

# CIVIL SOCIETY PERSPECTIVES: A View From Africa

From NonInterference  
to NonIndifference:  
Reflecting on the  
Implementation of the  
Article 4(h) Agenda at  
the African Union

Event Summary  
January 23, 2014  
Addis Ababa, Ethiopia



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—Donald Deya,  
chair of the ICRtoP

**O**n January 23, 2014, the Stanley Foundation, the Pan African Lawyers Union (PALU), and the International Coalition for the Responsibility to Protect (ICRtoP) convened over 45 representatives from civil society, the United Nations, the African Union (AU), and governments to discuss the implementation of Article 4(h) of the AU's Constitutive Act and the Responsibility to Protect (RtoP) norm.

The Constitutive Act, signed by African member states in 2000, includes Article 4(h), which established the “right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.” This historic switch from the “non-interference” approach of the Organization of African Unity (OAU) to the “non-indifference” approach of the AU predates the comparable commitment made by all heads of state and government at the 2005 World Summit, where in paragraphs 138-139 of the summit’s Outcome Document, they agreed to uphold their responsibility to protect populations from genocide, war crimes, crimes against humanity, and ethnic cleansing. RtoP affirms that states hold the primary responsibility for protecting their populations from these crimes and violations, while also establishing that the international community bears a responsibility to assist states in meeting their protection obligations and has a responsibility to respond in a timely and decisive manner if a state is either unable or unwilling to protect populations.

At this one-day event, participants heard from civil society and AU officials on the developments and challenges of realizing both the Article 4(h) and RtoP commitments. The conference included presentations on the capacity of the AU’s peace and security architecture as it relates to the prevention of and response to RtoP crimes and violations, a discussion of past and current crises in Africa, and analysis of the responses of the AU, African governments, and other regional and international actors to protect populations from atrocities.

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The organizers prepared this report following the conference. It contains their interpretation of the proceedings and is not merely a descriptive, chronological account. Participants neither reviewed nor approved the report. Therefore, it should not be assumed that every participant subscribes to all recommendations, observations, and conclusions.

## Participants Assess the Continental Architecture for the Prevention of and Reaction to Atrocities

The day began with opening remarks delivered by Donald Deya, chief executive officer of PALU and chair of ICRtoP, and Keith Porter, president of the Stanley Foundation. In discussing the importance of Article 4(h), Deya stated that this principle must be mainstreamed and implemented throughout all organs of the AU to ensure protection from atrocities. He further explored the relationship between this article and RtoP, reminding participants of RtoP's three-pillar framework and the range of non-coercive and coercive tools available to all actors for the prevention of mass atrocity crimes as compared to the more interventionist language to respond to crimes found in Article 4(h). Civil society, Deya declared, plays a key role in ringing alarm bells, calling for action in the face of such atrocities, and holding the international community accountable when actors are not upholding their protection obligations.

Following these remarks, Porter reflected on the timeliness of this convening on the prevention of atrocity crimes. He highlighted the ongoing crisis in the Central African Republic and the negotiation process under way in Addis Ababa on the situation in South Sudan, stating that the event had come at a critically important time for the AU and civil society working throughout the continent. Porter closed by remarking that we sometimes hear people say that RtoP has failed. It is in those moments, he stated, that we should remember the first pillar of the norm declares that nations have the primary responsibility to protect their populations from the four crimes and violations—a concept that cannot be rejected.

The first panel of the day, “The African Union’s Architecture for Prevention and Response,” brought together experts from civil society and the AU to discuss how the body’s peace and security architecture has been utilized for the advancement of Article 4(h) and RtoP, reflecting on the best practices and remaining challenges for action to protect populations from atrocities. Additionally, speakers provided recommendations on how civil society can work with the AU to strengthen the mechanisms and tools available to prevent atrocity crimes.

Opening the discussion, Nana Afadzinu, executive director of the West Africa Civil Society Institute and panel chair, recalled that skepticism remains for RtoP within Africa, with some looking at the norm as just another interventionist doctrine. Afadzinu noted, however, that when you look at the history of RtoP, the founding ideas, including the concept of “sovereignty as responsibility,” emerged out of an African context, which was followed in subsequent years with the inclusion of Article 4(h) in the AU’s Constitutive Act.

