

Fourth Meeting of the Global Network of R2P Focal Points Gaborone, Botswana, June 2014

INTRODUCTION

On 12 and 13 June 2014 in Gaborone, Botswana, the governments of Botswana and the Netherlands, in association with the Global Centre for the Responsibility to Protect, hosted the fourth annual meeting of the Global Network of R2P Focal Points. Senior representatives from more than 30 countries from 6 continents participated in the meeting together with the UN Special Adviser on the Responsibility to Protect (R2P), Dr. Jennifer Welsh. The meeting was opened by the Minister for Foreign Affairs and International Cooperation of Botswana, H.E. Mr. Phandu T. C. Skelemani.

During the meeting R2P Focal Points assessed how to build capacity for the prevention of mass atrocities through improving the rule of law and reforming the security sector, as well as through involving the business sector and affected communities. Three thematic experts – Rachel Davis from Shift, David Tolbert from the International Center for Transitional Justice and Janine Rauch from the International Security Sector Advisory Team – facilitated the discussions. The R2P Focal Points also reflected upon how applying the R2P lens to a conflict situation could help focus attention and expand understanding of emerging risks and threats.

This document provides a summary of key issues discussed in Gaborone and practical recommendations on the role R2P Focal Points can serve in building capacity to prevent mass atrocity crimes.

R2P, CAPACITY BUILDING AND THE BUSINESS SECTOR

For the first time at a meeting of the Global Network of R2P Focal Points participants addressed the role of the

business sector in all stages of mass atrocity situations – serving as either an enabler of mass atrocity crimes during a crisis or as a crucial partner in atrocity prevention and post-conflict rebuilding.

The discussion produced a nuanced picture of the roles and motivations of business. While the business sector is sometimes characterized as focusing solely on profit at the expense of people, an increasing number of businesses globally are paying closer attention to the human rights situation in countries where they operate. Responsible companies are increasingly concerned about the sourcing of materials used in the production of their goods and about the human rights performance of their key business partners and customers, including governments. With the unanimous endorsement of the UN Guiding Principles on Business and Human Rights by the Human Rights Council in 2011, expectations of business have converged around a “baseline standard” that they respect human rights throughout their operations. Measures undertaken by businesses to meet this expectation go well beyond philanthropy and other traditional approaches to “Corporate Social Responsibility,” and focus on whether a business has the operational policies and processes that it needs to avoid being involved in serious human rights violations.

Businesses are naturally concerned with the economic consequences of mass atrocity crimes and long drawn-out civil conflicts, with some companies experiencing significant financial losses as a crisis persists. Companies therefore have a material incentive to partner with domestic and international actors and facilitate a peaceful resolution to situations where mass atrocities have occurred or are threatened.

Responsible companies may actively seek information from and build relationships with governments to help inform their own due diligence processes and have a clear point of contact in case a situation escalates. As

businesses develop a growing awareness of the potential unintended consequences of their actions, they may also seek to learn more from relevant state and civil society actors about local dynamics and how their presence may aggravate tensions in fragile and/or divided societies. Governments and civil society can help these companies understand how their business may impact upon people, whether through hiring practices, local supply chain networks, or direct relationships with local communities or customers.

The role of business in enabling crimes

Companies operating in conflict-affected regions can play both a direct and indirect role in enabling groups to perpetrate mass atrocity crimes. While the international community is doing more to regulate how and where businesses source raw materials, some companies have helped facilitate the commission of mass atrocity crimes by funding armed groups through the purchase of illegally acquired materials. Companies have also sometimes provided weapons or logistical or other support to groups that have caused harm to civilians. Participants discussed examples of militias in the Democratic Republic of the Congo exploiting the local population, forcing women and children into labor in mines and illegally selling minerals such as coltan, gold and tin across borders to fund their activities.

Business may also indirectly enable the commission of mass atrocity crimes through the creation or sale of tools used by conflict protagonists, most notably in the technology and media industries. While radio broadcasts can be used to reduce the risk of mass atrocity crimes, such as through the “come home” messaging directed towards the Lord’s Resistance Army in Central Africa, they have also been used to incite violence and atrocity crimes, most notably in the case of Radio Mille Collines during the 1994 Rwandan genocide. SMS, radio and social media were similarly used during the 2007-2008 post-election violence in Kenya to broadcast hate speech and incite violence.

