

Global Consultation on the Responsibility to Protect: roundtable for SADC NGOs.

29-30 April 2008

Kempton Park, Gauteng, South Africa



Beginning in September 2007, the World Federalist Movement – Institute for Global Policy (WFM-IGP) embarked on a new initiative: to build a global civil society network for the Responsibility to Protect. The initiative, supported by Human Rights Watch, International Crisis Group, Oxfam International and Refugees International, aims to

- 1) Increase understanding of R2P and how it applies to conflicts in the region*
- 2) Explore how to strengthen regional and international mechanisms to support R2P*
- 3) Forge partnerships with NGOs who are interested in joining in a core group in building an NGO network.*

This roundtable, organized with our partner organization at the Human Rights Institute of South Africa, was the fifth conference in a series of seven that took place in Thailand, Canada, Argentina, Uganda, South Africa, France and Ghana.

DAY 1: Global Consultation on the Responsibility to Protect: Roundtable for SADC NGOs.

Panel 1: Introduction to the Responsibility to Protect

Welcoming remarks

Co-organizers **Corlett Letlojane**, Director of the Human Rights Institute of South Africa (HURISA) and **William R. Pace**, Executive Director of the Institute for Global Policy, welcomed participants and speakers.

Corlett Letlojane, signaled the importance of addressing the responses to genocides, crimes against humanity, ethnic cleansing and war crimes in the region. She emphasized events in Sudan and Zimbabwe as pertinent to the discussions on the R2P.

William R. Pace introduced the context around the development of the R2P concept. He noted that the events of September 11, 2001 and the subsequent U.S. invasion of Iraq in 2003 had hindered the initial reception of R2P as expressed by the International Commission on Intervention and State Sovereignty (ICISS) in 2001. Despite this political context, a commitment to an international Responsibility to Protect was made in the Outcome Document of the U.N. World Summit in 2005, thanks in large part to Southern leadership from countries such as Rwanda, South Africa, Argentina, Chile, Guatemala, and Mexico, who insisted on a meaningful commitment to the Responsibility to Protect.

Mr. Pace explained how many of the major reforms of the UN in the last fifteen years relate specifically to the failure of the United Nations and Member States to prevent genocide and large-scale crimes against humanity. The ad hoc tribunals, the strengthening of peace enforcement and peacekeeping mechanisms, the new International Criminal Court, and R2P were significant initiatives to strengthen the international legal order. However, the major achievements of the Summit, like the commitment to a Responsibility to Protect and the creation of the Peacebuilding Commission and the Human Rights Council, were limited to a few framework paragraphs, each requiring years of follow-through and negotiation for proper and effective implementation. Despite some advances since the World Summit, remaining efforts to implement these commitments, in addition to setbacks to the wider acceptance of R2P including the backsliding of some governments on their prior support such as South Africa, indicate the pressing need to unify civil society efforts. Mr. Pace shared how seemingly impossible advancements in international cooperation are in fact possible with the help of a concerted effort on behalf of civil society, based on his experience as the convener of the Coalition for the International Criminal Court (CICC).

Opening Remarks:

Jody Kollapen, Chairperson of the South African Human Rights Commission

Mr. Kollapen started his speech with a tribute to institutional advances on human rights in the last 60 years, but noted that these advancements neither halted nor prevented mass atrocities in Rwanda, Bosnia and Darfur. In addressing the crisis in Zimbabwe, Mr. Kollapen praised South African NGOs for their work in blocking the Chinese shipment of weapons heading for Zimbabwe, but questioned the lack of concrete responses to the crisis by the South African government. He noted that quiet diplomacy had not yet led to any meaningful change of policy in Zimbabwe.

Mr. Kollapen suggested that the Responsibility to Protect, through prevention, reaction and rebuilding, is intended to address these governmental and institutional failures; but without replacing the existing human rights regime. R2P instead complements human rights mechanisms for specific instances of genocide, war crimes, ethnic cleansing and crimes against humanity. He expressed support for the civil society efforts on R2P, while recognizing that R2P is facing challenges; namely lack of political will and lack of operational capacity.