Building upon the remarks of the panel’s chair, Charles Mwaura, the AU’s expert on Continental Early Warning System and Preventive Diplomacy, reflected on the historic transition of the OAU to the AU, and how Article 4(h) seeks to move the continental body forward in addressing the past failures of conflict and atrocities prevention. This step, he noted, gives rise to the debate on what the AU should do in terms of applying this principle in practice. To answer this, Mwaura pointed to the range of instruments available to the AU, including the establishment of the Peace and Security Council, which holds authority to pronounce itself on any situation of concern on the continent and functions in part through mediation and good offices; the existence of the Continental Early Warning System, which seeks to use open source information for the anticipation of conflict throughout the region; and additional tools such as the African Charter on Democracy, Elections and Governance, which outlines the obligations of member states in protecting human rights and preventing conflict, as well as the African Standby Force, which seeks to be operational by 2015.

Following this overview of the AU’s architecture, Ibrahima Kane, AU advocacy director of the Open Society Foundations, provided his analysis on the implementation of Article 4(h) and capacity of the tools available to the AU. Kane suggested that before the AU Constitutive Act and Article 4(h), there was the African Charter on Human and Peoples’ Rights, which included Article 58 on the role of the African Commission on Human and Peoples’ Rights in investigating and calling for action in the face of gross human rights violations, a tool that, in his opinion, has not been put into practice enough by African states.

In discussing the peace and security architecture, he remarked that there remains some confusion on the roles of the various AU organs and the actions that can and should be taken, as there are responsibilities that sometimes overlap between bodies. Past and current actions by the AU to intervene for civilian protection, including the cases of Mali, the Central African Republic, and South Sudan, have shown the key challenges within the AU to take action and the need for external support to succeed in responding to atrocity crimes. At the heart of such challenges, he stated, is not a lack of will but a lack of means, both human and material, that is needed within the African Union. On this point, he highlighted the support of South Africa to the government of Burundi in assisting to provide the resources necessary to undertake steps to achieve peace. Such an example shows what can be achieved with the political will and means. Kane closed by asking a critical question: Do we, as civil society representatives and actors engaging the AU, have the will to give the AU the resources it needs?

Solomon Dersso, senior researcher at the Institute for Security Studies, Addis Ababa University, discussed the relationship between Article 4(h) and RtoP and reflected on the mechanisms available to respond to atrocity crimes. In providing an overview of the principles of the AU Constitutive Act, Dersso noted that there are two key elements of the document—sovereignty and human rights—with the key question being how to bridge the two. He noted that preference must be given to human rights over non-intervention and that through Article 4(h) we see that state sovereignty is not absolute in the face of gross human rights violations and crimes. It is there, he stated, that Article 4(h) links with RtoP, but he also pointed out that the Responsibility to Protect includes more comprehensive modalities for implementation for a range of different actors, whereas Article 4(h) remains a briefly articulated principle in the Constitutive Act. In assessing the various AU tools available, Dersso reflected on the Continental Early Warning System, which he noted is supposed to function in cooperation with the early warning mechanisms of the Regional Economic Communities (RECs). The question remains, though, as to whether there is coherent assessment of information from all bodies and cooperation among them when conducting early warning on a potential crisis situation.

Closing the panel discussion, Dan Kuwali, deputy director of legal services for the Malawi Defence Force and expert on the AU's implementation of Article 4(h), and recent editor of the book *Africa and the Responsibility to Protect: Article 4(h) of the AU Constitutive Act*, discussed the implementation of the article and the work of civil society in seeking to further define and understand what action under this principle can mean for the continent. Kuwali began by pointing out the all-too-common conflation of the concept of non-indifference and military action. On this issue he highlighted the lack of discussion on steps to include accountability measures, including the role of the International Criminal Court, into atrocities prevention and response. He stated that there remains the key question of understanding what prevention means and what actions can be taken to prevent mass atrocities. Tied to this point, he noted that it is important to focus on human rights systems and protection when discussing Article 4(h) and the RtoP, and the implementation of both principles. Kuwali provided insight on the work that civil society has undertaken to more clearly define action under Article 4(h). This includes the development of the "Pretoria Principles on ending mass atrocities pursuant to Article 4(h) of the AU," which were created following a conference of civil society and academic experts in December 2012. By examining the roles of various actors, their relationship with RtoP, and the modalities for intervention, among other issues, these principles "provide greater clarity and inform action by the AU, subregional actors, governments, and practitioners on how to enhance their respective roles in ending mass atrocities in Africa pursuant to Article 4(h)."