The role of business during crises

Businesses can contribute to the process of conflict resolution and reconciliation by instituting policies throughout their operations that promote ethnic, religious and political understanding, respect for human rights and support for local-level mediation during a crisis. They can also use leverage with government to take timely action to stop a conflict before it has a devastating effect on the economy.

For example, during the 2007-2008 post-election violence in Kenya, the business community took significant actions to support an end to the conflict. When the conflict started to threaten the daily operations of companies, several business associations worked together to pressure the government and opposition to cooperate with the international mediation process so that they could resume normal commercial operations. Several companies also hired mediators and consultants to give their staff a safe place to start a dialogue and build understanding among different ethnic communities both inside and beyond the workplace.

The role of business prevention

By improving economic stability and providing jobs, businesses can strengthen resilience to some of the risk factors associated with mass atrocity crimes. Economic opportunities reduce incentives for civilians to seek financial gain through joining militias and provide the government with options for reintegration of individuals who formerly participated in armed violence. This has been the experience in Côte d’Ivoire, Liberia and elsewhere.

As they strengthen the economy, businesses also facilitate the creation of shared interests within the community. Diverse workplaces allow staff to interact with people of other ethnicities, religions and political perspectives.

The role of states regarding the business sector

A first step states can take in encouraging responsible business that helps to prevent mass atrocity crimes could include adopting or adhering to leading international and regional guidelines on doing business in conflict-affected regions. Key reference points include the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the six tools under the ICGLR’s Lusaka Declaration of the Special Summit to Fight Illegal Exploitation of Natural Resources in the Great Lakes Region, and the recently proposed EU Responsible Trading Strategy for Minerals from Conflict Zones. A number of these include due diligence and certification processes – similar to the Kimberly Process for “conflict-free” diamond certification.

More broadly, some states are adopting a national action plan on business and human rights, clarifying the government's expectations of businesses within their jurisdiction. The benefit of a national action plan is the creation of a coordinated strategy across ministries, encouraging comprehension and implementation from all parts of government. States can also adopt domestic legislation regulating international commerce with conflict-affected states, such as the United States' 2010 Dodd-Frank law, which seeks to influence the supply chain of minerals from the Democratic Republic of the Congo.

R2P AND STRENGTHENING THE RULE OF LAW

R2P and rule of law are intrinsically linked. Strengthening the rule of law within a state is an essential element of ensuring accountability for past mass atrocity crimes and/or deterring potential perpetrators from committing such crimes. Failure of the legal system to protect rights and criminalize mass atrocity crimes allows perpetrators to commit violence against civilians with impunity and signals the state's failure to uphold its Pillar I responsibilities. Building a responsive legal and judicial system requires the political will to reform laws, norms and structures, the creation or refinement of credible legal institutions and the provision of equal access to institutions of justice.

States can deter mass atrocity crimes by ensuring that domestic laws provide legal protection to vulnerable communities and, where relevant, those affected by previous atrocity crimes. An important first step states can take in preventing atrocities is by adopting laws that explicitly prohibit and punish the commission of mass atrocity crimes and by ratifying international human rights standards. These acts send a signal to would-be perpetrators that the commission of mass atrocities has punitive consequences that will be upheld by the state. Additionally, the state's legal framework – including the constitution – must be assessed to ensure that courts have the capacity and legitimacy to prosecute mass atrocity crimes if and when they occur in a domestic jurisdiction.

Building legal infrastructure

States emerging from conflict need to assess the existing judiciary for weaknesses in their ability to uphold their mandate and hold perpetrators accountable, particularly

if national courts are incapable of holding domestic trials for international crimes. Judicial institutions need the physical infrastructure for administering trials, investigating crimes and providing witness and victim protection. The judicial sector also needs to inform relevant legislation, particularly the enactment of laws that establish complementarity between national and international legal mechanisms.

Mass atrocities, particularly those occurring in the context of armed conflict or civil war, can cause vital national institutions to break down. The lack of basic legal infrastructure, especially in rural areas in developing countries, means that victims often have very limited, if any, access to formal mechanisms of justice and are often uninformed about the rights and services they are entitled to. Certification of a professional judiciary and judicial infrastructure that can provide services to populations across the country is crucial. Though it is often overlooked in capacity building discussions, investing in legal education and training, including creating a professional judiciary, can directly contribute to stabilizing a country where significant conflict risk factors exist.

