widely – from a regimental ethos, steeped in military codes of honour, to the revenge ethos of societies where a long tradition of banditry and vendetta exists.

We have suggested that, where combat values predominate over political ones, there may be less scope for airing human rights issues. It is also true that a military tradition lends itself to forms of authoritarianism (in that it sets a high value on discipline and obedience). This said, military discipline – certainly in combat – clearly represents a protection against abuse and can provide victims with forms of redress. In civil conflict environments, in fact, human rights are unlikely to be protected adequately wherever armed groups are not effectively commanded and controlled by their officers.

This is no less true, of course, of governments: too often these do not adequately control official agencies that violate human rights and claim to act in the state's name. This said, armed groups might face particular difficulties. They often operate underground, with clandestine methods of communication that can be interrupted. The leadership, particularly if it is a political leadership, will often be located in another country or well away from conflict zones and areas of operation. Their views on human rights issues may carry little weight with the guerrillas who are actually engaged in combat. Additionally, their forces may never have been trained adequately, in terms of discipline or in the rules of war. Where an armed group is actually a disparate coalition of forces, united only in their opposition to the existing government, effective control is especially problematic. Even when groups are sophisticated, and have established lines of control, the exact relationship between policy and what actually takes place will not always be clear.

Strategies for enhancing respect for human rights that focus on the leadership, where that leadership is not able to control its forces, are unlikely to be effective in stopping abuses.

On the other hand, the leadership of an armed group will often claim – to rebut human rights criticism – that particular acts did not reflect official policy, but were mistakes committed by rank and file members. It may deny its ability to rein in its members, pointing to the difficulties faced by an underground organisation, or one fighting on different fronts. It may also be quick to deny that particular acts committed in its name were actually carried out by its members. In other words, claiming a lack of effective control is often used to deflect human rights criticism. These are arguments familiar to monitors of government abuses and the same scepticism is appropriate in both cases.

Economy of the armed group

How do armed groups support themselves? Is the armed group economically independent and does it have its own sources of revenue? Or does it depend for survival on taxing or pillaging the local population?

Understanding the economy of the armed group is crucial to understanding how it might be influenced. This will be of particular importance where its economy depends on foreign trade – either with other states or private business abroad. Our own research did not go into this question in any detail. We raise it here to flag its importance.

As noted above, the actions of some armed groups (with apparently political aims) tend to pursue profit through criminal enterprise. They aim to “capture” the state not for political purposes, but because the ruling institutions of the state – president’s office, various ministries, senior military posts etc. – are seen as the best positions from which to enrich oneself and one’s friends.

The armed group’s economic relationship with local communities, especially in very poor countries, influences political legitimacy. If the group is seen to represent a legitimate movement, local people will help to feed its members – and will accept taxation, except in times of great hardship. Pillage is very common, however, especially in very poor societies.

Foreign sponsors

Armed groups are often supported by foreign states. Support can take the form of political protection, financial assistance, provision of safe bases or military material and logistical support, training, or even support from the country’s own armed forces. It may be based on sympathy for the group’s cause, or common ideological or ethnic interests. Where foreign sponsors have sympathy for human rights, this may create channels for dialogue with the armed groups they assist. Very few states that claim to espouse human rights would shrug off the charge that armed groups they supported had committed grave human rights abuses.

Such an approach is not easy, of course. The sponsor state may itself be engaged in widespread human rights violations or be hostile to human rights arguments. Where this is so, it is an indication that the armed groups it supports may also engage in abusive practices.

Some armed groups depend heavily on private companies for financial support. Companies trading with armed groups, or conducting business in areas under the armed group’s control, may be their main source of income and may wield considerable influence with the group. In this sense, private companies too can be seen as “sponsors” and their role should not be under-estimated.

Foreign mercenaries too might fight with armed groups, and exercise considerable influence. They might be based or recruited abroad and the role of governments abroad in checking their activities is of considerable importance.

While foreign sponsors create opportunities for influence, they might also reduce an armed group's dependence on the local population for material and political support. If groups are very well financed from abroad, they will depend less on the local population. This may increase the likelihood of abuse because there is less pressure on such groups to be accountable.

Constituency

Who supports the armed group? On whom does it depend? Or whose allegiance does it claim?

Relations between armed groups and their constituencies take many forms. In some cases, the group's constituency is defined on purely ethnic or religious lines. Others claim to represent or defend a culture or a nation; or a social or economic class; or the followers of a religion. Many armed groups essentially claim a territory and in doing so the allegiance of all the people who live in that place, or at least those people the group considers to be its constituency (for example, an ethnic group). Some groups have an essentially rural constituency – even one that is defined in opposition to the city – while others have a base that is principally or exclusively urban.

The character of these different constituencies is also very varied. In some cases armed groups are working with a racially mixed community of support. In others they work, even exclusively, with one ethnic group. Their constituencies may be thinly distributed over large areas of population or densely concentrated in one place. They may be based in urban industrial communities or in peasant societies, acknowledge the authority of traditional leaders (elders, chiefs), or religious leaders, or modern ideologues. They may have followers in every age group or concentrate their support among the young.

It may be the case that armed groups tend to exercise a dominant, quasi-totalitarian role when they claim to represent a constituency that is defined entirely on religious or ethnic lines. The LTTE claims to represent all Sri Lankan Tamils (and to be their only legitimate representative). It has sought to eliminate other armed Tamil groups that had somewhat different views and has violently tried to suppress all forms of dissent within Tamil civil society. In the group's own logic, that is coherent, because all (loyal and true) Tamils should support the organisation that represents them.

Two particular constituencies should be noted. Armed groups frequently develop an important base in refugee camps or places where displaced populations have been concentrated. In these environments, armed groups are frequently responsible for political coercion and various forms of material and sexual exploitation. Humanitarian and human rights organisations are rightly concerned about the effects of a military presence on these vulnerable and dependent populations.

Diasporas are a second distinct constituency. In the wake of civil conflict, members of a community spread abroad and gradually form significant communities in other countries. Such exiled groups often feel an acute sympathy for armed groups that claim to struggle for their nation or their culture. Some diaspora communities supply large sums in money and resources – and sometimes fighters – to such armed groups. In some cases they are the group's principal support.

Sometimes such communities can exercise a moderating influence, precisely because they provide crucial financial and logistical support and because, living abroad, they may acquire a wider perspective and greater awareness of issues such as political tolerance and the need to respect fundamental rights. However, this is not always the case. Exile communities are often ardent defenders of armed groups, irrespective of abuses the group may commit. Indeed, their support may be more unconditional than the support of communities living in the areas of conflict. People in exile are distant from the armed group's area of operation and therefore less aware of local grievances that may exist. Additionally, in many cases they are unwilling to believe reports of abuse and claim these are politically motivated. In some cases people are afraid to speak out against abuse, especially where they still have relatives living in the conflict zone, even though they are abroad.

The issue of legitimacy within the constituency is a very important one. We have noted already that armed groups which have independent access to finance and weapons and food (from sponsors or diaspora communities) are under less pressure to win the loyalty of the communities in which they operate. It is always possible, of course, for armed groups to sustain themselves (at least for some time) by forcible occupation, including exploitation of the local population. This happens frequently.

What determines the legitimacy of an armed group? Legitimacy is partly rooted in the armed group's *aims*. Are they just, is oppression real, is it true that normal political activity cannot resolve the injustice? It is also partly rooted in the degree of sympathy and support the group arouses among the people it claims to "represent". Is that support deep, is it representative of many sections of the population, is it freely given, can it be expressed? It is already difficult to assess the level of support a political movement has in countries that are at peace, run a free press and hold fair elections. It is clearly much more difficult to make such assessments in conditions of civil conflict, which have the very precise effect of stifling free expression and discouraging frankness in all areas of life.

Sometimes a population is sympathetic but cannot express its sympathies for fear of government retaliation. Sometimes too a population has no sympathy for the armed group but is silenced by fear of the group. More often, there is some support and some opposition – open or silent – reflecting the extent to which the

armed group caters to particular interests or constituencies, or acts in ways that are extortionate or oppressive. Wherever there is an absence of criticism, even when silence is not enforced, it can legitimise abusive behaviour.

In different conflicts, one often hears those within the civilian constituency of an armed group refer to those fighting as “the boys”. This terminology is instructive; it captures perfectly the sense that even if the civilian constituency does not approve of their actions, they would still protect them.

Armed groups that depend to a significant degree on their local constituencies for their survival will be sensitive to criticism from those communities, even if they are impervious to criticism from outside. Understanding the needs and fears of armed groups in relation to their local constituencies is therefore crucial.

No doubt it is equally important to understand the needs and fears of local communities in relation to the armed groups that operate within them. There are many ways in which human rights and humanitarian organisations can help communities to meet their needs and face their problems. Raising their awareness of rights is clearly likely to be an important component of any policy designed to strengthen the community's capacity to represent its interests against the claims of authority – whether authority is governmental or non-state. It goes without saying, however, that such work is not without risk in many societies.

The question of the security of human rights defenders who work in areas where armed groups operate is not the subject of this study. It no doubt becomes acute, however, when human rights organisations touch on the relationship between armed groups and their constituencies, and particularly when they raise issues of accountability and legitimacy and abuse of power.

The role of civil society

To influence and improve the behaviour of armed groups, it is necessary to analyse them. But those taking action, be they national human rights NGOs, humanitarian relief groups or international organisations, also need to analyse their own strengths and weaknesses. This report is primarily directed at national organisations, and in particular local human rights groups who are grappling with the problem of how to deal with abuses committed by armed groups. This section therefore concentrates mainly on these independent actors at the national level, and less on factors related to actors at the international level.

The term “civil society” is admittedly a vague one, and subject to misunderstandings. We use it as a broad term that describes the many associations and groupings – larger than family and separate from the state – which reflect public opinion within societies. As a category it clearly includes very diverse groups including trade unions, religious congregations, charities, business guilds, Bar Councils, sports clubs, human rights organisations and many more. The term should be used sceptically, but it is useful. Every society generates associations

that bring together people who have similar interests and status. And everywhere such associations have influence. The notion of civil society enables us to acknowledge the variety of social association across human societies, but also the influence of organised social groups – at many levels and in complex ways – on almost all political systems.

Individual associations can be analysed to identify their capacity and their strengths and weaknesses. Similar analyses can be made for civil society as a whole, in a given country or in relation to a particular objective – in this case the task of sensitising armed groups to human rights concerns. The characteristics of civil society as a whole also vary widely from place to place. The list below is not intended to be complete but indicates some of the issues that an organisation might wish to consider as it develops strategies for relating to armed groups on human rights issues.

- Is there a rich or thin mix of associations in the country? (Is civil society strong or weak vis-à-vis government and armed groups?)
- Do human rights organisations have support in society? (Or are they considered to be an “international import”?)
- Do religious leaders and organisations have national credibility and do they emphasise human rights concerns?
- Have civil society and human rights organisations developed a tradition of independence from government? (Has government accepted their independence?)
- Do human rights organisations co-operate well? (Are they divided between those who are independent and those who have sympathy for the government or sympathy for opponents of the government, including armed groups?)
- Is there a “united front” environment? (Have armed groups recruited or won the support of a significant proportion of civil society activists?)
- Do the relevant organisations have good relations and contacts with international organisations? (Can these provide legitimacy and protection?)
- Are the relevant civil society organisations well connected or socially marginalised? (Do they know generals and politicians and guerrilla leaders personally – are they “in the family”?)
- What levels of skill and experience can civil society organisations draw on? (How professional are they, how well resourced?)
- Are international or national organisations better equipped to take up specific human rights issues effectively with armed groups?
- Which actors in civil society exert the most influence?

Some of these questions are developed in more detail below.

Motivation

NGOs take up abuses by armed groups for a number of reasons. The dominant motivation is usually the concern to protect human dignity and freedom, either for

ethical reasons and/or because the actions of the armed group amount to breaches of international law. This is most often the basis advanced by international actors such as international human rights NGOs, or representatives of intergovernmental organisations.

Sometimes organisations take up abuses by armed groups in order to establish credibility with the government. Governments may challenge an NGO's objectivity, if it criticises abuses by government armed forces but does not criticise abuses by armed groups. If this motivation is predominant, then the effectiveness of any action taken in relation to armed groups will be of secondary importance. That is, simply criticising the armed group publicly – whether or not such criticism has any impact – will be sufficient to counter the charge of bias and is an end in itself. In our discussions, local organisations in some countries said that, in their view, too much of the work on armed groups done by international actors was of this nature and therefore ineffective.

NGOs may also take up abuses by armed groups for other reasons that are to do with protecting their own reputations. Where organisations sympathise with the objectives of an armed group they may wish to reform its behaviour in order to counter bad publicity that is undermining support for the struggle (or even harming their own reputations).

A humanitarian relief organisation may wish to end abuses in refugee camps – extortion or intimidation of refugees, or sexual abuse of women – because these hinder it in carrying out what it sees as its main activities (e.g. providing relief).