Discussion following the panel focused on assessing civil society's accessibility to the African Union, as well as the added value of normative frameworks and commitments such as RtoP and Article 4(h). It became clear that, while formal civil society participation within the AU's activities remains a principal challenge, the staff of the organization's various bodies are open to and interested in cooperation with civil society and can serve as partners for non-governmental organizations (NGOs) seeking to engage the AU. Participants urged that more be done to establish more formal relations with civil society, however, so that organizations can have a seat at the table when meetings are held and policies adopted.

With regard to the value of normative frameworks, while some participants questioned the usefulness of such tools when there remain vast challenges to their implementation, panelists pointed out that the problem lies not with the principles themselves but rather with the actors tasked with upholding them, and therefore, more must be done to continue to enhance the capacity of states, regional bodies, and the international community to prevent and respond to atrocities.

### Discussions on Country Cases Show Article 4(h) and RtoP in Practice

Following the morning's discussions on the AU's peace and security architecture, participants focused more on Article 4(h) and RtoP in practice by examining various past and current country cases on the continent. Civil society experts shared information on circumstances surrounding the situation in focus, the actions



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taken by regional and international actors to prevent and respond to the threat and commission of atrocities, and the role of civil society organizations in calling for action to prioritize protection. Countries in focus included the Democratic Republic of Congo, Kenya, the Central African Republic, and South Sudan.

The second panel, moderated by Angela Bruce-Raeburn of the Stanley Foundation, began with a presentation by James Gondi, deputy executive director of Inform Action, a Kenyan NGO, who provided an overview of the violence in Kenya following the December 27, 2007 elections, which left thousands dead or injured and upward of 300,000 displaced. While this episode was by far the most devastating for the country, Gondi reminded participants that there has been a cycle of electoral violence in Kenya. Focusing on the 2007-08 crisis, Gondi assessed the response by the AU, member states, and the international community, noting that swift action was taken by various personalities to respond to the situation.

Emphasizing the establishment of the AU panel of eminent personalities tasked with resolving the political dispute and bringing peace, Gondi pointed to the critical impact of mediation as a tool under the RtoP to prevent the further escalation of atrocity crimes. This panel, led by former UN Secretary-General Kofi Annan, received support from the international community in its actions to mediate a solution. In addition to working toward the immediate cessation of violence, Gondi stated that the panel sought to address long-term challenges plaguing the country's security and began to take actions through the establishment of commissions to investigate and address issues such as police and electoral reform, as well as investigate the violence committed following the elections. In concluding, Gondi noted that the efforts undertaken in Kenya are a clear example of how joint actions undertaken by the AU, United Nations, regional blocs, and governments can work to prevent RtoP crimes and serve as a best practice of the norm.

Following Gondi's presentation, the focus shifted to the Central African Republic, with Mathias Barthélemy Morouba, president, Central African Observatory for Human Rights, reflecting on the ongoing humanitarian crisis there and the action taken by the AU and

external states, including France, to respond to protect populations. With regard to the current crisis, Morouba remarked on the gross human rights violations being committed throughout the country, including recruitment of children, killings, displacement, and indiscriminate targeting of civilians. This situation is further complicated by the presence of the Lord's Resistance Army in the country. The conflict, he stated, has taken on a religious tone as the country has experienced increasing violence between Christians and Muslims.

While action has been taken by the AU through the deployment of a peacekeeping force supported by French troops, Morouba remarked that the situation remains out of control, due in part to logistical issues within the capital, Bangui, as well as the lack of a military presence throughout the whole country. Civil society organizations have been incredibly active in advocating for action to protect populations, with Morouba pointing to engagement by NGOs at the United Nations to attract the attention of the international community to the crisis plaguing the country. While he felt their voices have been heard, his NGO partners believe that far more needs to be done to protect all populations and work toward both an immediate and a long-term peace, which they will continue to advocate for.