Transitional justice and accountability for mass atrocity crimes

Transitional justice mechanisms, including national prosecutions, truth and reconciliation commissions and reparations for victims, help to hold perpetrators of mass atrocity crimes accountable and prevent a recurrence of violence. However, while addressing the immediate post-conflict needs of a country, transitional justice mechanisms must be integrated with long-term reforms of legal institutions.

Participants also addressed the benefits of engaging with “traditional” and community-based legal mechanisms, highlighting the important contribution they can make towards ameliorating inter-communal tensions while also alleviating strain on national courts in post-conflict situations. The role of the gacaca courts in Rwanda following the 1994 genocide was cited as an example of successfully modifying traditional mechanisms that encourage tolerance, reconciliation and peaceful coexistence within communities.

It was agreed that while traditional mechanisms could complement formal legal proceedings, high-level perpetrators of mass atrocity crimes must always be prosecuted within formal national and international

institutions, which are better equipped to ensure criminal accountability for crimes on this scale.

The linkage between traditional mechanisms and national institutions highlights the necessity of fostering local ownership of reform programs. While examples of well-functioning legal systems and lessons-learned from rebuilding judiciaries in other countries need to be considered, legal systems must be rooted in domestic realities. Civil society needs to be involved in the process of judicial reform, particularly on how reforms will affect citizens' rights and access to justice. Participants emphasized a strong link between inclusion, transparency and institutional legitimacy in post-conflict societies. Involving communities in the process of legal reform can help establish better trust in institutions and increase the likelihood of victims seeking justice through legitimate mechanisms rather than through violent reprisals.

R2P AND CAPACITY BUILDING IN THE SECURITY SECTOR

The discussion of the security sector addressed all three pillars of R2P, focusing on what states can do to reform their own security sector, how international partners can assist in those reforms and, when necessary, what international partners can do to intervene in a crisis when a state's security forces are too weak to protect civilians or are acting as perpetrators.

In discussing security sector reform (SSR), participants emphasized the need to examine the full breadth of the security sector architecture. States and international partners assisting in capacity building need to assess all actors involved, including the military, police, border guards, judicial structures, relevant ministries and other individuals, in building the security and protection capabilities of the government.

The R2P Focal Points focused on six areas of the security sector that are relevant to capacity building and mass atrocity prevention:

1. National authorities need to generate their own strategic vision for SSR; international partners should only play a supporting role, providing technical expertise to augment domestic efforts.
2. States and their partners must be mindful that capacity building through SSR is a long-term

endeavor, requiring deep political will from national authorities and considerable training, funding and equipment, often through sustained external support.

3. In order to build societies that are resilient to mass atrocity crimes, the security sector must reflect societal diversity.
4. Training needs to include contingency planning on how to minimize the impact of incitement to violence, particularly in areas where the threat of recurring mass atrocity crimes is high.
5. States need to build institutions that are viewed as legitimate. Clear and transparent benchmarks that measure SSR help build community support and trust for these institutions.
6. The process needs to be approached democratically, including input from civil society.

Security sector reform as a holistic approach

The security sector is affected by reforms to other sectors, including the judiciary. For example, a weak judiciary that is unable to prosecute security personnel for past crimes can have a negative impact upon the SSR process. Similarly, a weak economy and the inability of the government to adequately compensate security personnel for their work can result in demoralization and personnel looking for supplementary income, encouraging corruption or potential cooptation by armed groups. SSR cannot occur in isolation and must take ongoing reforms within other sectors into account.

Governments involved in SSR must also assess the size and capabilities of existing forces. A security sector that exceeds the size necessary to provide security to the country is a drain on the economy and may sustain problematic elements. An SSR approach that takes into consideration these realities is more likely to succeed.

Emphasis on protecting civilians

It is essential that the security sector be equipped with necessary tools to prevent and, if necessary, halt mass atrocities. Prior to implementing SSR programs, governments first need to assess how security forces were previously trained and structured. This is particularly crucial in countries where security forces have previously been involved in perpetrating mass atrocity crimes against the civilian population.