In certain cases, NGOs can be brought in by the leadership of armed groups to assist them to solve problems they face, for example, management of dissent or relations with local communities. The NGO may be motivated to provide such advice and support because it sympathises with the cause of the armed group or because the tasks required are directly within its areas of operation and expertise. Medical organisations will be ready to treat wounds, lawyers will be ready to advise on due process, social welfare organisations will be ready to advise on disputes between soldiers and community leaders, etc. Each of these examples might, or might not, raise ethical questions of legitimacy for the NGOs concerned.

Different motivations can go together. The categories suggested above are not exclusive of each other.

Capacity and competence

Where NGOs are willing to take up abuses by armed groups, are they in a position to do so? The answer to this question depends partly on whether or not the state permits independent approaches to armed groups, and that subject is dealt with below.

The capacity and expertise of the organisation also needs to be considered, however. Are the resources available? Has the NGO concerned thought through

the ethical and policy issues that may arise – and has it developed a clear position on these? Do staff have the skills to deal with the sensitive, sometimes dangerous issues of practice and principle that may need to be explained and negotiated with the armed group? Are they sufficiently detached to remain professional, or is their objectivity and professionalism compromised because they are sympathetic to or opposed to the armed group concerned? Have issues of security been thought through, both the security of the organisation and its staff, and the security of other organisations whose work might be jeopardised if relations with the armed group break down or if the project is repressed by the government?

There is no science to raising human rights issues. One need not be a lawyer or well-versed in international law to make demands on armed groups regarding things they should not be doing. As discussed in the section below on types of action undertaken, a wide variety of organisations have sought to influence their behaviour. By competence, therefore, we refer not primarily to some form of expertise (e.g. knowledge of international humanitarian law) but to an understanding of the context in which the abuses take place. Ignorance on this score is likely to prevent organisations from analysing what actions might be effective (or who should be taking them). It may even lead to actions that are counter-productive. In trying to understand the context, key points to look at would include the factors set out in this report.

Expertise is also relevant of course. National organisations are usually familiar with their own strengths and weaknesses – the experience and maturity of staff, their level of legal training and general education, their competence in relevant languages, their social and negotiation skills, the range and level of their personal contacts (sometimes essential for personal security), even in some cases their physical fitness, etc. Decisions to engage in work in this highly sensitive and political area clearly need to take account of factors like these and assess the ability of staff to manage the demands that will be made on them.

In addition to understanding the context, being competent means being professional and exercising good judgement. In this respect, knowing as far as possible the risks of being manipulated by either side in the conflict is essential to acting competently. So too is the need to think carefully and strategically about the timing of any intervention.

Concerning resources, it is worth noting that local human rights NGOs often feel overwhelmed by state violations of human rights. In most countries where armed conflict occurs, civil society organisations operate with difficulty, in many cases dependent on financial assistance from abroad to pay salaries and equip an office. They are likely to find they have little time to look at armed group abuses – and additional resources might not be forthcoming for this kind of work.

International actors may not face the same resource constraints, but they too will often feel that resources devoted to reporting on armed group abuses divert attention from the “real” work of focusing on state abuses. For both national and

international actors, even where resources are adequate there is the problem of getting access to the group and obtaining information about its abuses.

Making contact

A precondition for undertaking some types of action is to have access to the leadership of an armed group. International organisations face particular difficulties of access. Chief among these is knowing who to speak to. Who represents the armed group? By its very nature, an insurgency is often clandestine, and its leadership is unlikely to operate openly. In situations where the armed group controls territory and has offices in that territory, actors from outside this territory may encounter difficulties (from both the state and the armed group) in entering. Even if the armed group agrees to allow visitors into "its" territory, in some cases they run the risk of being taken hostage.

Where leaders are abroad, it is easier for international organisations to speak with them, although in many cases there may be doubt as to whether the leadership in exile actually controls its forces in the conflict area.

The issue of making appropriate contacts is a real one for any actor who wishes to engage with armed groups. It nevertheless presents itself in different forms to many national organisations. Though they too may be unsure of exactly who to speak to, this is not always so. Key leaders may be known personally and it may be possible to arrange meetings and contacts quite efficiently. In other cases, however, it may be hard to know how far armed groups have been penetrated and meetings (however justified) may incur severe risks. (For national organisations it is much harder to leave the country, and they have much less protection against arrest than visitors from international organisations.) This can severely complicate the construction of transparent and honest lines of communication between local human rights organisations and armed groups.

Finally of course, the factor of fear should not be forgotten. One reason contacts are not made with armed groups is that people are afraid. Fear – and the climate of secrecy and mistrust that pervade social relations in conditions of civil conflict – simply prevents people from initiating and developing relationships. Such fear is entirely legitimate. Indeed the surprise is that so many people working to promote human rights find the courage, day after day, to overcome it.

Lack of information

Whether organisations are national or international, they face difficulties in documenting human rights abuses committed by armed groups. Where a form of action (e.g. denunciation) requires solid and reliable information in advance, this difficulty can paralyse effective work.

Documentation problems arise for the most part from the character of armed conflict (and therefore apply equally to information on abuses by government forces). For example, it is difficult to assign blame for abuses. Discovery of a mass

grave in an area in which more than one group of combatants operates always leaves it open to the party responsible to blame others. Access to conflict zones can be difficult (and dangerous) and as a result it may be impossible to check facts first-hand. In a general way the issue is also made infinitely more complicated by the fact that allegations of human rights abuse have a propaganda value and are used by all sides as a weapon in the war.

Safety

Can one safely take up abuses by an armed group? In a number of countries, individuals who speak out against human rights abuses committed by armed groups have been harassed, threatened or killed by members of the group. Governments may also target individuals who engage in dialogue with armed groups.

Of course, when national NGOs denounce government abuses they often face reprisals as well. Human rights activists are frequently barred from organising, harassed, put on trial and imprisoned. In a number of countries experiencing civil conflict, governments and paramilitary forces that act for them have frequently killed human rights activists who are considered a threat to their interests. Yet, in some countries (though by no means all) the risk of retaliation by armed groups invokes a special kind of fear for those who criticise their abuses. This seems to be based on the unpredictability of any retaliation. There is the sense that, if the government decides to act against a human rights activist, it will do so in a more or less predictable manner. This arises from the government's need to give its actions a veneer of "legality". Therefore, the inclination will be to use the police and courts to silence critics. Even where law is unfairly and arbitrarily applied it does provide, in a perverse way, a sense of security. But armed groups almost by definition operate outside the law. One is simply never sure when retaliation will come or what form it might take. Still, the same could be said of paramilitary forces that are linked to the government.

Taking sides (impartiality)

Armed conflicts involve two or more parties at war with each other precisely because they cannot reconcile their disagreements by peaceful means. Once conflict starts, the logic of war pushes both sides to extreme positions. Belligerents find it necessary to deny or discredit the legitimacy of the other side. One way of doing this is to claim the other side is committing human rights abuses. Of course, this is not new. Belligerents have always pointed to the injustices committed by their opponents to show the righteousness of their own struggle. But as the idea of human rights gains wider acceptance and fewer governments or armed groups are willing to ignore charges that they are abusing human rights, human rights issues will increasingly become entangled in the propaganda of war. As the language of human rights gathers political legitimacy and appeal, the temptation increases to manipulate it for political advantage.

For organisations prepared to take up abuses by armed groups, the question of balance is therefore crucial. How to document the abuses of an armed group without appearing to take the government's side? When criticising an armed group, how to avoid being manipulated by the government? In situations where government forces appear to commit abuses with impunity, it will become even more difficult to criticise the armed group without appearing to take sides. On the other side, many governments already claim that human rights criticism of their performance is evidence of bias in favour of armed groups that are not criticised. The burden on monitors to demonstrate rigorous impartiality will increase as the practice of criticising abuses by armed groups becomes established.

To rebut charges of bias in favour of the government, organisations need to demonstrate that they are genuinely independent. Armed groups are unlikely to take human rights criticism seriously if they consider that the information presented to them or those who have collected it are politically compromised.

Human rights organisations can best establish their credibility with armed groups by developing a consistent record of documenting abuses by both sides. Certainly, if the aim is to engage armed groups on human rights issues, human rights organisations are likely to have to show that they are critical of abuses by government forces. This is true for international as well as national organisations. It is unlikely, for example, that UN agencies will be able to raise human rights abuses effectively with armed groups if they have been silent on government abuses.

In the course of our discussions we learned that a number of national human rights organisations who did want to do something about abuses by armed groups failed to act precisely because they feared the government would manipulate these actions for its own purposes. A common concern was that critical reports would be used by the government as a propaganda tool to discredit the armed group, or to deflect attention away from the government's human rights record. In extreme situations, the government might even use such information to justify repressive measures. What can be done to allay such fears? A basic point to make is that organisations with experience of criticising government abuse of human rights in internal conflict situations should be familiar with the way such criticism is manipulated by armed groups. In other words, information is manipulated by both (or all) sides. While it may be the case that a government is better equipped to play at this kind of propaganda war (for example, through control of or influence on the media) this cannot be assumed. Therefore, the risk of government manipulation is not that different from manipulation by other parties.

Insiders and outsiders

This report focuses on "independent" actors, meaning independent of government. But in many conflict situations, independent organisations may in

fact be sympathetic to, or aligned with particular armed groups, for example as part of a broad coalition or "united front". In some cases, armed groups co-opt or recruit members of organisations that are ostensibly independent. In others, opposition political formations include a legal, semi-legal or tolerated political element, and an illegal armed segment. The links between the two may be strong – though denied, to allow the political element to continue to operate. Even where no formal institutional links exist, many political activists may feel some allegiance or solidarity with armed movements.

Many armed groups and revolutionary movements adopt "united front" strategies to increase their influence. The approach is well understood by counter-insurgency experts and by governments. In order to discredit truly independent opposition movements (or because their intelligence is wrong), governments often allege that "united front" tactics are being used when they are not.

The effect of "united front" strategies is to further complicate the situation of civil society organisations. These already have to negotiate an independent space between armed groups and governments in a context influenced by insecurity and fear of violence. Where, in addition, some NGOs are secretly run by members of the armed group, and others are unwittingly co-operating in policies they believe to be independent but are not, it is extremely difficult to maintain honest and transparent relations. This is especially true where governments are attempting both to co-opt some organisations (also secretly) and to accuse others of political bias (correctly or not). In certain cases, human rights and other independent organisations manage this treacherous working environment relatively well. In others, by contrast, their credibility may be irretrievably damaged, trust may collapse and the entire sector may split into factions, with disastrous consequences for the polarisation of society.

In these situations, claiming successfully to be independent of both the government and the armed opposition may become virtually impossible. In some countries, the issues are further complicated by the fact that the growth of human rights organisations is closely linked to the rise of an armed opposition.

Perhaps particularly in these very difficult contexts, a question arises: are organisations or individuals that have links to an armed group able to influence it as effectively or more effectively than organisations or individuals that are truly independent?

In some cases, for reasons of loyalty and sympathy, the individual or organisation may be unwilling to criticise. Indeed, some "insiders" have approved and become apologists for policies of armed groups that would normally be denounced by human rights organisations. This said, the situation is often more complex. Human rights concerns have been raised from within many armed groups and movements aligned to them, and sometimes those who raise human rights issues

from the inside have been listened to first or most carefully. At the same time, reform processes induced in this way are often slow to develop. In some cases, those involved recognise with hindsight that they raised human rights questions too diffidently or too late, partly out of loyalty or a sense of discipline or sympathy for the cause. Part of the slowness, in addition, may be due to the fact that those “insiders” who raise these issues were not at first influential and their views gained an audience only when it became apparent to senior leaders that their policies were counter-productive (for example in security terms) or immoral or had discredited their organisation.

In certain circumstances therefore, “insiders” can influence the policies of armed groups and may even do so more effectively than independent observers or international organisations. Where this is so, it is an option that should be taken seriously by international organisations. Part of any strategy to encourage armed groups to respect human rights should be to identify and support “insiders” who are willing to speak up on human rights issues within their movements and in the armed groups with which they sympathise or to which they belong.

National and international

Some tasks will be carried out more effectively (and safely) by international actors; others by national actors. For example, it will often be easier for international actors to convince an armed group of their impartiality in relation to all combatants, whereas only national organisations may be able to develop the relationships of real trust that are necessary to many kinds of human rights protection in conditions of civil conflict.

Our research indicates that where armed groups feel the need for international legitimacy, or at least international attention, they may be more inclined to pay attention to international actors. Also, as indicated above, where there is a risk of retaliation it will usually be safer for international actors to take up abuses by armed groups.

International organisations need to consider how their policies and actions relate to and support those of national organisations, which may be constrained in different ways by government repression or their political environment. Co-ordination – dealt with below – is an important issue because international organisations are in a position to provide some protection for national organisations working in this sensitive area, and because national and international organisations will be more effective and also more influential if their work is complementary.