Featured Speaker

Ms Ruth Archibald, Canadian High Commissioner in South Africa

H.E. Ruth Archibald provided an overview of the development and historical context of R2P. She began by explaining that the end of the Cold War had brought about both a shift in the nature of conflicts, notably a considerable rise in internal conflicts accompanied by the highly visible targeting of civilians, and a broadening of the international community and the Security Council's notion of what constitutes a threat to international peace and security (ie. beyond military inter-state conflicts infringing upon great power interests to include other destabilizing human/economic disruptions). These shifts in the 1990s, she noted, put considerable pressure on the traditionally state-sovereignty centric international security framework, resulting in failed responses to the crises in both Rwanda and Kosovo, a serious debate about the way to handle these increasingly frequent intra-state humanitarian crises and a crisis of confidence in the UN Security Council. It was in 2000, with this divisive debate still raging, that then UNSG Kofi Annan called on Member States to definitively address this issue of humanitarian intervention and establish appropriate frameworks for reaction.

Ms. Archibald then briefly described the creation, mandate and conclusions of the International Commission on Intervention and State Sovereignty (ICISS) developed in response to Mr. Annan's challenge, emphasizing the central principles of the ICISS proposed approach to balancing humanitarian imperatives with respect for state sovereignty in such situations – namely, the primary responsibility of states for the protection of their own populations and the residual responsibility of the broader community of states where states failed in this regard. Ms. Archibald also detailed the process which saw the UN ultimately adopt the R2P concept proposed in the ICISS' 2001 report at the 2005 World Summit and subsequently reaffirm it in Resolution 1764 on the Protection of Civilians in Armed Conflict in April 2006.

In terms of the future of R2P, Ms. Archibald noted three principal areas in which progress was needed to successfully integrate the concept into state practice and operationalize R2P. Firstly, work to strengthen the normative consensus on R2P by reinforcing interest and commitment to its principles, particularly in regional and sub-regional organizations (eg. AU, RECs), African states and other partners at the UN is required. Secondly, the international community needs to encourage Security Council action in situations requiring a robust response in order to create clear R2P precedents. Thirdly, operational readiness for

interventions by the international community needs to be enhanced, notably through research on military doctrine, rules of engagement and training to protect civilians, and simulation exercises. Ms. Archibald emphasized that R2P could not succeed without the support of the AU and African governments, who were crucial to its endorsement at the 2005 World Summit. She also recognized the crucial role that NGOs have to play in assuring that this new tool for holding governments and the international community to account succeeds, particularly through their awareness-raising, coordinated advocacy and provision of early warning and expertise to decision-making bodies. Ms. Archibald noted that the adoption of R2P at the UN Summit in 2005 was, of course, not an end but a beginning and pointed to the UN Secretary-General's prioritization of R2P and the considerable ongoing work in this area as encouraging signs that R2P might ultimately assist the international community to develop the means for timely, effective and robust action to protect civilians in the near future.

Panel 2: The Responsibility to Protect in the continent and the region

Chairperson: Sapna Chhatpar, Program Manager at the Institute for Global Policy on the Responsibility to Protect -Engaging Civil Society Project.

Speakers:

- **Shehnilla Mohammed, Oxfam South Africa Director**
- **Dr Matloteng Patrick Matlou of the African Institute of South Africa**
- **Prof. Michelo Hansungule of Pretoria University**

Mrs. Chhatpar began the panel by reminding participants the scope and definition of the Responsibility to Protect. She emphasized that the R2P norm seeks to address only the following four crimes: genocide, crimes against humanity, ethnic cleansing and war crimes. She explained that world leaders agreed in paragraph 138-139 of the 2005 World Summit Outcome Document that:

- Each individual state has the primary responsibility to protect its populations from genocide, war crimes, crimes against humanity and ethnic cleansing. And it is also a responsibility for prevention of these crimes.
- The international community should encourage or assist states to exercise this responsibility.
- If national authorities manifestly fail to protect their populations, that the international community, through the United Nations, has the responsibility to use peaceful measures first, and only if peaceful means are inadequate, the international community is prepared to take collective action under Chapter VII of the UN Charter, which may mean sanctions or authorization of military force.