Security forces must be trained to prioritize protection of civilians and to understand and uphold international human rights standards. It was noted that in many countries military forces were trained in patrolling borders or protecting government officials rather than in protection of vulnerable civilians. Military leadership needs to undergo the same stringent sensitization to human rights, civilian protection responsibilities and international standards. In addition, they need to be qualified to enforce these standards and ensure that there is no impunity for grave human rights abuses committed by security personnel.

INVOLVING AFFECTED COMMUNITIES AND VICTIMS

Throughout the meeting, participants reflected upon how capacity building in the rule of law, security and business sectors could be implemented in a manner that directly addresses the needs of victims and communities affected by mass atrocity crimes.

Regardless of the role of government in any conflict, one of the immediate post-conflict needs across all institutions is to reestablish the relationship between the state and the population. Conflicts where mass atrocities have been perpetrated often result in citizens losing faith in government, particularly with regard to the justice and security sectors. If populations feel that the state lacks the capacity to protect their rights or that the security sector will not provide them with physical security, the country cannot progress. Citizens may resort to implementing their own form of rudimentary justice or informal security, risking a recurrence of conflict.

In the judicial sector, populations need to know how to access judicial resources and have their historical experience reflected in any reconciliation or transitional justice mechanisms created by the state. Mechanisms for truth and historical recognition of events are crucial, particularly those that allow affected communities to safely tell their stories.

For each of the sectors discussed, the government needs to undertake reforms in consultation with civil society. Building trust in these institutions by showing the population that their voice is being considered in the reform process is crucial. Furthermore, states emerging from conflict must ensure that capacity building is implemented with recognition of the need to address

societal inequalities. State institutions must reflect the social composition of the country, ensuring that no group is marginalized. This means that the security forces, police, courts, reconciliation commissions and other institutions need to include representation from all groups within society.

States are responsible for addressing the needs of victims and affected populations after a crisis. Not only must they protect the rights of the most marginalized and vulnerable communities to avoid recurrence of conflict, but they are also responsible for providing reparations to those affected by mass atrocities. These reparations must be distributed equitably to affected populations in order to avoid perceptions of bias.

KEY RECOMMENDATIONS

The fourth meeting of the Global Network of R2P Focal Points covered numerous aspects of capacity building for mass atrocity prevention. The following are ten recommendations for states to consider:

1. Emphasize the importance of the R2P lens regarding capacity building in relation to the rule of law, security sector, business sector and communities affected by mass atrocities in order to identify and address relevant risks.
2. Ratify and implement international human rights treaties and conventions and adopt national laws that explicitly prohibit and punish the commission of mass atrocity crimes.
3. Engage the business community in a dialogue on its role in the prevention of mass atrocity crimes. Adopt international and regional guidelines for conducting business in conflict-affected regions, including the UN's Guiding Principles on Business and Human Rights, and enforce business compliance with these instruments.
4. Design effective mechanisms for post-conflict accountability for mass atrocity crimes that can be integrated with the long-term reform of legal institutions.
5. Ensure that all victims have access to justice and are adequately informed regarding their rights.

6. Facilitate the exchange of knowledge between formal and informal community-based justice systems.
7. Actively avoid aggravating societal cleavages. This includes ensuring structures emphasize inclusivity and reflect national diversity.
8. Reestablish trust between state and society when reforming or designing new legal and security institutions.
9. Sensitize and train security forces regarding their role in upholding civilian protection and human rights responsibilities.
10. Involve civil society in the process of R2P-relevant capacity building in the judicial and security sectors whenever possible.

CONCLUSIONS

The fourth meeting of the Global Network of R2P Focal Points examined concrete steps states can undertake in order to build capacity in four areas of central importance to mass atrocity prevention. During these discussions, participants focused on how they, as R2P Focal Points, can undertake practical steps within their government to ensure that a mass atrocity prevention lens is applied to these areas. For all four areas discussed in Gaborone, emphasis was placed on the need to carefully design measures, avoiding the unintended consequences of reforms that could exacerbate tensions rather than prevent recurrence of mass atrocity crimes.

Throughout each session there were discussions of Pillar II responsibilities and how members of the network can work together. As one participant noted, “R2P in essence is really about mutual commitment to support one another.” While it is essential to develop strategies for addressing institutional deficiencies at home, building an active and engaged network of support among states committed to mass atrocity prevention remains an essential ingredient in the struggle to eliminate these crimes once and for all.