The state and its armed forces

Implicit in the discussion above is an assumption that one cannot meaningfully understand what motivates an armed group, or the ability and willingness of independent actors to engage with it on human rights issues, without taking the

role of the state or government into account. Factors such as the legitimacy of the state itself (or the government in power), the degree to which the state and its armed forces violate human rights (and whether or not there is accountability for these abuses), and the state's tolerance for any forms of independent action vis-à-vis armed groups (or communication with armed groups), all play a crucial role in determining whether independent organisations might take up abuses by armed groups effectively.

Legitimacy of the state

The existence of an active armed group in a country suggests that either the state or the government in power is considered illegitimate by at least that segment of the population which supports armed struggle.

A state may fail to be legitimate in the eyes of its people for a number of reasons. It may be regarded as an occupying or colonial force, which has never been legitimate. It may be rejected as oppressive, because it represses freedoms, or because it is economically extortionate (taxing or taking from the population without justification). It may forfeit loyalty because it is corrupt, has mismanaged the economy, or failed to defend the country's independence. Its legitimacy may be challenged on ideological grounds (class), or on the grounds that it is unrepresentative (ethnically, regionally). Illegitimacy may also be more complex. Local officials may be considered illegitimate (to have behaved illegally) while the authority of the head of government may still be acknowledged.

Governments also lose legitimacy when they are seen to start losing militarily to armed groups that oppose them, or if their counter-insurgency tactics come to be seen as oppressive or unacceptably violent. It is the strategy of some armed groups to provoke violent military retaliation against the civilian population precisely in order to undermine the government's political legitimacy.

For our purposes, the legitimacy of the state is important in two respects. Where a large proportion of the population of a territory objects to the government in power and supports the armed group that opposes that government, this raises important issues of relative legitimacy in which the armed group and the government compete for public support. In such contests, governments can recover as well as lose legitimacy. If they make a transition to democracy, for example, their fortunes may rise and this in turn may weaken support for the armed groups that oppose them. Competition in such contexts can also turn into pure oppression, as is evident in several internal conflicts. Armed groups and governments secure political control over the population by violence, and those directly affected gain little or nothing by siding with either. In such conditions of terror, they can merely attempt to minimise the immediate danger of violence – or escape the situation by flight. Judgements about the legitimacy of states relative to armed groups will be difficult. Most people would accept that at a certain point it is morally correct or defensible to take up arms against a repressive state.

Indeed, the preamble to the Universal Declaration of Human Rights appears to condone some such notions¹⁰. The fact that resistance can be legitimate does not mean of course that abuses committed are justified. As a practical matter, however, tolerance for abuse (especially among the armed group's constituency) will be related to this question of legitimacy.

Second, whether international actors view the state as legitimate or not affects the judgements they make about armed groups. Where few outsiders believe that a state's claim to disputed territory is just, or that their war to defend that territory is winnable, for example, they will tend to recognise and treat the armed group in that territory as a *de facto* government. This has practical consequences. It may, for example, mean that international organisations are less concerned that engaging with the armed group will provoke protests from the government. It may thus affect the degree to which outsiders will work with armed groups to provide advice and assistance on human rights matters.

State-sponsored violations

It is hard to think of any situation of internal armed conflict where state forces too have not been responsible for serious human rights abuses. In many situations, the state-controlled armed forces will have a history of repression stretching back well before the emergence of an armed opposition.

The level of abuse by state forces, and the degree to which there is any accountability for those abuses, will crucially affect any approach one might make to armed groups on human rights questions. Where the state itself acts with impunity, it will be harder to convince those who are fighting it to respect human rights. "Reform" factions within the armed group will find it much more difficult to make the case for restraint. If state forces are, by and large, improving the degree to which they respect human rights, the armed group will be in a more exposed position on human rights questions.

But this is not a straightforward equation. In the face of extremely repressive action by government forces, some armed groups have still shown a willingness to exercise restraint. Similarly, in cases where government forces appear to be making efforts to respect human rights, some armed groups have only become more brutal and ruthless.

Nevertheless, it remains broadly true that the lack of accountability for violations by the state is a key factor in determining the willingness of armed groups to improve their own human rights record.

¹⁰ The Preamble says: "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

Tolerance of the state for independent action

Governments are consistently sensitive to independent efforts to monitor, report on or engage with armed groups operating inside the country they govern. Frequently, they are unwilling to tolerate any such private initiatives. A number of the country studies prepared for this report indicated that local organisations, asked about their attempts to influence armed group behaviour, believed that government policies had prevented them from doing so effectively.

Looked at from their perspective, governments have strong grounds for resisting private attempts to deal with armed groups. For governments, armed revolt against the state – treason – is a fundamental crime. Organisations that deal with armed groups afford them some level of recognition, even if it is just that they are a force to be reckoned with. Where international actors are involved, in addition, armed groups acquire some international legitimacy. Moreover, if armed groups are effective, governments are fighting for their very survival. It is not surprising that they should seek to control every aspect of the conflict and that they should resist even small actions that seem to legitimise these groups.

As a result those who engage in such private contacts incur particular risks. In some cases independent actors who meet with an armed group's leadership risk being denounced as "rebel collaborators", arrested as traitors and put on trial. We noted above the practical difficulties that local actors face in obtaining access to the armed group's leadership either in "liberated" zones or abroad. Suspicion by governments of such contacts is another powerful obstacle. For international actors who are not subject to the arbitrariness of local laws, contact with leaders of armed groups may still arouse intense suspicion within government.

There is an inherent contradiction in what governments demand of both local and international human rights actors vis-à-vis armed groups. On the one hand, the complaint is often heard that human rights organisations are "biased" because they do not pursue abuses by the armed groups with the same vigour that they pursue government abuses. On the other hand, sometimes when human rights organisations do show a willingness to criticise or engage with armed groups (on the question of respect for human rights), many states either denounce such efforts or intervene to minimise or distort their impact.

While it is understandable that governments fear the legitimacy that independent approaches might confer on armed groups, it is also the case that such approaches often offer the only realistic means of ending or lessening abuses. When undertaken by responsible organisations, they can help to create the political space that may eventually lead to serious political negotiations.

Just as we indicated above that a key point was to increase tolerance within armed groups, so too should governments be more tolerant of independent approaches to armed groups. International organisations should encourage

governments to be more tolerant of independent initiatives that are respectful of human rights standards and essentially democratic in spirit. Of course, it follows that those demanding the space to engage with armed groups should be competent enough to do so in a professional manner.

Four: INFLUENCING ARMED GROUPS – SURVEY OF POSSIBLE ACTIONS

"I think that many more violations would have occurred, many more murders of people accused as informants, many more executions of mayors, even more indiscriminate use of explosive devices and attacks on barracks and the like by the guerrillas would have occurred if pressure from the [human rights] organisations had not been exerted to respect international rules...".
Former FMLN guerrilla, El Salvador.

Numerous factors will guide decisions on what types of action can be taken to encourage or force armed groups to respect human rights. Having looked at these factors in the previous chapter, we now discuss various options for action. Many kinds of actions can be undertaken and most have been tried, including:

- fact-finding and public reporting;
- campaigning for prosecution of armed group members by international tribunals;
- asking for sanctions such as a ban on arms sales to the group;
- "shaming" the group through national or international media attention;
- raising awareness of the plight of victims of armed group abuses;
- raising awareness of abusive practices among the armed group's supporters;
- engaging in confidential dialogues with leaders on human rights concerns;
- training members of armed groups in international standards;
- encouraging groups to adopt codes of conduct that include human rights commitments;
- assisting groups to establish "judicial" mechanisms to deal with insubordination and dissent;
- through mediation or other means, working to end the conflict and secure long-term peace (and thereby end abuses).

At the outset it should be made clear that different organisations will undertake different actions. For some organisations, public denunciation or work on international criminal prosecutions is simply not an option. Organisations actually working in rebel-held areas – for example, humanitarian relief organisations – face different constraints from organisations based abroad. The purpose, in discussing different actions, is not to suggest what particular organisations should do. Such decisions can only be taken after considering the many factors discussed in the preceding chapter (and there may be others). Our intention in listing these actions is to indicate a *range of possible interventions*.

Some organisations are better equipped or suited to do different types of actions, and no doubt a division of labour between different actors is needed. Human

rights organisations are unlikely to launch conflict resolution initiatives, and humanitarian relief groups to initiate legal prosecutions abroad. But a division of labour implies some co-operation and co-ordination between different actors and this is far too often lacking. At the conclusion of this chapter we discuss briefly the problem of co-ordination between different actors.

When we look at options for action we also try to identify some of the advantages and disadvantages of each. Included in the discussion below are actions that aim to achieve an improvement in the human rights situation. Following that, we look at conflict mediation and peace campaigns that seek to end conflict.

Different approaches (shaming and engaging)

In very broad terms, an organisation that wishes to change the behaviour of an armed group can undertake two types of activities:

- it can shame or persuade the armed group concerned to cease an abusive practice, or
- it can work with the group to give it the means to do things differently¹¹.

This distinction is itself based on an assumption that, when examining the abusive practices attributable to an armed group, two distinct situations can arise. In the first, abusive practices reflect the group's policy. For example, a group may consciously recruit child soldiers or murder suspected informants. To stop such practices the armed group must be persuaded to change the policy. Whether this is achieved by quiet dialogue and persuasion or by public denunciation is a matter of tactics.

In the second case, armed groups recognise that a practice is an abuse of rights and wish to reform but do not have the means to do so. For example, lacking a system of courts, judges and defence lawyers, a group may not be able to test allegations against suspected informants and it therefore detains all of them indefinitely, whether they are guilty or not. Or leaders of a group may wish to stop abuses by their forces but have no system for training them. Where the desire for reform is genuine, but an armed group lacks the means to implement new policies, direct engagement and assistance may be an effective and reasonable response.

It is not suggested that these two approaches are mutually exclusive, and that organisations must choose between shaming or engaging. In practice, an organisation's decision to provide services or assistance to an armed group could limit its ability to be publicly critical. But this need not be the case. For example, an organisation might only agree to become involved in training guerrillas in the rules of war on the understanding that it will continue to be critical where required.

¹¹ It was pointed out to us that the same distinction can be made when dealing with violations committed by governments.

A third type of action is available that does not fit neatly into this typology – use of international criminal law to prosecute members of armed groups responsible for war crimes and crimes against humanity. This is discussed below.

Shaming (and persuasion)

There are different ways to influence an armed group to stop an abuse of human rights. Some are more public than others. Commentators on human rights sometimes contrast the method of public denunciation used, for example, by Amnesty International and Human Rights Watch, with the method of private dialogue preferred by bodies like the ICRC. In fact, both approaches have the same aim – to get the groups concerned to change their practice. Similarly, both public and private approaches rely on the same foundation: good evidence.

Fact-finding and denunciation

Fact-finding and denunciation are traditional forms of human rights monitoring. Information on human rights violations is gathered and assessed, and a report is written and made public. The purpose of reporting is to draw attention to unacceptable patterns of behaviour (usually measured against international standards) and, by adverse publicity, shame the responsible authority into changing laws or policies that permit these practices to continue.

This approach is commonly used by international human rights NGOs to report on armed groups. In a number of countries, national human rights NGOs have applied the same technique.

Does it work? Of course, it is hard to know with certainty what has motivated a change in behaviour. Our studies showed that there is some reason to believe that adverse publicity based on the public release of critical human rights reports has influenced armed groups in some countries.

Timing is important. When are interventions most effective? The leadership of armed groups is likely to be receptive when it recognises it faces a problem. For example, leaders may want to introduce rules to guide interrogation and “trial” procedures if a large number of guerrillas are arrested and executed for treason and morale starts to collapse. They are less likely to be receptive when there is intense military activity – for example, when the armed group is in retreat. Leaders may be receptive also if they face problems of legitimacy and recognise that relations with their constituency are breaking down. There are also key opportunities when negotiations for peace are taking place or when the group feels a need for international recognition and legitimacy.

Public denunciation and campaigning are not risk-free. Some of those commenting on the draft of this report argued that public advocacy can back fire, closing doors that had been opened for dialogue, undermining reformers within the armed group and, in extreme cases, creating risks for people in the country, or in territory controlled by the armed group. On the other hand, we were told by

others that public criticism should not be ruled out by the existence of private dialogues. Some will clearly feel that severe abuses require public condemnation.

A further point deserves mention. As we noted above, in internal conflict situations it will often be hard to say with certainty whether the government or an armed group is responsible for a particular incident. When the facts are unclear, little can be done to assign blame. Both governments and armed groups will also resist efforts (though perhaps not concerning the same incidents) by independent monitors to conduct investigations.

Human rights monitors are familiar with government denials of the credibility of reports they publish. Over a number of years the UN has set up working groups or appointed rapporteurs to investigate and establish the facts in such situations. Their independence assures the government that its side of the story will be heard, and their official status ensures international legitimacy for their findings. While far from perfect, this system at least allows credible international investigation of claims about government abuse. On the whole, however, this system does not deal with abuses by armed groups.