The following is a synthesis of the common themes present in this panel.

1. Regional and sub-regional institutions and R2P

Participants gave an overview of the regional and sub-regional institutions which relate to R2P, and explained that African institutions have more mandates related to R2P than in any other region. Indeed, they presented the principles behind the norm as native to Africa and entrenched in the 2002 AU Charter, which preceded the 2005 World Summit in showing commitment to protecting populations from grave crimes, even if infringement on sovereignty is required. The norm is also all the more pertinent to the continent, since many conflicts are facing the type of crimes which the R2P addresses.

The African Union

Panelists noted that the African Union's Constitutive Act represents the switch from the 'non-interference' stance of the Organization of African Unity (OAU) to the 'non-indifference' stance of the AU. The Constitutive Act recognizes in Article 4(h) the "right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstance, namely war crimes, genocide and crimes against humanity¹". The African Union Peace and Security architecture has the following components that relate to R2P three elements of prevention, reaction and rebuilding:

1. Continental Early Warning System
2. Peace and Security Council; supported by quiet diplomacy of the AU chairperson;
3. Panel of the Wise: composed of 5 highly respected personalities, devoted to prevention, supposedly free of political pressure;
4. Stand-by force to intervene if the above fails
5. Post-conflict reconstruction unit within Peace and Security Council

As such, the AU was identified as a key leader in implementing the norm; however panelists agreed that this ambitious mandate has its operational limitations.

Civil Society advocacy and the AU

Presentations highlighted that Article 20 of the 2004 AU Peace and Security Protocol encourages civil society involvement in the work of the AU, which covers early warning, peacemaking, conflict resolution and humanitarian action, but that this link between civil society and the AU was not yet a reality. Participants mentioned that it is a challenge for civil society to be taken seriously by the AU, sub-regional organizations, and their governments, as they are often seen as agents of Western interests funded by Western donors.

The experience of civil society forums in lobbying the African Commission on Human and Peoples' Rights (ACHPR) to pass a Resolution on R2P in November 2007 was presented as an important achievement. Civil society work behind the passing of the ACHPR R2P resolution can serve as a model for future NGO strategies with regional and sub-regional bodies. While these efforts sets a precedent in achieving successful advocacy engaging African Heads of State, participants mentioned the need for civil society to work beyond normative advances and towards implementing such agreements.

Note: Participants asked whether the 'new scramble for Africa', i.e the search for access to natural resources and the recurring food crises, could lead to mass atrocities, possibly rising to the level of invoking R2P. The role of NGOs in terms of collecting information and raising awareness on these matters will be crucial.

Regional and sub-regional Organizations and R2P

Regional organizations were also identified as having mandates related to the prevention, reaction and rebuilding elements of R2P. The Southern African Development Community (SADC) has a relevant Protocol on Politics, Defense and Security which allows the Organ to intervene in situations of intra/inter state conflicts. However, SADC's early-warning centre and regional brigade (Southern Africa's standby peacekeeping force) lack resources and political will to be properly implemented. The Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS), the East African Community (EAC) and the Inter-Governmental Agency for Development (IGAD) also have mandates appropriate to respond to violent conflict including genocide, war crimes, ethnic cleansing and crimes against humanity, but encounter operational and resource problems.

¹ AU Constitutive Act: http://www.au2002.gov.za/docs/key_oau/au_act.htm

All three panelists agreed that while normative advances for R2P in African institutions are more institutionalized than in any other region, proper civilian protection on the ground has not been implemented. Challenges identified include the lack of political will and capacity to act, especially by sub-regional hegemony such as South Africa.