The focus turned to a discussion on the unfolding crisis in South Sudan and peace talks that were under way in Addis Ababa while this event was being held. Aguil de'Chut Deng, head of the Women's Delegation of the South Sudanese Women for Peace Mission, shared her perspectives as a grassroots civil society activist witnessing the developing situation and advocating for peace in the country. In reflecting on the eruption of violence, Deng noted that the start of the crisis on December 15 should not have been a surprise as many in the country saw this coming due, in part, to internal political disagreements within the governing party. What is unknown, however, is what precisely triggered the start of attacks, a point that she urged be investigated by the AU. Tied to this, she stated, is the critical importance of understanding how to prevent such a crisis from occurring again, a point that she noted is equally as important as finding a cure to the current situation. Shifting to talk on the role of civil society, Deng highlighted the important work of

women's organizations and individual women activists in urging for a cessation of violence and resolution to the crisis. Civil society engaged with political leaders reached out to Rebecca Nyandeng de Mabior, an adviser to the president of South Sudan and widow of John Garang, former Sudanese vice president. Throughout all discussions, she and her colleagues have worked to bring attention to the facts on the ground on both the political and humanitarian crises in the hopes of motivating action to address the situation and protect populations.

The final presentation of the day, given by Franck Kamunga Cibangu, executive director of Droits Humains San Frontieres, centered on the intractable conflict in the Democratic Republic of Congo (DRC). Following a brief overview of the multidecade crisis that has left over 5 million dead and countless displaced, Cibangu discussed the recent efforts to bring about peace, including the actions taken by the signing of the Kampala Agreement under the leadership of the International Conference of the Great Lakes Region as well as the deployment of an intervention force by the United Nations and the AU to offensively engage rebel groups and protect populations.

Cibangu identified a range of challenges that remain for ensuring long-term peace and security in the DRC, among them the inclusion of former militia leaders within government posts without the necessary disarmament and reintegration training. Additionally, he noted that there are talks of the passing of an amnesty law for combatants, an action that would serve to further entrench impunity in the country according to Cibangu. In speaking on the initiatives of civil society to bring awareness of RtoP throughout the country, he reflected on the work of his organization and fellow ICRTOP member UNA-DRC to build the capacity of organizations in the DRC. This is being conducted by raising awareness of the entry points at all levels for engagement on RtoP, discussing how the norm relates to other sectors such as women's rights, and identifying ways to work with the media in bringing attention to incidences of violence and understanding of RtoP.

Participants engaged in a lively conversation on RtoP and Article 4(h) in practice following the panelists' presentations. A recurring

point raised throughout the session was the role of neighboring states as interveners in situations of mass atrocities, such as the case of Uganda's involvement in South Sudan, with participants noting that such actions can both assist in protecting populations as well as further complicate a situation due to the political interests involved. Additionally, participants noted the critical need to ensure the inclusion of victims' voices throughout response and postconflict reconstruction processes, as well as an overall focus on peacebuilding as a tool for preventing the recurrence of conflict and RtoP crimes. Participants also advocated for the continued inclusion of women in prevention and response, asking panelists to comment on how women have been and/or should be included in processes undertaken in the countries in focus.

### Meeting Closes With Reflection on Next Steps for Engagement on RtoP

The day was brought to a close by Don Deya, chief executive officer of PALU and chair of the ICRtoP, who shared key recommendations that emerged from the discussions, which could be taken forward in participants' advocacy and work in-country. An overarching theme of the day was the need to continue to strengthen awareness of and the commitment to the AU and RECs architecture for peace and security so that civil society, which plays a critical role in sharing information and raising an alarm on violence and atrocity crimes, can better access and engage with these bodies as well as understand and implement Article 4(h) throughout the continental system. A challenge facing the AU is the financing of the institution. The AU is largely funded by outside states, and many argue that this reality impedes the strengthening of the organ's capacities and internal infrastructure. The issue of finance is an opportunity for civil society engagement with the AU. While the continental and regional bodies are critically important in the advancement of RtoP, Deya reminded participants of the importance of domesticating Article 4(h) and RtoP through institutionalizing prevention and response mechanisms within all state governments. By establishing the necessary national, regional, and international architecture working in tandem with civil society actors, further progress can be made to make RtoP and Article 4(h) living realities for the prevention of and protection from mass atrocity crimes.