In some countries we looked at, local organisations felt that official (for example, UN-sanctioned) international inquiries were needed into allegations of abuses by armed groups.

Use of media

Media can clearly play a crucial role in highlighting abuses by armed groups. In an age where satellite and mobile telephones provide links to and from even remote places, few armed groups are beyond media contact. When an armed group's leaders are reclusive or difficult to meet directly for technical or military reasons, media criticism may be the only way to bring effective pressure to bear on their policies.

Some armed groups – not all of them among the largest or most experienced – are skilful in influencing the media. They secure favourable coverage about their “struggle”, encourage visits by journalists and give considerable attention to the media.

The media itself has a mixed record on these issues. The international media virtually ignores some important civil conflicts and gives high profile attention to others. In doing so, some reporting is of the highest quality, but much coverage tends to stereotype the government and armed groups in ways that this report suggests is unhelpful. For the international audience that followed news about the civil war in Sierra Leone, for example, it was probably impossible to make much sense of what was reported. Certainly these are extremely difficult stories to report well. The aim here is not to stereotype the failures of journalists either. Nevertheless, it is important to note that civil conflicts are subject to propaganda manipulation to an extreme degree by both the governments and the armed

groups involved, and the media have frequently failed to find an appropriately neutral and well-informed position from which to report. The result is that international media reports are much more about acts of violence than the political processes that give rise to them. In the end this does not encourage understanding, often benefits parties that do not deserve to benefit and also, in many cases, fails to advance the cause of human rights.

At a national level the issues are somewhat different. Issues of distortion and the influence of propaganda on media coverage are significant problems. But in addition local media have often to confront government censorship as well as intimidation by governments and by armed groups. Coverage is influenced by fear, which is often, of course, justified. A large number of journalists and editors have been assassinated in the course of recent civil conflicts, and the correlation between killings of journalists and civil conflict underlines the importance that both governments and armed groups attach to the media.

The impact of coverage will be greater where it reaches populations that matter to the armed group. If foreign states sponsor a group, critical media reports in those states will make an impact. If an armed group craves international legitimacy and attention, then reports in international media will be effective. If an armed group relies heavily on its domestic constituency, reports in local media will become more important. Ideology is an issue. If the armed group characterises its struggle as being "anti-western", it is unlikely to be troubled if western media report critically on its abuses. The fact that international media is by and large controlled by people based in Europe or North America tends to colour the perception of the news it broadcasts. If the US is perceived as being hostile to the aims of an armed group, then critical coverage of the group's actions on CNN is likely to be seen as biased and partial.

Sanctions

Should national and/or international organisations lobby for sanctions to be placed on armed groups that abuse human rights? This is a tricky issue, and one that is hotly debated when the target of such sanctions is a government. It is argued against sanctions (such as economic sanctions) that they are a "blunt instrument", have an adverse impact (primarily on civilians) and tend in many cases to strengthen the regime in power. Some also maintain that sanctions regimes are notoriously "leaky", so that it is easy for states and private business to disobey them and in so doing gain business or political advantage over those who follow the rules. Sanctions imposed unilaterally are also criticised on the grounds that they are more about domestic politics in the sanctioning state than any objective assessment of whether the sanctionee deserves to be punished. All of these arguments could equally be applied in the case of armed groups. Additionally, in conflict situations, if sanctions are only placed on one party they will be seen to encourage the other.

Sanctions against armed groups can take several forms:

- restrictions on foreign travel for identified individuals;
- a ban on trading, or investing in areas under their control;
- restrictions or bans on transfers of arms or military technology or expertise (including training);
- seizing or freezing all foreign assets;
- prohibitions on political or other activity of its members abroad.

Other sanctions might be threatened should the armed group succeed in its aim to establish a new state or government; for example, exclusion from inter-governmental organisations or non-recognition by other states.

In all these examples, sanctions may be applied by one state acting unilaterally or by a group of states acting as part of a regional organisation (e.g. the European Union). Sanctions may also be applied at the international level by the UN Security Council, in which case all states are required to implement them.

A number of armed groups have been subject to sanctions. Whereas the effectiveness of sanctions against states has often been studied, little work seems to have been done to assess how effective sanctions on armed groups have been. Do they work? Are they counter-productive? Are UN-approved sanctions more effective than unilateral measures? The UN Security Council has recently shown a willingness to tighten the enforcement of sanctions it has imposed on UNITA in Angola by publicly criticising those states that permit continued trade with UNITA. Efforts to make sanctions against armed groups work are important, but so too will be a clearer sense of their potentially harmful impact. The charge of selectivity in the use of sanctions will also need to be addressed – why UNITA and not others?

Engaging constituencies and sources of support

As discussed above, to understand an armed group it is crucial to understand its constituency. Who provides the group with support? Knowing this helps one identify the levers of influence. This section looks at how different sources of support can be used to influence the group's behaviour: including the local population (the group's constituency), foreign state sponsors, and private business.

Earlier we identified three significant constituencies:

- Local populations that, out of genuine or forced commitment, give support and assistance to armed groups. Supportive populations may be defined on social (class), ethnic or religious lines.
- Refugee communities and communities of displaced migrants. Those who are confined for long periods in refugee camps or designated areas are particularly vulnerable to influence and coercion by armed groups.

- Diasporas overseas. Diaspora groups include both refugees and communities of people who live abroad to trade or study or work. When they live in prosperous countries, they are often a major source of funds for armed groups. When they organise in support of armed groups, they can significantly influence political attitudes abroad.

What appropriate actions might be taken towards the local population? Where a population is living in territory under the control of an armed group, or acknowledges allegiance to an armed group, it may be difficult to engage with them. When human rights issues can be raised, local people do not always feel confident or secure enough to discuss such issues with the armed group leadership. The same is likely to be true of refugee populations in camps where armed groups are present.

It should be more straightforward to discuss human rights issues with diaspora groups. The goal might be to encourage the diaspora group concerned to support the idea that armed groups should respect international standards. Where the armed group has committed very serious abuses, the aim might be to cause the diaspora group to express its unease and disapproval or even to withdraw its financial support. In practice there are difficulties here too. Even when such populations are dispersed across several countries, they may be "captive", subject to forms of political coercion, or unwilling to be persuaded that abuses have been committed. Some armed groups are able, by effective propaganda or by intimidation, to maintain tight control over diaspora groups abroad. In addition, many exiles, even if they are not "captive", have more illusions about the "struggle" than local populations on the spot. In many cases they refuse to accept claims that the armed groups they support commit abuses and dismiss such claims as government-inspired propaganda. In short, it cannot be assumed that their presence in stable democracies makes diaspora groups more aware of the "real" situation at home, more sensitive to human rights issues, or more able to act.

Armed groups get support too from foreign states and private business. What actions can be taken vis-à-vis these forms of support?

As noted above, the ability to shame a foreign state into withdrawing support for an armed group because of its poor human rights record will depend on whether that state is susceptible to such pressure. Even states that have poor records at home might seek to distance themselves from an armed group, or use their leverage with it to push for a halt to abusive practices. The Sudan, for example, was heavily criticised by international NGOs for allowing the LRA to operate from bases within Sudan, to which it brought children who had been abducted for use as soldiers. Cutting its ties to an abusive armed group, or getting that group to change its behaviour can also become a low-cost way for sponsor governments to improve their international reputation.

With private business, two types of approaches are conceivable. One would be to ask corporations to use their influence with an armed group's leaders. The other would be to demand that corporations cease to do business with it. In either case, various techniques can be used to persuade and pressure corporations, including consumer boycotts. In general, corporations are vulnerable to bad publicity and they do not like it to be thought that they trade with armed groups that commit serious human rights abuses.

Influencing corporations is not easy, nevertheless. Unlike states, they have not signed up to international human rights agreements. It is not straightforward to put the case that they have some responsibility for the human rights abuses of those they do business with. It is also difficult to establish clear evidence in many cases. Transactions will rarely be transparent, and it can require considerable effort to find out who is ultimately financing economic activity (such as mining) in rebel-held areas. When threatened, moreover, armed groups may simply switch their corporate sponsors. Companies that are urged to use their leverage with an armed group on human rights issues may respond that if they do so they will lose their contracts to a less ethically-minded competitor.

Nevertheless, as global markets are integrated and the influence and power of private corporations increase, more attention is being given to these issues and to the role that corporations can play in protecting human rights. In recent years, a significant number of corporations have made public commitments to respect human rights, albeit in vague terms. Influential work is also being undertaken on corporate corruption by organisations like Transparency International and the World Bank. Governments are introducing new controls on corporations to detect illegal financial flows (particularly in relation to the laundering of drug money). Over time, these processes will influence the secrecy with which companies conduct their business and how they present their balance sheets. Companies may become more sensitive to public criticism about their partners and the nature of their investments. It is interesting to note the recent decision by De Beers, the diamond cartel, that it will no longer trade in diamonds mined in conflict zones, a decision motivated at least in part by the bad publicity attached to two armed groups financing themselves through such mining (UNITA in Angola and the Revolutionary United Front (RUF) in Sierra Leone).

Dialogue

Persuasion implies some form of dialogue, whether direct or indirect. Governments have embassies and representatives abroad who can be contacted. In most cases, contacts can be made openly and transparently. In contrast, speaking to the leadership of an armed group can be fraught with difficulties. Some problems are technical: unless an organisation has personal links to the leadership of armed groups (relatives, for example, or friends from school or university), it may be difficult to gain their trust. Physical and military obstacles

may also present themselves. As discussed above, it is not always clear who actually represents the armed group – leaders in prison, leaders abroad or commanders “in the hills”. Other difficulties are political in character. Local actors, in particular, might attract government suspicion. Anyone who decides to sit down and enter into a dialogue on abuses with an armed group is at risk of having such actions misinterpreted (deliberately or otherwise). A genuine attempt to get the group to stop an abusive practice can be made to look like subversion or “collusion with terrorism”.

The process of dialogue itself creates responsibilities and certain risks. Organisations need to be very clear about their own principles before they begin such discussions. They also need to be clear about the limits of their mandate and the limits of their legitimacy, if they begin to dialogue about matters of broader policy (political openness, steps towards peace, fundamental demands of the armed group, etc.).

Dialogue also implies the possibility of negotiation. Where an armed group offers to reform its policies, what (if anything) can a human rights organisation offer in return? In this respect, humanitarian relief organisations or the political agencies of the UN may be in a better position to enter into such dialogues with armed groups than national or international human rights organisations. The UN can offer to use its good offices to open new areas of dialogue with the government. The population under the control of an armed group can derive obvious benefits from humanitarian relief organisations (such as medical supplies or food).

This said, direct dialogue with armed groups by independent actors has brought results on human rights issues in a number of countries. Hostages have been released, promises have been made about investigating arbitrary killings, and commitments made to respect international standards. The private dialogues undertaken by the ICRC have saved countless lives. In some cases independent organisations are the only institutions capable of opening dialogue on behalf of the wider population. Religious leaders in particular can acquire an almost unique legitimacy – neutral, morally coherent and above politics – and sometimes play a decisive moral or practical role in opening space for negotiation, dialogue and improved respect for human rights. For specific periods and in particular contexts, alliances of civil society organisations have also sometimes played a crucial role in influencing the shape of political dialogue across a broad range of issues, including respect for human rights. In this sense, it is not straightforward to set limits on the scope of such dialogue. But in most cases success will depend on understanding very clearly what the limits are.

In general, like anybody else, armed groups will only dialogue in a constructive spirit with interlocutors who they consider to be legitimate and trustworthy. In this sense, the success of such independent initiatives will depend on whether the organisations concerned have intelligently assessed their status and legitimacy in relation to the armed group and to the issues they raise with it.

Even if dialogue does not produce immediate results, it promotes awareness in armed groups of what is expected of them. It can generate debates within the group about tactics, about what is right and wrong, and about what steps might have to be taken to reform. While dialogue on individual cases may produce immediate results (for example, the release of a hostage), real change in the group's behaviour is likely to take time. In this sense, dialogue should be seen as a process, through which the armed group leadership gradually comes to see that certain practices ought to be stopped. In addition, a dialogue that begins on the narrow issue of putting a stop to certain practices can create the space for a broader dialogue about a just resolution to the conflict.

One final point on dialogue should be highlighted. Some people may believe it is simply inappropriate to sit down with some armed groups and have any sort of discussion on human rights. They might feel that such groups are so brutal and so immune to reason that doing so will merely give them a legitimacy they do not deserve. In the past, very similar arguments were used by some human rights organisations to rule out dialogue with certain governments. Today, most agree that (if the conditions are right) it is acceptable to discuss human rights matters with any government, whatever its record. It would seem to us, based on our discussions and the comments to the draft report, that a similar pragmatism is now developing regarding dialogue with armed groups.