2. Crisis in Zimbabwe:

Note: participants and speakers made reference to the situation in Zimbabwe throughout the roundtable (comments were incorporated in the summary below).

The ongoing crisis in Zimbabwe since the 29 March 2008 elections served to evaluate the role of AU and SADC on implementing the Responsibility to Protect. In analyzing the response from regional and sub-regional organizations to the crisis, participants referred to the failure of SADC to mediate the conflict and halt persecuting of civilians. Participants referred to the recent civil society Communiqué at the African Emergency Summit on Zimbabwe on 21 April 2008, which stemmed from debates of 105 representative of civil society from 21 countries in Africa, including human rights activists, faith groups, students. The Communiqué describes the SADC mediation process as lacking transparency, neutrality, openness and consultation, and called for the SADC mediator to be removed from the process. Notably, the Communiqué makes reference to R2P as follows:

The international law principle and norm of Responsibility to Protect places primary responsibility in the hands of the State to protect its people from crimes against humanity, genocide, and war crimes. However, where the State itself is the perpetrator of such heinous crimes, and /or where it fails or neglects to protect its people, the international Responsibility to Protect cannot be stopped by self-serving claims of sovereignty on the part of armed and predatory elites. The African Union has the responsibility to put into place measures to protect;²

The Communiqué is an example of how civil society can use statements and press releases to make its voice heard when calling for appropriate responses to mass atrocities. Litigation efforts were also mentioned as part of a toolbox of R2P measures in reaction to mass atrocities. For instance, the national legal recourse taken by South Africa to prevent the Chinese ship of arms to reach Zimbabwe demonstrate this tool.

Panelists agreed that the AU, consistent with article 4(h) of its constitution, has the responsibility to respond more efficiently to the need of civilians in Zimbabwe, to be protected from the crimes they are facing in the country, most particularly in aftermath of the electoral crisis.

Panel 3: Role of civil society in promoting and strengthening R2P

Speakers: Voke Ighorodje, Center for Democracy and Development (CDD) and Lloyd Kuvuya from the Open Society Initiative for Southern Africa (OSISA)

Chairperson: Ernest Mudzengi

During the third panel, the role of civil society in promoting and strengthening the R2P was discussed and activities at the national and sub-national-level were identified. A more in-depth analysis on Zimbabwe was also presented to emphasize how litigation efforts can contribute to the R2P agenda. These

² Communiqué of the African Emergency Summit on Zimbabwe, Dar Es Salaam, 21 April 2008
http://www.zimbabwejournalists.com/story.php?art_id=4008&cat=4

presentations, combined with small working groups, identified the following challenges and strategies for NGO advocacy on the R2P:

Challenges for implementing R2P in the region

First, normative challenges were identified, including the fact that defining the limits of sovereignty still remains problematic, especially when and how to overcome sovereignty in cases of genocide, war crimes, ethnic cleansing and crimes against humanity. There is a lack of information and expertise on the Responsibility to Protect within governments, institutions and civil society and no strong national and regional network that would ensure collaboration among NGOs for the advancement of the norm.

Secondly, operational challenges were mentioned, including first and foremost the lack of political will from governments to respond to mass atrocities, and the lack of implementation of human rights treaties and protocols. Also, in some countries, such as Angola and Swaziland, NGOs are facing difficulties obtaining contacts and relationships with government offices. There are also resource constraints which limit advocacy efforts.

Civil Society Strategies to overcome these challenges

Discussions on how to overcome these challenges focused on key strategies to identify active persons and NGOs to help promote R2P by increasing awareness of the norm. This includes conducting targeted advocacy, which means identifying key policy-makers with whom to conduct one-on-one advocacy (i.e. in Justice Ministry, Foreign Affairs, Special committees, human rights institutions, parliamentarians).

At the regional level, civil society needs to identify and engage with key officials within SADC, the AU and other relevant bodies. Groups mentioned the impact of networks or forums in conducting successful advocacy, such as the civil society forums behind the passing of the R2P Resolution at the ACHPR in November 2007. In addition, civil society needs to engage with the media, academic circles, think tanks, and faith and youth groups.