## Participant List

### Organizers

**Angela Bruce-Raeburn**, Program Officer, The Stanley Foundation

**Megan Schmidt**, Outreach Officer, International Coalition for the Responsibility to Protect

### Speakers

**Aguil de'Chut Deng**, Head of Women's Delegation, South Sudanese Women for Peace Mission

**Solomon Ayele Dersso**, Senior Researcher, Conflict Prevention and Risk Analysis Division, Institute for Security Studies

**James Gondi**, Deputy Executive Director of Inform Action

**Ibrahima Kane**, Director, African Union Advocacy Program, Open Society Foundations

**Dan Kuwali**, Deputy Director of Legal Services, Malawi Defense Force; Senior Partner, K.D. Freeman & Associates

**Mathias Barthelemy Moruba**, President, Central African Observatory for Human Rights

**Charles Mwaura**, Expert, Continental Early Warning System and Preventive Diplomacy, African Union

**Keith Porter**, President, The Stanley Foundation

### Participants

**Nana Asantewa Afadzinu**, Executive Director, West Africa Civil Society Institute

**Desire Assogbavi**, Head of Oxfam African Union Liaison Office, Oxfam International

**Mohammad Badawi**, African Centre for Justice and Peace Studies

**Joel Bayubahe**, Executive Director, Youth Action for Development

**Franck Kamunga Cibangu**, Executive Director, Droits Humains Sans Frontieres

**Carnita Ernest**, Executive Director, The Centre for Citizens' Participation on the African Union

**Bernadette French**, Program Manager, Justice Security and Human Rights, Campaign for Good Governance

**Tiberiu Galis**, Executive Director, Auschwitz Institute for Peace and Reconciliation

**Wondemagen Gebreselassie**, President, Ethiopian Lawyers' Association

**Sulaiman Jabati**, Executive Director, Coalition for Justice and Accountability

**George Kegoro**, Executive Director, Kenyan Section, International Commission of Jurists

**Stephen Kirimi**, Chief Executive Officer, Peace and Development Network Trust

**Stephen A. Lamony**, Africa Outreach Liaison and Situations Advisor, Coalition for the International Criminal Court

**Philippe Masabo**, Communications Manager, Center for the Training and the Development of Ex-Combatants

**Manyawkal Mekonnen**, Executive Director, Ethiopian Lawyers' Association

**Dismas Nkunda**, Director, International Refugee Rights Initiative

**Victor Ochen**, Executive Director, African Youth Initiative Network

**Frank O. Okyere**, Faculty of Academic Affairs and Research, Kofi Annan International Peacekeeping Training Centre

**Madeleine Schwarz**, Human Rights Officer, Office of the Special Envoy of the Secretary-General for the Great Lakes Region

**Victor Amisi Sulubika**, Executive Director, Vision Gram International

**Cissa Wa Numbe**, Secretary General, United Nations Association of the Democratic Republic of the Congo

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**Jack Kimball**, Program Officer, The Stanley Foundation

Affiliations are listed for identification purposes only. Participants attended as individuals rather than as representatives of their governments or organizations.

## Collaborators/Organizers

### **The Pan African Lawyers Union**

PALU is the umbrella association of African lawyers and law societies. It brings together the continent's five regional and 54 national lawyers' associations, as well as individual lawyer members. Its mission is to work toward the development of the law and legal profession, the rule of law, human rights, and the socio-economic development of the African continent, including through supporting African regional integration.

### **The Stanley Foundation**

The Stanley Foundation advances multilateral action to create fair, just, and lasting solutions to critical issues of peace and security. The foundation's work is built on a belief that greater international cooperation will improve global governance and enhance global citizenship. The organization values its Midwestern roots and family heritage as well as its role as a nonpartisan, private operating foundation. The Stanley Foundation does not make grants.

### **The International Coalition for the Responsibility to Protect**

The ICRtoP is a global network of civil society organizations dedicated to advancing RtoP at the international, regional, subregional and national levels. For the past ten years, ICRtoP has worked to build a constituency of civil society support for the norm, and the coalition now has a global membership and works in a wide range of sectors, including women's rights, conflict prevention, human rights, genocide prevention, and international and regional justice.



The Constitutive Act of the African Union Charter signed by member states in 2000 represented the historic switch from the “noninterference” approach of the Organization of African Unity to the “nonindifference” approach of the African Union (AU).

More importantly, Article 4(h) of the Constitutive Act established the right of the Union to intervene in a member state pursuant to a decision of the Assembly regarding grave circumstances, namely war crimes, genocide, and crimes against humanity.

However, there remains varied success within the AU with regard to the implementation of this commitment largely based on issues related to political will and financial and military capacity to implement the necessary policies and mechanisms for prevention and response.