Points of entry

In conflict situations both armed groups and government forces typically engage in a wide variety of abusive practices. Some armed groups are responsible for dozens of distinct human rights abuses. In many cases, armed groups are more willing to put a stop to certain practices than to others. For example, they may conclude that certain practices are indefensible, or generate bad publicity, or serve no useful purpose, or are otherwise counter-productive to their cause.

All human rights abuse is terrible for those subjected to it, but some kinds of abuse, particularly in conflict situations, seem particularly indefensible. An example might be forcibly recruiting nine and ten year-old children, abusing and de-sensitising them and sending them into battle. Armed groups are more likely to be susceptible to pressure when the abuse is one that affects people who are genuinely "innocent". Taking up abuses against children, for example, might put more pressure on the group than if one were to take up the issue of how they treated captured (adult) combatants.

Of course, there are risks with an approach that is limited in this way. It could give the impression that the abuses not being raised are somehow acceptable (or at any rate less objectionable). Such risks can be managed though, particularly if, as suggested above, a dialogue about respect for human rights is seen as a process.

Working with armed groups

As outlined above, in situations where an armed group seems willing to respect human rights but lacks the means to do so, it might make sense to work with the group to help bring about an actual change in practice. Direct engagement of this sort with an armed group presumes that its leadership is committed to improving the group's human rights policies and is willing to change. Clearly it is never easy to know, on either side, whether this is true. Human rights organisations that enter into such arrangements always run the risk that the initiative will give legitimacy to the armed group without achieving any improvement in respect for human rights. No rule can make that calculation. It is a matter of judgement for the organisation concerned.

In conditions of civil conflict, moreover, the situation may change very swiftly. A leadership that is committed to reform may change its mind as new circumstances arise. (It was losing, it is now winning – or vice versa.) The influence of reform factions in the leadership may rise or fall relative to factions that are more intolerant or authoritarian. Even so, work with leaders who accept that certain practices are wrong may be the best way of building the trust and credibility that eventually leads to real and effective changes in policy supported by the leadership as a whole. In short, when decisions to engage are made, it is generally impossible to foresee their outcomes. Those who engage in this work often adopt a very pragmatic approach that, however brutal the armed group appears, it is necessary to begin a process of sensitising it to human rights concerns.

We discuss below three types of action that involve some kind of direct engagement or assistance with an armed group:

- assistance for reform,
- developing codes of conduct, and
- direct substitution of services.

Assistance for reform

For many years, governments with poor human rights records have received “technical assistance” from the UN to bring their policy and practice into line with their international human rights commitments. Such assistance can come in many forms: training of judges and law enforcement officials, advice on law reform and constitutional change, and financial support for paralegals or national human rights commissions. Increasingly, these forms of human rights assistance are provided not just by the UN, but by foreign governments (through their overseas development aid), international development banks, regional organisations and private foundations.

Is it possible to foresee such assistance programmes being developed for armed groups? In general, donor governments and intergovernmental organisations will

be reserved about providing aid or reform assistance to armed groups where the state in question opposes it – as it is very likely to do. Assistance of this sort implies recognition of the armed group and the establishment of bilateral relations that look “diplomatic” in character. For this reason, where such assistance is given, it is generally “masked” or finessed in some way by agreement with the state concerned. This said, there are programmes to train armed groups in a range of skills, including human rights standards.

In other cases such programmes will not be feasible. Where states are extremely hostile to this kind of engagement, it will be difficult for the UN or other states to be involved. Even if state hostility can be overcome, where an armed group has the status of an international pariah the UN and foreign donor agencies will be reluctant to associate closely with it.

The degree to which the armed group exercises *de facto* control over a territory and population will also be a key factor in determining whether human rights assistance is possible and, if so, what kind of assistance. While it may be possible to enter into a dialogue with armed groups that operate in strict clandestinity, or in small “cells” in urban centres, it may be impossible to establish training and advice programmes because these require a minimum of transparency and bureaucratic control (budgets, reports, evaluations, etc.). Some armed groups will be too mobile or unstable to allow this kind of direct assistance. As indicated above, the perception of outsiders as to the legitimacy of the state will also affect whether they provide direct reform assistance to the armed group.

Other consequences need to be considered. Most importantly, any type of assistance that establishes structures of governance (e.g. courts) will strengthen and legitimise the armed group’s claim to leadership over the populations served by those institutions. If an armed group establishes some kind of judicial system, it will be a parallel system and when peace arrives this may significantly complicate the task of re-establishing state authority over the whole country. Where an armed group has secessionist aims, helping it establish separate courts will inevitably appear to support that aim.

In short, the fact that it is *possible* to work with armed groups (to improve their knowledge of international standards, to advise them on “judicial” matters, and on training programmes for their military commanders) does not mean that it is *desirable* to do so.

For many years the ICRC has been prepared to offer armed groups training and advice on international humanitarian law. It takes the pragmatic view that humanitarian principles should be made known to all parties to a conflict. Whether a particular armed group is “beyond the pale” or not is irrelevant in this analysis. However, training in the laws of war might be less problematic than at least some human rights issues.

If assistance for reform is to be provided to armed groups, many questions arise. What forms should training take? If it helps to develop a justice system, what models are appropriate? To what extent should existing national law be taken into account? How can the sustainability of reforms be assured? How should "civil society" be integrated and empowered by a reform process? This type of assistance is still quite new. It would certainly help those thinking of undertaking these types of assistance programmes to have a clearer sense of the risks involved, as well as the benefits that might result. Quite serious programmes are already underway (for example, with the Sudan People's Liberation Army (SPLA) in the south Sudan) and it would be useful to bring together the experience that has been gathered during such exercises.

Developing codes of conduct

Unlike state forces, armed groups often operate without being subject to any clear code of conduct. In theory at least, state forces are bound by international human rights and humanitarian law regarding the means and methods of warfare used and the way they treat captured combatants and the civilian population generally. National law should reflect international obligations and military codes and national criminal law should prohibit certain types of action to give effect to these obligations. Of course, in practice these laws are often inadequate and are routinely ignored. But it is at least clear what the baseline for governments should be.

When it comes to armed groups, however, numerous problems arise. First of all it is difficult to determine which international rules apply to them (discussed in Chapter Five below). Whatever international obligations apply, it is less clear how whatever international obligations exist are to be applied in practice. There is no obvious process for translating international obligations into operational instructions for their forces. Nor is it clear what "legal" process should apply to how the armed group "governs" those under its control. Moreover, the methods for enforcing law – courts, police, judiciary – are unlikely to be in place in areas under armed group control. Where they are in place, they will not always be ready to apply existing national law. Where the group's ideology denies the legitimacy of the state, it is unlikely to easily accept the legitimacy of that state's laws.

A first task is to persuade armed groups to commit themselves to respect international standards. If the leadership of an armed group states explicitly that they will be bound by international standards, this is a basis for raising certain abuses with the group. A number of armed groups have made such commitments. Of course, stating an intention to respect international standards does not in any way guarantee that that will be the result. Clearly, armed groups might make such declarations just to win public relations points.

The next need is to apply those standards. How should an armed group adjudicate complaints that its policies or practices are wrong? Who should an

individual complain to? Do traditional codes and authorities take over? If so, what happens when there is a discrepancy between what traditional justice decrees and a decision preferred by the armed group's leadership?

This is where the issue of codes of conduct arises. Such codes can deal with diverse issues – a statement of do's and don'ts for soldiers in the field, rules and mechanisms for fairly adjudicating allegations that certain members are spies, detailed rules on what freedoms are guaranteed to civilians in areas under armed group control, etc. The point is to have some kind of written statement of commitment from the leaders about how they will behave, and to ensure so far as possible that it reflects international standards.

Our research and consultation suggests that where armed groups do commit themselves to written codes of conduct, this encourages them to respect human rights. However, there are problems. The very nature of an insurgency means, generally, that armed groups do not have the means available to develop and apply "law" in the same way as a state. In many cases it will be unrealistic to expect that even the most progressive codes of conduct will be applied in a way consistent with international standards. For example, "trial" procedures for guerrillas alleged to have committed abuses, or internal inquiries into allegations of spying will, in almost all cases, proceed under a "judicial" apparatus that is likely to fall below international standards.

Whatever the difficulties, the usefulness of these codes should not be underestimated. However imperfect, they give some shape to a very grey area of decision-making. They also force the leaders of armed groups to think about regulating the behaviour of their forces and how they conduct their relations with civilians under their control. In this sense, they are a first step towards eroding the arbitrariness that is a hallmark of many armed groups. Additionally, a "legal" approach is important to counter-balance tendencies to adopt "revolutionary" forms of justice in a number of armed groups.

Direct services

A third type of direct assistance to armed groups deserves mention. Assistance for reform and developing codes of conduct both rely for implementation on the armed group, or structures under its control. But in certain cases some other institution or "service" might be put in place to stop abusive practices. This might require substantial outside support. For example, take the issue of anti-social crime in areas controlled by an armed group. Where a substantial portion of the population perceives an armed group to be legitimate, and the state and its laws to be illegitimate, they are likely to look to the armed group and not the state to "police" them. The armed group comes under social pressure to deal with thieves, drug-dealers, rapists, fraudsters and common criminals of all kinds. In some instances, judicial or quasi-judicial structures will be in place to deal with criminal behaviour. In others, a programme or "institution" to deal with anti-social crime may be required, allowing the armed group to withdraw from this activity.

Innovative programmes along these lines have been operating with some success in Northern Ireland to deal with the problem of "punishment beatings" carried out by armed groups against those deemed guilty of anti-social crime. The programmes involve trained community activists taking over responsibility from the armed groups for resolving disputes and dealing with petty crime in a lawful and non-violent fashion using the principles of restorative justice¹². The programmes operate with the full consent of the armed groups.

According to those involved, hundreds of punishment beatings and worse abuses have been prevented through these programmes. Of course, such programmes can be attacked on the grounds that they legitimise armed groups and release the state from its responsibility to deal with crime. But the fact is that they do reduce the level of abuses. There might well be problems with using such models in other situations. But they deserve closer attention.

Punishing

Under international law, individuals can be held responsible for war crimes and crimes against humanity including genocide. It does not matter whether the individual acted under the authority of a state or of an armed group (see legal section below). Yet, although it has been possible for many years for individual members of armed groups to be prosecuted for crimes against humanity and war crimes, only recently has such action become likely. In the 1990s there has been a definite trend to explore international prosecutions when national prosecutions are not brought. While the main focus has been on abuses by government officials, individual members of armed groups have also been under investigation.

International prosecutions can take place in two ways. First, individuals can be prosecuted before international criminal tribunals. There are only two existing international tribunals (for the former Yugoslavia and for Rwanda). Though their mandates are limited to crimes committed in those territories, these tribunals can indict members of armed groups. The International Criminal Tribunal for the Former Yugoslavia (ICTFY) has announced that it is investigating allegations that Kosovo Liberation Army (KLA) guerrillas committed crimes against humanity during fighting against Serb forces in Kosovo in 1998.

In 1998 in Rome a vast majority of states voted to establish a permanent International Criminal Court (ICC). The ICC will not begin work until a sufficient number of states have ratified its statute, a process that could take several years. When this happens, international criminal prosecutions of members of armed groups for war crimes and crimes against humanity will become much easier.

¹² Restorative justice approaches crime and anti-social behaviour as a breakdown in relationships which requires healing rather than retribution (i.e. the application of criminal law). Restorative justice practices usually involve offenders, victims and the community, and may include a range of techniques such as victim-offender mediation, reparation and family group conferences.

A second type of international prosecution can take place if a state uses the universal jurisdiction rule. Under this rule, any state may (and in some cases must) try individuals who are guilty of crimes against humanity and war crimes if they are found within its jurisdiction. The rule applies regardless of the nationality of the victim or perpetrator, or when or where the crimes were committed. Augusto Pinochet was arrested under this rule in the United Kingdom, for extradition to stand trial in Spain. The attempt to extradite Augusto Pinochet from the UK to stand trial in Spain, and his arrest in the UK for this purpose, were based on this rule.

The use of universal jurisdiction prosecutions against members of armed groups has some distinct advantages. First, the leaders of armed groups are often resident abroad. The rule makes it possible to arrest them and put them on trial if there is evidence that they are responsible for crimes against humanity or war crimes. Second, prosecution abroad has the advantage of overcoming the problems of trials and treatment at home. While in most situations the government in power will be keen to arrest and put on trial members of armed groups, such trials might fall short of international standards and those arrested may be tortured. Third, it can be easier to prosecute members of armed groups abroad because, unlike people who hold some forms of state power, they cannot claim immunity from prosecution by other states.

Yet there are also difficulties in using the universal jurisdiction rule against members of armed groups. It can easily be misused by states motivated by reasons other than a desire to punish individuals who have committed crimes against humanity. It also raises problems of selectivity – punishing the armed group but not the state, or punishing one armed group but not another. Much will depend on the role of the state that decides to exercise universal jurisdiction and whether it is seen to act from a genuine interest to punish war crimes, rather than to prosecute members of a particular armed group for political reasons.