There was support for sub-regional and regional civil society collaboration to address the need to build capacity (in obtaining training, materials, and resources) for NGOs to integrate R2P in their mandate.

(For a more complete list of specific activities: see below)

DAY 2: Civil Society Strategies on R2P

Session 1: Role of National Human Rights Institutions promoting and strengthening the R2P

Speakers: NjoNjo Mue, Kenya National Human Rights Institution

Mr. Mue explained how National Human Rights Institutions (NHRIs) compliment the R2P agenda and the convergence between their mandates and what NGOs are doing to ensure the protection and enhancement of human rights. The most important aspect of the work of NHRIs is in prevention of violence and these institutions can take the lead on early-warning activities and can monitor human rights at all phases of a conflict. NHRIs can create more awareness of R2P with the public and policymakers and instruct governments on how to fulfill their responsibility to protect populations from human rights abuses. For example, in Kenya the NHRIs took an important role in advocating for a Truth Commission and documenting human rights violations, by assisting politicians in drafting a bill on hate speech.

Session 2: Civil Society and R2P: Strategies for building a regional coalition

Facilitators: Sapna Chhatpar, WFM-IGP, Voke Ighorodje CDD, and Francois Godbout, East Africa Law Society

The three facilitators engaged participants in an open discussion on specific recommendations for civil society to advance R2P. Participants expressed support for increased solidarity, organization and empowerment of civil society around R2P. A list of recommendations on specific activities for either a network or individual NGOs at the regional and national levels was developed.

Activities:

Awareness-raising

- Organize R2P workshops and conferences with a range of human rights, peace, faith, and security groups
- Simplify and translate the materials into relevant languages to increase understanding of R2P
- Use existing protocols/Acts/Resolutions referring to R2P in the region/sub-region in advocacy materials (such as in statements, reports...), including as basis of advocacy argument the official language of the AU Charter Article 4(h) and to the ACHPR Resolution on R2P
- Publish newsletters and reports on R2P with information on what the 'state of R2P' is in the region
- Include R2P in Communiqués, press releases and statements, including in country-specific situations
- Develop messaging for media on R2P

Advocacy

- Develop a R2P toolbox for civil society activities on R2P, with an emphasis on prevention and early-warning activities
- Target sub-regional institutions i.e SADC, including planning workshops on R2P for SADC stakeholders
- Identify and lobby key policy-makers (i.e. in Justice Ministry, Foreign Affairs, Special committees, human rights institutions, parliamentarians)
- Mobilize and advocate for the AU and/or ACHPR to create a Special Advisor position on R2P;
- Develop NGO capacity for more effective advocacy, including access to training and resources
- Identify existing resources in the region to avoid criticism that R2P is an instrument from the West

Session 3: Strategies for Building a Global Coalition

William R. Pace, Executive Director of the Institute for Global Policy, presented a draft concept paper for establishing a global civil society coalition on R2P. WFM-Institute for Global Policy, in cooperation with Human Rights Watch, Oxfam International, Refugees International and International Crisis Group, has identified the need to consult civil society worldwide, in view of increasing awareness on R2P and establishing a global network of civil society groups in support of the R2P. The concept paper outlined the possible structure, activities and principle for a global coalition and participants were invited to comment and give recommendations to the concept paper.

The concept paper was drafted based on prior consultative meetings with NGOs worldwide. Mr. Pace explained that the goals of a Coalition could be to protect the integrity of R2P by educating and advocating for proper use of the concept, to activate a network of NGOs to lobby for norm-building through international, regional and sub-regional endorsements, and for the application of R2P to country-specific situations. Some questions were raised concerning membership and what type of members should be encouraged to join, whether private interest and government-affiliated NGOs should be accepted. Others emphasized the need for broad representation, including women and community-based groups.

Conclusion of the Roundtable

Participants expressed interest in reconvening another civil society meeting and/or providing additional feedback on the need for a coalition after consulting with their organizations/communities. Participants were asked to stay involved in discussions, to share their comments or concerns on the draft concept paper, and to introduce or reinforce R2P into their existing mandates before eventually joining a network of NGOs.

Suggested next steps

- Translating information about R2P in different languages
- Send information related to R2P in the region to WFM-IGP to post on the website at www.responsibilitytoprotect.org where there is a page dedicated to R2P in the continent
- Sign-up for WFM-IGP's e-newsletter and receive updates about R2P in the news, country specific situations, reports and events. Send an email to Marion Arnaud at arnaud@wfm-igp.org to sign up
- To advance the work of R2P in the region, four volunteers offered to be part of an informal working group. Volunteers included Lloyd Kuvuya (Open Society Initiative for Southern Africa); Isididro Cambamba Dinis Lueni (Open Society Initiative for Southern Africa-Angola), Gege Katana (Solidarity Movement of Women Human Rights Activists (SOFAD) and Corlett Letlojane (HURISA). We look forward to hearing their recommendations, and encourage all participants to stay involved in the discussion on R2P and the creation of a global network.

List of Participants

NAME	ORGANISATION	COUNTRY
Andre Titus	Human Rights Institute of South Africa	South Africa
Archie Choku	National Children's Committee	South Africa
Bongani Masuku	COSATU	South Africa
Corlett Letlojane	Human Rights Institute of South Africa	South Africa
Delma Monteiro	The Justice, Peace and Democracy Association (AJDP)	Angola
Emilio Jose Manuel	Open Society Initiative for Southern Africa-Angola	Angola
Ernest Mudzengi	National Constitutional Assembly	Zimbabwe
Fikile Vilakazi	Coalition of African Lesbians	South Africa
Francois Godbout	East Africa Law Society	Tanzania
Frank Kayitare	Europe Parliament for Africa (AWEPA), Gauteng	South Africa
Frances Spencer	Southern Africa Centre for Survivors of Torture	South Africa
Gege Katana	Solidarity Movement of Women Human Rights Activists (SOFAD)	Burundi
Isididro Cambamba Dinis Lueni	Open Society Initiative for Southern Africa - Angola	Angola
Jody Kollapen	South African Human Rights Commission	South Africa
Jorge Coelho	ASSERCO	Mozambique
Jose Patrocinio	OMUNGA	Angola
Kennedy Maboso	Ceasefire Campaign	South Africa
Kerstin Loehr	Oxfam-GB	United Kingdom
Lloyd Kuveya	Open Society Initiative for Southern Africa (OSISA)	South Africa
Mamosa Mohlabula	Woman and Law in Southern Africa, Lesotho	South Africa
Marcio David	OSISA	Angola
Maria Lucia Silveira	The Justice, Peace and Democracy Association (AJDP)	Angola
Marion Arnaud	WFM-Institute for Global Policy	United States
Matloteng Patrick Matlou	Africa Institute of South Africa	South Africa
Michelo Hansungule	University of Pretoria, Centre for Human Rights-	South Africa
Monica Tabengwa		Botswana
Njonjo Mue	Kenya National Human Rights Institution	Kenya
Nonhlauhla Sibanda	People Oppose Women Abuse	South Africa
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Salvador Nkamate	Liga Mocambicana dos directos humanos	Mozambique
Ruth Archibald	Canadian High Commission	South Africa
Sapna Chhatpar	WFM-Institute for Global Policy	United States
Shehnilla Mohammed	Oxfam South Africa Programme	South Africa
Smagele Mmema	Coalition for Concern Civic Organization	Swaziland
Thuli Khumalo Mohapi	Noah's Ark	South Africa
Tsholofelo Nakedi	Centre for the Study of Violence and Reconciliation	South Africa
Vera Tambala	Centre for Community Org. & Development	Malawi
Voke Ighorodje	Centre for Democracy and Development (CDD)	Nigeria
William R Pace	WFM-Institute for Global Policy	USA