Conflict resolution and campaigning for peace

“The issue of ‘humanizing’ the war is also very important and must be addressed. But quite honestly, humanism and war contradict each other. If you ‘humanize’ the war you do so in order to prolong it and what we want is to end it, by eradicating the factors which have given rise to it.” – FARC communiqué, Colombia.

The activities described above aim to mitigate the effects of conflict, not to stop it. Some international actors interpret the demands of neutrality and impartiality to mean that one cannot take any position on peace or conflict resolution. To suggest how conflicts can be solved or to work towards that end would, from this perspective, mean implicit approval or disapproval of the goals of one or other belligerent. Their judgement – often based on practical experience gathered over many years – is that such a step would affect their status as an impartial monitor.

Nevertheless, clearly the most effective way to halt human rights abuses caused by war is to end the war itself. On these grounds, some would argue that working for peace is a key means of ending human rights abuses by armed groups. In addition, some people view war itself as an assault on human rights. They feel that the very idea of a humane war is a contradiction in terms. Such people will be sceptical of all efforts to protect human rights that ignore the issue of resolving the conflict.

A number of international political bodies have a mandate to bring warring parties together to reach a political settlement. The UN, regional organisations and states acting on their own send peace envoys or sponsor negotiations and cease-fires. In addition, many independent non-governmental organisations are active in this field. In this study we cannot discuss techniques of conflict mediation and peace-making in any detail. However, it may be useful to comment briefly on how peace initiatives can complement human rights work, and where sometimes there may be contradictions.

Working to improve respect for human rights in an armed conflict, by either the government or an armed group, can help to create the conditions in which an eventual peaceful settlement becomes possible. It is probably accurate to say, for example, that as atrocities worsen or respect for human rights improves (on either side) so it becomes harder or easier to bring combatants together to discuss peace. While many other factors also influence whether peace is achievable (military advantage, pressure from other governments, etc.), the extent to which one or other party has shown a brutal disregard for human rights will affect the willingness of the other to sit down with it. Thus “humanising” the war can be a first step to ending it, by reducing (though not eliminating) antagonism felt by the other side.

Additionally, insisting on respect for human rights during conflicts helps to ensure that such issues are not forgotten when peace negotiations and political reconstruction eventually begin. In particular, armed groups who face criticisms of their human rights record during the conflict are put on notice that after the conflict ends their conduct (as political parties, or members of a new government) will be under scrutiny.

There are other issues to consider. In particular, in considering peace, it is important to understand the extent to which past violations of rights were a *cause* of the conflict (or were instrumental in the creation of armed groups involved). Rights can be violated at many levels, of course. Violence, illegal detention, the repression of civil and political rights, expropriation of property may all be important factors – so may the oppression of minorities, suppression of religious freedoms, or denial of the right to self-determination. A peace that does not address such causes is likely to be unsustainable and indeed unacceptable. Because settlements inevitably involve concessions by all parties, such issues raise difficult dilemmas of judgement for human rights organisations.

Amnesties and issues of accountability for past abuses frequently arise in the context of peace settlements. These also pose difficult issues of judgement. On such questions, organisations whose primary interest is respect for human rights often find themselves at odds with those who are motivated above all by the desire to establish peace. In some cases, amnesties are negotiated against conditions. In South Africa, those guilty of political abuses during the apartheid period were offered amnesty on condition that they gave a full account of their misdeeds. In other cases, a blanket amnesty is agreed. Such an amnesty was agreed in 1999 as part of a peace settlement in Sierra Leone. It was criticised because of the extreme brutality of the abuses that had taken place there, although there was considerable support for the amnesty in Sierra Leone on the basis that it was seen as essential to peace. The collapse of the peace agreement in May 2000, largely as a result of intransigence on the part of the RUF, led many to conclude that the 1999 amnesty had been a grave mistake.

In most countries, national organisations take a variety of positions on amnesty, according to their assessment of the political options that are available. International human rights organisations (though not all humanitarian organisations) refer to international law when they consider the same issues and almost invariably they oppose amnesties that enable individuals who have been guilty of crimes against humanity and war crimes to evade justice. This can create differences of opinion between national and international organisations.

This is not an easy question. Agreement will not be found in one step. It is perhaps worth saying three things. One is that people exhausted by war and constrained by their political environment are entitled to choose peace without justice (though the choice itself is often made under duress). Two, international organisations are entitled, indeed obliged, to protect international standards that require accountability. Three, where the crimes committed are international in character (for example, crimes against humanity), they remain subject to international law and no local amnesty can efface the right of courts to bring such people to trial abroad. To this degree, people who opt for amnesty also have room in which to change their minds at a later date – and those who commit serious human rights crimes cannot feel that they are forever safe from eventual prosecution.

Our research focused largely on the work of human rights organisations. But in the course of it we learned that peace groups of many different kinds are actively engaged with armed groups in many countries and that they are similarly preoccupied with the abuses those groups commit. In our discussions, and from some of the comments we received, it became apparent that the somewhat different perspective of peace groups is not always well-understood by those who base their actions in human rights, and vice-versa.

Organisations that adopt positions of strict impartiality, and do not work on resolving the conflict, sometimes feel that it is mistaken to tie commitments on

human rights to a peace process. The risk, as they see it, is that better behaviour becomes conditional on political factors, whereas respect for international law should be non-negotiable. The argument is also put that conflict resolution efforts and peace campaigns are easily manipulated by the warring parties, given their inherently political nature (as they touch on issues of how the conflict should be resolved). On the other side, peace and conflict resolution groups are frustrated by what they see as the overly legalistic approach adopted by human rights NGOs – an approach which they also criticise because it appears to them to deal with symptoms rather than causes.

We do not wish to exaggerate these differences. Clearly many people do understand the motivation behind, and the need for, different approaches. Yet further discussion between these two different types of actors might usefully identify much common ground. As one commentator put it, "... the voice for human rights should be seen too as a voice for peace, and vice-versa".

Co-ordination between actors

During our research, many national organisations made the point that, when international attention was focused on abuses by armed groups, it helped to create political space and enabled national organisations to take up the same issues.

In a few cases, on the other hand, international action created difficulties for local organisations – for example, it put pressure on them to address armed group abuses when they were not in a position to do so. In some cases, as they saw it, ill-timed public interventions undermined private dialogues.

It is clear from our research that a very diverse range of actors can do certain things in support of human rights in relation to armed groups. When they act together, great opportunities for collaboration can emerge. International NGOs know how to engage the world's press, whereas national actors understand much better how to identify and engage with an armed group's constituency. Human rights organisations are generally good at fact-finding and analysing information about abuses, whereas humanitarian relief organisations are adept at operating in conflict zones (and equipped to do so). Religious groups with links to (and legitimacy within) the armed group's constituency can be in a unique position to initiate dialogue, whereas international civil servants have expertise and authority to mediate between armed groups and governments. The strengths and weaknesses of these different actors need to be understood, in the very different contexts in which civil conflict occurs. In each place, then, taking account of local realities, decisions can be made about who can best undertake particular actions. This implies sustained co-operation among all those involved.

Most agree that co-ordination is desirable, and most see the potential benefits of thinking through together which types of organisations should undertake which

actions. The real problem is putting it into practice. Even at the national level co-ordination between different civil society actors is difficult. When one factors in international organisations (both official and non-official), and their different mandates, we were told that pleas for greater co-ordination can appear “naïve”. Nevertheless, this report suggests that actions vis-à-vis armed groups should be preceded by an analysis of the context. Such an analysis should include consideration of the question of who is best placed to do what. This in turn can assist efforts towards greater co-ordination.

Five: LEGAL ISSUES

As already noted, there is some confusion and uncertainty about the extent to which international human rights standards can be applied directly to armed groups. There are also questions about whether international humanitarian law (the laws of war) adequately covers the problem of abusive practices by armed groups. In this chapter, we look briefly at these issues.

Some of those commenting on the draft of this report asked that we deal in much more depth with the legal issues. Certainly the overlap between international human rights law and international humanitarian law in internal conflict situations raises complex issues. A full analysis would require reference to numerous treaties, an examination of rules of customary law, consideration of authoritative and judicial pronouncements on the applicability of different rules, and identification of the various problems that arise for those seeking to apply these rules to armed groups. In addition, most would agree that developments over the past decade in international criminal law mean that the law here is in a state of flux.

The legal issues are important and do deserve close attention. Nevertheless, the purpose of our research was not so much legal as practical, and our intended audience extends far beyond people familiar with the details of international law. Other studies discuss the legal issues in detail. This section therefore addresses a narrower question: whether legal uncertainties or ambiguities obstruct or hinder efforts to ensure armed groups stop abusive practices.

Before proceeding, it is worth indicating why international law is important to efforts to ensure armed groups respect human rights. First of all, it is clear that if one is to raise a complaint that certain practices or behaviour amount to “human rights abuse”, one should have criteria for making such a judgement. International law provides criteria and it has distinct advantages over national law.

Armed groups will not readily accept the legitimacy of national law. If they are secessionist movements, they are likely to disagree that the state has authority to pass laws that are valid in contested territories. Similarly, revolutionary or insurrectionist groups that seek to overturn the government of a country are likely to challenge the legitimacy of that government’s laws. National law is tainted by its association with the state or government in power. International law, even though it is developed by states, has the advantage of being distinct from any particular state. Since it is *supra-national* in character, it provides a degree of legitimacy for armed groups that national law does not.

Of course, some armed groups challenge the legitimacy of international law just as readily as national law. Groups whose aims or ideology will not accommodate a world of sovereign states, or who claim divine (religious) authority, might question the legitimacy of international norms. In such cases, one might usefully

look for rules in traditional or religious codes that are similar to prohibitions in international law.

A second, related, point is that international law provides a *common* standard. We have already noted the importance of impartiality. In conflict situations, an organisation's ability to raise human rights issues credibly will depend partly on whether it has consistently criticised the abuses of all parties. It is crucial therefore to measure these abuses against a common standard. For international actors it is important to show that the standards applied to one conflict situation are no different from those applied elsewhere.

International law provides the most effective available yardstick for measuring behaviour. We can now consider briefly whether it is adequate. Two sets of rules are relevant for regulating the behaviour of armed groups in conflict situations: international human rights law and international humanitarian law. Both have advantages and disadvantages when applied to armed groups.

International human rights law

International human rights law is made up of many international treaties and declarations, the most important being the Universal Declaration of Human Rights (adopted in 1948) and the two International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights (both adopted in 1966)¹³. In addition to legally-binding treaties, the UN has also adopted dozens of standards and guidelines on human rights issues, ranging from principles for investigating arbitrary killings to guidelines for the treatment of prisoners. Though they are not legally binding, these set out how states are expected to act on specific human rights matters. States have also formed regional intergovernmental organisations that have adopted human rights treaties (for example, the African Charter on Human and Peoples' Rights).

Taken as a whole, international human rights law provides a comprehensive set of principles. They set out which human rights are protected and the measures that need to be taken to implement them. The problem is determining whether these standards create obligations on actors other than states, including armed groups. Human rights treaties were for the most part drafted with the intention of creating obligations on states. Most of the provisions of these treaties are addressed to states, and it is hard to imagine actors other than states being in a position to fulfil some of the detailed obligations they contain. Additionally, only states can formally sign and ratify these treaties, and only states are subject to the oversight mechanisms the treaties establish.

¹³ Other UN treaties include the International Covenant on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Convention on the Prevention and Punishment of the Crime of Genocide.

In addition to these difficulties, there is also the worry that, for some states it would be convenient to apply international human rights law to armed groups. They could deflect attention from their own behaviour, and this could weaken the international system set up to scrutinise the degree to which states respect human rights. Further, some would argue that the notion of human rights describes a relationship between governments and citizens, and that harms perpetrated by persons acting without governmental authority, no matter how objectionable, should not be thought of in the same terms.

On the other hand, some armed groups control territory and population, and resemble *de facto* governments. Certain groups have also signalled their desire and intention to respect international human rights treaties (even if they cannot formally sign them). It would seem strange not to welcome this simply because other states do not formally recognise their authority or because they cannot be admitted to the UN. Further, governments and intergovernmental organisations have concluded cease-fire and peace agreements with armed groups in which those groups have explicitly agreed to respect human rights as set out in international standards that were originally devised to bind governments alone.

Moreover, even when the armed group itself might not be subject to international human rights law, its individual members can be prosecuted for crimes against humanity. Since the Nuremberg Trials at the end of World War II, it has been established that individuals can be prosecuted under international law for crimes against humanity. These crimes (listed below) are the most serious human rights violations, and it is now accepted that individuals can be prosecuted whether or not they are acting on behalf of the state.

Crimes against humanity include systematic or widespread acts of murder, extermination, enslavement, torture, deportation or forcible transfers of population, arbitrary imprisonment, enforced disappearance of persons, persecution on political, religious, racial, or gender grounds, and rape, sexual slavery and other serious forms of sexual violence. Also included are practices like *apartheid*. Genocide – which involves acts such as killing or persecuting members of a racial, religious or ethnic group with the purpose of destroying that group – is also a crime against humanity.

Therefore, whatever the difficulties in applying human rights treaties to armed groups, members of those groups are still accountable under international law for certain kinds of unacceptable behaviour. We raised this point in the draft of this report and in response a few people commented that prosecution for “crimes against humanity” was a different matter than “human rights”. The difficulty is partly semantic. If by “human rights” one refers narrowly to the main international human rights treaties, then it is the case that for the most part these create obligations on states. However, a broader scope for the term, to include crimes against humanity and generally claims against those who hold organised power, is also possible.

This debate cannot be resolved here. One final point deserves mention, nevertheless. In April 2000 the UN Commission on Human Rights approved a new protocol to the Convention on the Rights of the Child that raises from 15 to 18 the age at which governments can allow soldiers to participate in conflict. The younger age is in the Convention, completed in 1989. The prohibition on recruiting and using children in the protocol applies to armed groups, who were not included in the original convention.

International humanitarian law

International humanitarian law covers a wide range of international treaties and agreements, some dating back over a hundred years. The most important instruments are the Four Geneva Conventions (1949) for the protection of victims of war and their two Additional Protocols (of 1977). Other important agreements include treaties prohibiting the use of chemical or biological weapons and landmines. In addition, there are customary rules (based on the practice of states) that are not set out in treaties but still create legal obligations.

Unlike human rights law, it is clear that the laws of war apply to all parties to the conflict including, in internal conflicts, to armed groups. This area of law has the added advantage that its rules are tailored precisely to deal with the conduct of warfare and the protection of victims of war.

Here too however, there are difficulties. First, international humanitarian law was for the most part designed to deal with wars between states, not internal conflicts. Only one article of the Four Geneva Conventions applies to non-international armed conflicts (Common Article 3 – so-called because it is found in each of the four conventions). Only one treaty – Additional Protocol II to the Four Geneva Conventions – is designed specifically to cover internal conflicts.

Common Article 3 guarantees the humane and non-discriminatory treatment of non-combatants (including captured soldiers), and outlaws murder, torture, cruel or degrading treatment, the taking of hostages, and unfair trials. Protocol II expands the protection offered by Common Article 3 to include prohibitions on collective punishments, violence to health and physical or mental well-being, acts of terrorism, rape, enforced prostitution and indecent assault, slavery and pillage. Protocol II also includes provisions for the protection of children, for the protection and rights of those detained for reasons related to the conflict, and provides fair trial guarantees for those prosecuted for criminal offences related to the conflict. Articles also deal with the protection and care of the wounded, sick and shipwrecked and the protection of medical and religious personnel. Protocol II further prohibits attacks on the civilian population, the use of starvation as a method of war, and the arbitrary displacement of the civilian population.

While this list appears quite detailed, it still falls short of the detailed rules on the means and methods of warfare found in treaties covering international armed

conflicts. For example, it does not include prohibitions on weapons or methods of warfare that are prohibited in international armed conflicts. Also, there are detailed rules that require armed forces in international conflicts to take precautions in attack so as to reduce the risk of civilian casualties, and regarding facilitating and protecting the work of humanitarian agencies providing relief to the civilian population. These are absent from the above list.

The bigger problem, however, is that, at least for Protocol II, the rules only apply in internal conflicts that reach a certain threshold of intensity¹⁴. As a result, the laws of war only apply in *some* internal conflicts and the definition of these is ambiguous enough to allow both armed groups and governments plenty of scope to deny that the fighting in their country is covered. Governments are often quick to do this because they fear that admitting the application of the Protocol will confer international legitimacy on the armed group.

Having noted the problems, it is worth pointing out that, in most of the countries we studied, efforts to hold armed groups accountable were not obviously hampered by the confusion or contradictions in existing international law. Both UN and NGO staff suggested to us that lack of clarity about international law is simply not that important. Those adopting a legal framework for their actions tend to be pragmatic, using either or both bodies of law as circumstances allow and taking into account what would be most effective. The fact that only states can formally sign and ratify human rights treaties has not stopped many actors in the field from using provisions in those treaties as a basis for discussion with armed groups. Similarly, the fact that in legal terms Protocol II does not apply in some internal conflicts (those of a lower intensity) has not, apparently, prevented its use as a reference point, even in situations where its legal applicability is in doubt.

That being said, in some situations the legal question does cause difficulties. For example, some organisations would find it impossible to explain why, if they used humanitarian law as a yardstick, they were only able to condemn some killings by armed groups. Humanitarian law distinguishes between combatants and civilians, and only prohibits attacks on the latter. This means those using humanitarian law as a reference point could not generally condemn attacks on soldiers, and in some situations of internal conflict this could lead to difficulties. Further, the rules do not always provide clear guidance on who is a combatant; the category includes those taking part in hostilities in some way, and could encompass

¹⁴ Protocol II applies to conflicts taking place between a government's armed forces "... and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol." The Protocol does not apply "... to situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts." Common Article 3 is not explicitly limited to more intense internal conflicts. It applies to "armed conflicts not of an international character", but even so there is continuing debate about its applicability in many situations.

numerous government officials or others who might contribute to the war effort. Making such distinctions can prove politically impossible in some situations.

Regarding the point that less law applies to armed groups than applies to states, it should be stressed that, taken together, Common Article 3 and the list of crimes against humanity (as set out in the ICC statute) do provide a good starting point for judging unacceptable behaviour.

One final problem should nevertheless be mentioned. As we have already said, the degree to which armed groups are tolerant towards those under their control is crucial. In conflict situations, governments must also be persuaded to be more tolerant of independent efforts to address armed group abuses. However, at least with governments one can use the many provisions of human rights law that guarantee freedom of expression, association and opinion and protect political rights. While some of these freedoms can be limited in war, there is still a basis in international law to challenge arbitrary government actions. Yet, if human rights standards cannot be applied to armed groups, there is a gap when it comes to insisting that they show tolerance for dissent or respect these basic freedoms. International humanitarian law is more or less silent on these kinds of rights and freedoms.

Six: CONCLUSION

In the preceding chapters we have looked at two main issues:

- What types of action are likely to be successful in causing armed groups to respect human rights?
- What factors and circumstances make types of action more or less likely to succeed or more or less appropriate?

We noted some of the legal problems that arise when international law is applied to armed groups. We also noted the many different issues that arise for organisations that want to influence armed groups to respect human rights. In this conclusion we draw out some key points and make suggestions for further study.

Step back

It is difficult, and for some perhaps impossible, to take an objective view of armed groups or the abuses they commit. Those sympathetic to the aims of a group will too readily excuse or justify abuses and those hostile to the group's goals will seize on any infraction as evidence of its wickedness. Foreign governments might support the armed group or, in contrast, label it as "terrorist". Intergovernmental organisations (such as the UN) find it hard to think clearly about armed forces that are not state-controlled, and that are fighting against Member States of the organisation. None of this is surprising.

At the same time, it is clear to us from our research and discussions that effective action vis-à-vis armed group abuses requires above all else a dispassionate analysis. We recognise that this is difficult, not least for those closest to the victims of the abuses committed. However, viewing armed groups in simple terms – whether as heroes or demons – does not help one understand how they might respond to human rights issues.

Understand the context

Numerous factors influence the success of any action taken to reduce human rights abuses committed by armed groups. The approach suggested in this report is that effective action requires an analysis of the context. Schematically:



The key contextual factors that arise are those relating to the character of the armed group, the role of the state, and the capacity (strengths and weaknesses) of civil society. In addition, the nature of the organisation that is considering action influences its choices and approach. National human rights NGOs, relief groups, peace groups, etc. are not in the same relationship to the conflict or other actors as international organisations, and the role of international NGOs differs again from that of states or intergovernmental organisations (like the UN).

All these elements influence each other. The size of an armed group's constituency may depend on the perceived legitimacy of the state; the ability of national actors to raise human rights issues with armed groups will depend on the degree to which both states and armed groups tolerate independent initiatives.

Appreciate the diversity

We noted in the introduction the extraordinary diversity of armed groups. Their common feature is that they are not under state control, but that in itself provides little useful information for determining the extent to which they might be prepared to heed calls to respect human rights and humanitarian norms. As a category, armed groups defy easy description.

It is essential therefore that those wishing to engage armed groups on human rights issues should try to understand the character of each group on its own terms. Methods of action that might be successful with one group might not achieve results when applied to another, and might even be counter-productive.

We identified a number of key factors to consider:

- The aims and ideology of the group
- Its leadership
- Its openness and tolerance
- Methods of military command and control
- Foreign sponsors
- Constituency

There might be others. The key point is that the process of considering any such list helps to avoid easy generalisations.

Armed groups and tolerance

The degree to which armed groups tolerate dissent is a crucial indicator of whether it is possible to influence their respect for human rights. This includes tolerance of dissent among their members and in their constituency. Intolerance of dissent can not only cause human rights abuses (such as purges) directly, but prevents action to stop other abuses because no space exists within the group or within its constituency to challenge certain policies or tactics.

Much more attention should be devoted to ensuring that armed groups, like governments, allow space for the exercise of basic political and civil liberties. Killings, hostage-taking and assaults on civilians must be addressed, but so too must restrictions on free speech and association. Millions of people live under the direct or indirect control of armed groups, and their freedom to speak out, to disagree or to espouse independent opinions cannot be ignored. There are legal problems, and no doubt interventions along these lines will be difficult. Nevertheless, the possibilities for a real change in behaviour are greatly enhanced when those inside the group or its constituency are in a position to raise concerns without fear.

Identify the reformers within

Organisations of civil society linked to or sympathetic to an armed group are key motors for changing the behaviour of armed groups. Where there is room for these “insiders” to act they will enjoy credibility with the armed group leadership that “outsiders” will rarely attain.

Both official and private actors that want to ensure armed groups respect human rights should aim, where it is safe and appropriate to do so, to identify and engage with such “inside” reformers.

Role of foreign governments

Our research focused on the efforts of independent organisations, primarily at the national level. Governments also have a role to play in putting a stop to human rights abuses by armed groups. Of course, where a foreign government supports or sponsors an armed group, it can play an obvious role in using its influence on the group.

Even where foreign governments have no direct means of influence, they can speak out against abuses. People on the ground generally reported that public criticism of armed group abuses by foreign governments was often helpful. Governments can also support the efforts of national actors to reduce abuses by armed groups, not least by helping to provide protection when they work in conditions of great risk.

Where punishment is an appropriate response, foreign governments play a crucial role. Only through their efforts, whether acting alone or through an inter-governmental process, can legal sanctions be put in place or international criminal investigations opened.

In situations where it is appropriate to work with an armed group to assist them to reform their behaviour, governments can provide the resources required for such work.

Striking the balance

One point raised repeatedly in our discussions with national actors was the fear that any work they might undertake on armed group abuses would be

manipulated by the government. No doubt governments will use to their own advantage criticisms made by independent actors of armed group abuses. In some cases such criticism will be manipulated to deflect concern from the government's own human rights record or to justify abuses it commits.

On the other hand, such manipulation of human rights information is hardly new. Indeed, this is exactly what armed groups do with criticism levelled at governments. The issue is not avoiding the risk of manipulation, but taking steps to manage that risk.

Having said that, we repeat here the point raised earlier, namely that national organisations must make their own decisions about whether it is appropriate for them to take up the issue of human rights abuses by armed groups. Though there is a trend among human rights and humanitarian organisations to work on this issue, national actors will determine in many cases that it is neither practical nor safe for them to do so.

State tolerance of independent action

State intolerance of independent action on abuses by armed groups frequently hinders effective work against those abuses. Organisations that have more credibility and could influence the behaviour of armed groups are prevented from doing so. Governments facing an armed insurgency cannot easily be persuaded to view with disinterest how independent organisations engage with the insurgents. On the other hand, where there is genuine interest in finding a peaceful resolution then the dialogues on human rights and humanitarian issues initiated by civil society can help to create the space for official contacts.

Foreign governments and intergovernmental organisations can play a role in persuading governments in such situations not to prevent independent efforts to engage with armed groups.

Dialogue

More efforts should be made to engage in dialogue on human rights issues with armed groups, and with their constituencies. There are risks with dialogue, but it must be undertaken. If it is acceptable to sit down and discuss human rights with any state, the same should be true of any armed group, whatever the perception of its abuses, tactics or objectives.

That said, the choice of who is best placed to enter into dialogues with armed groups is crucial.

Assistance for reform

In appropriate circumstances, it might make sense to work directly with armed groups and assist their efforts to reform. Doing so will not be easy and raises difficult problems, but where an armed group sees the need to better respect human rights but lacks the means to do so, this option deserves to be considered.

Codes of conduct

Steps need to be taken to fill the gap so that international obligations on armed groups can be turned into operational and practical rules for their combatants and to regulate their rule over populations under their control. Codes of conduct covering the military and civilian functions of armed groups need to be developed.

Ideas for further research

In the course of our research numerous issues came up that we feel could usefully be studied further.

- *The usefulness of sanctions*

What types of sanctions on armed groups work most effectively? To what extent have sanctions on armed groups led to unintended consequences for civilians (or sanctioning states)? What are the comparative strengths and weaknesses of bilateral and multilateral efforts in this regard? What particular problems (if any) arise in placing sanctions on armed groups (compared to states)?

- *Survey of assistance initiatives*

We have suggested that it is possible, though not necessarily desirable, to provide assistance to armed groups with the purpose of strengthening their ability to respect human rights and humanitarian norms. A survey of assistance efforts to date would be valuable. Such a survey could look at different approaches, identify the problems faced by those providing the assistance, and describe how problems were dealt with.

- *Collection and analysis of armed group commitments to human rights and humanitarian law*

Our research confirmed that a number of armed groups have made formal commitments to respect international human rights and/or humanitarian standards. These commitments range from short unilateral positions on specific issues (such as the use of landmines) to detailed agreements with governments covering dozens of human rights-related issues. Collecting these agreements, and drawing out their common points and defects, would be useful to those who are discussing such issues, including armed groups themselves. A comparative assessment of the practical effects of such commitments in reducing abuses would also be useful.

- *Collection and analysis of internal codes of conduct and "legal" systems in place in areas under armed group control*

We noted that armed groups face conceptual and practical difficulties when they seek to translate international obligations into practice, and establish "legal" systems in areas under their control. Comparative research on this point, in particular gathering information on internal codes of conduct, would be useful.

- *Human rights and peace/conflict resolution initiatives*

We noted the tension that sometimes exists between different actors, in particular between those whose main aim is to stop human rights abuses and those whose main aim is to put an end to the conflict. A greater understanding among and between these different actors of the strengths (and limitations) of both approaches would be helpful. Further discussions and analysis on this point could help to ensure that, as a minimum, different actors approaching armed groups were not working at cross-purposes.

ANNEXE I: LIST OF PARTICIPANTS IN THE PROJECT MEETING,
6-8 SEPTEMBER 1999

Country Researchers

Myrna J. Alejo.	Head, the Democracy Watch Programme, Institute for Popular Democracy (Philippines).
Mohamed Barood Ali.	Executive Director, Somali Relief and Rehabilitation Association (Somalia).
Janet Cherry.	Lecturer, School of Social Sciences and Humanities, University of Port Elizabeth. (South Africa).
Benjamin Cuéllar.	Director of Human Rights Institute, Central American University (El Salvador).
Monyluak Alor Kuol.	MPhil candidate, Oxford University (Sudan).
Andrew Mawson.	Human rights advisor, Save the Children UK (Uganda).
Kieran McEvoy.	Assistant Director of the Institute of Criminology and Criminal Justice at Queens' University in Belfast (Northern Ireland).
Helmut Oberdiek.	Independent researcher, (Turkey).
Michael O'Flaherty.	Head, Office of the High Commissioner for Human Rights in Sierra Leone (Sierra Leone).
Jaime Prieto	Independent researcher (Colombia).

Invited Experts

Bishop George Biguzzi.	CARITAS, Sierra Leone.
Rachel Brett.	Quaker UN Office, Geneva, Switzerland. Advisor to the project.
Claudio Cordone.	Head, Research and Mandate Programme, Amnesty International, UK.
Mark Cutts.	Policy researcher, UNHCR, Geneva, Switzerland.
Jacques de Maio.	International Committee of the Red Cross, Geneva, Switzerland
Alebel Derib.	Radda Barnen, south Sudan.
Stephen Ellis.	Professor, African Studies Centre, University of Leiden, The Netherlands. Advisor to the project.
Kristina Hedlund-Thulen.	Ministry of Foreign Affairs, Sweden.
Anders Kompass.	Office of the UN High Commissioner for Human Rights, Colombia.

Nick Leader.	Overseas Development Institute, UK.
Susan Lee.	Researcher in the Americas Programme, Amnesty International, UK. Advisor to the Project.
Eduardo Marino.	Working Group on Non-State Actors, ICBL, UK.
Mike McClintock.	Deputy Programme Director, Human Rights Watch, New York, USA.
Hanny Megally.	Director, Middle East Programme, Human Rights Watch, New York, USA.
Mtyhuzely Mzamo.	Lt.-Col. South African National Defence Force.
Bob Neidhardt.	Conciliation Programme Co-ordinator, Quaker Peace and Service, UK.
Christophe Peshoux.	Office of UN High Commissioner for Human Rights, (formerly in Cambodia, now in Geneva), Switzerland.
Elisabeth Reusse-Decrey.	Parliamentarian, Geneva, and Swiss representative of the International Campaign to Ban Landmines, Switzerland.
Samuel (Kofi) Woods.	National Director of the Catholic Justice & Peace Commission in Monrovia, Liberia (1991-1998). Currently at the Institute for Social Studies in the Hague, The Netherlands. Advisor to the project.
ICHRP Staff	
Robert Archer	Executive Director.
David Petrasek	Research Director, and Co-ordinator of Project.

ANNEXE II. RESEARCH QUESTIONS

In preparing this report we drew on research papers that looked at experiences in ten countries. The researchers who prepared these papers were provided with a list of research questions. We include this list below. People interested in reflecting on the experience in countries with which they are familiar might find the list helpful.

Main Research Question # 1: How have human rights and humanitarian actors in different countries tried to influence armed groups to respect human rights?

- Why have human rights and humanitarian actors tried to influence the behaviour of armed groups? What factors led them to begin such work? If human rights and humanitarian actors have not tried to influence the behaviour of armed opposition groups, what are the reasons for this? Is it the result of a conscious choice? What are the costs and benefits to local actors of trying to influence armed groups to respect human rights?
- What techniques and strategies have been pursued? Are efforts limited to fact-finding and reporting? Have there been attempts to enter into dialogue with members of armed groups or those who speak on their behalf? What types of intermediaries or interlocutors are used or are found to be reliable? Do local human rights and humanitarian actors depend on alliances with international organisations, and if so what types of alliances?
- Who are the different actors who have tried to influence armed group behaviour?
- Who has tried what? Which human rights and humanitarian actors have tried which types of actions? Have local actors pursued different strategies from international actors? Have approaches that have been made raised concerns about many different abuses, or just about one type of abuse?
- What are the types of recommendations/demands made to armed groups – and why were these chosen?
- Which armed groups are or have been the subject of scrutiny? Is it difficult in practice to decide which armed groups to look at, and what are the difficulties?

Main Research Question # 2: What are the main obstacles human rights and humanitarian actors have encountered in trying to influence armed groups to respect human rights?

- To what extent does a neutral position on the conflict assist or inhibit efforts to influence the behaviour of armed groups? Has it been possible to take effective action on abuses by armed groups without taking a position on the conflict or the aims of the group in question? Has it been possible to take such action if one has also taken a position on the conflict?

- Does the government (or government forces) prevent or inhibit actions taken to influence the behaviour of armed groups? Does it otherwise interfere with such actions? Does taking action against abuses by armed groups create the risk that human rights and humanitarian actors are perceived as allied to the government, and if so what are the consequences?
- If the armed group is largely made up of one ethnic group, in what circumstances can appeals made by people from another ethnic group still have an impact? Similarly, where the armed group has a set ideology, does it respond to appeals made by actors associated with a different ideology?
- Which legal standard, if any, do human rights and humanitarian actors rely on in assessing whether certain actions by armed groups are reprehensible? Do the armed groups accept the legitimacy of standards based on either national or international law, or neither? What are the reasons given when armed groups question the legitimacy of legal standards? Do human rights and humanitarian actors face difficulties in trying to apply either international human rights or international humanitarian law? If so, what are the specific problems?
- Do human rights and humanitarian actors have access to areas controlled by armed groups in order to make independent assessments about the nature and extent of abuses attributed to them? If they do not have such access, how does this limit the effectiveness of their action against armed group abuses?
- Do human rights and humanitarian actors want intergovernmental organisations like the UN to monitor and report on abuses by armed groups? Would this help their efforts, or would it create the risk that this gave more legitimacy to the armed group, or meant less attention would be placed on the government's human rights record?
- Where humanitarian assistance is being provided to those affected by the conflict, what role does it play in either increasing or reducing the ability to influence the behaviour of the armed group to respect human rights or humanitarian norms?
- Is the local population aware of the abuses committed by the armed group, and if not what are the consequences? Do different sections of the population have a different understanding of what abuses the armed group is committing?

Main Research Question # 3: What types of action have been successful in limiting or ending abusive practices, and why?

- Under what circumstances have armed groups signed agreements or made formal undertakings to respect human rights or humanitarian norms? What form do they take? Have these agreements covered a range of different types

of human rights abuses, or is it easier to get commitments on certain abuses? Are such agreements useful? What is the process leading to their adoption?

- What types of monitoring and verification arrangements, if any, have been agreed to by armed groups to ensure the implementation of any undertakings they have entered into on respect for human rights and humanitarian norms? Which types, if any, have worked or shown the potential for being effective? Are armed groups known to carry out their own "internal" inquiries or disciplinary proceedings against members who have committed abuses? What types of "internal" proceedings are used, are they effective and can (or should) they be influenced by appeals from outside?
- Which actors are more successful in influencing armed groups? Why are they more successful? Are international organisations more or less successful than local organisations in addressing abuses by armed groups? Is it important for success that the actions to influence armed group behaviour are taken by civil society organisations (as opposed to institutions or individuals linked to the government)?
- What factors most influence the armed group's willingness to cease abusive practices? Its need to appear legitimate – either in the eyes of international or national opinion? Its loss of support? The failure of using methods of terror? Changes in the political, social, economic or military context? The emergence of independent critics (NGOs churches, etc.)? Do armed groups tend to be more amenable to influence when they are in a position of military or economic strength? Or when their position is militarily or economically weak?
- Does national press attention to abuses committed by armed groups have an impact? Does international press attention have an impact?
- What role is played by other Governments who are sponsoring or supporting the armed group, or who can otherwise influence the group? Or by private companies doing business with the armed group? Or by ethnic, religious or political associates of the armed group who are abroad?

Annexe III: LIST OF INDIVIDUALS AND ORGANISATIONS WHO COMMENTED ON AN EARLIER VERSION OF THIS REPORT

The International Council would like to thank the following individuals and organisations for their comments on an earlier version of the present report.

Arab Organisation for Human Rights, Egypt.

Mustafa Nazir Ahmed, South Asia Partnership, Pakistan.

Saman Amarasinghe, Chair, National NGO Council of Sri Lanka.

Ayella Fred Brown, Diocese of Northern Uganda.

Cairo Institute for Human Rights Studies, Egypt.

Arturo Carrillo, Columbia University, New York, USA.

Janet Cherry (and colleagues) South Africa.

Andrew Clapham, Graduate Institute for International Studies, Geneva, Switzerland.

Colombian Commission of Jurists, Colombia.

Luka Biong Deng, Sudan Relief and Rehabilitation Association.

Chris De Hoy, Thailand.

Brice Dickson, Northern Ireland Human Rights Commission.

Comfort Ero, Centre for Defence Studies, King's College, London, UK.

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Marion Harroff-Tavel, ICRC, Geneva, Switzerland.

Mehmet Kose, IHH, Turkey.

Monyluak Alor Kuol, Sudan.

John Lampen, Northern Ireland.

Jacques de Maio, ICRC, Geneva, Switzerland.

Maggie Maloney, UK.

Ram Mannikkalingam, Rockefeller Foundation, New York, USA.

Eduardo Marino, Working Group on Non-State Actors of the ICBL, UK.

Ian Martin, UK.

Clem McCartney, Northern Ireland.

David Moore, University of Natal, South Africa.

Stuart Morton, Quaker Peace and Service, UK.

Richard Mulla, Co-ordinator, South Sudanese Community Association in UK.

Lt-Col M. Mzamo, South African National Defence Force.

Norah Niland, UN Programme, Afghanistan.

Wendy Noble, South Africa.

Bo Viktor Nylund (and colleagues) UNICEF, New York, USA.

Helmut Oberdiek (and colleagues from Human Rights Association of Turkey, and Human Rights Foundation of Turkey).

Jelena Pejic, ICRC, Geneva, Switzerland.

Margo Picken, UK.

Henry Odraa-Raga, Fellowship of Reconciliation, Uganda.

Anne Ryniker, ICRC, Geneva, Switzerland.

Ignacio Saiz, Amnesty International, UK.

Solomon Santos, University of the Philippines.

Martin Scheinen, Director of the Institute for Human Rights, Åbo Akademi University, Finland.

Wilder Tayler, Human Rights Watch, UK.

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