

At a Glance

AN EDUCATIONAL TOOL BY THE INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT

FACT-FINDING AND ASSESSMENT:

TOOLS TO IMPLEMENT THE THIRD PILLAR OF THE “RESPONSIBILITY TO PROTECT”

The role of fact-finding and assessment tools in implementing RtoP’s third pillar

In the context of RtoP, fact-finding and assessment mechanisms are primarily used to gather information in situations where populations have experienced violations of human rights abuses. Evidence gathered can help to assess appropriate post-conflict accountability and reconciliation measures. Employed by a range of actors, these mechanisms also can serve a preventive function by drawing attention to and verifying cases of abuses, thereby increasing pressure on government actors and other perpetrators to stop committing crimes.

There are several principal mechanisms for fact-finding and assessment. Observers may be deployed in **fact-finding missions**, which can be dispatched independently or jointly by UN bodies and regional organizations, to document evidence in cases where human rights appear threatened. A **commission of inquiry** is a type of fact-finding mission, typically authorized by UN actors. Fact-finding missions may or may not be deployed inside the state of the threatened population, depending on the consent of the host government. A **Special Rapporteur** or an **Independent Expert** can be appointed to analyze, monitor and report on human rights issues in specific country cases or in multiple states or globally based on a thematic mandate.

The role of United Nations and regional actors

United Nations

Fact-finding missions and commissions of inquiry may be established by the UN **Human Rights Council (HRC)** or the **Security Council (UNSC)**, independently or upon recommendation by the **Secretary-General (UNSG)**, the **General Assembly (UNGA)**, or the **High Commissioner for Human Rights**. The HRC can also appoint Special Rapporteurs or Independent Experts in accordance with the body’s special procedures system. Discourse on best practices and recurring concerns for these mechanisms is ongoing. For example, the **UN Office for the Coordination of Humanitarian Affairs (OCHA)** and the Permanent Mission of Portugal to the UN co-organized a high-level workshop in November 2011 on *Accountability and Fact-finding Mechanisms for Violations of International Humanitarian Law and Human Rights Law*, which highlighted operational and methodological challenges to fact-finding mechanisms and assessed the capacity of the UNSC and other actors to use these tools to prevent mass atrocities.

Regional and sub-regional arrangements

Regional bodies often become aware of at-risk situations in the early stages, positioning them as key actors in implementing fact-finding tools. Regional capacity to gather and assess information on potential threats varies; case examples include:

- The **African Union (AU)** can authorize fact-finding missions to respond to potential crises through its **Peace and Security Council**. Such missions were sent to Sudan’s Darfur region in November 2008, to diffuse escalating tensions between Sudan and Chad, and to Côte D’Ivoire in February 2011, to assess the situation on the ground ahead of a team of AU mediators that would arrive amid post-election violence. The AU planned to send a fact-finding mission to Libya in February 2011 in response to threats of mass atrocities against the population by former Libyan leader Muammar Gaddafi, but the mission was dissolved following the authorization of a no-fly zone through UNSC Resolution 1973.
- The **Intergovernmental Authority on Development (IGAD)**, which includes Djibouti, Ethiopia, Kenya, Somalia, Sudan, South Sudan, Eritrea and Uganda, established the **Conflict Early Warning and Response Mechanism (CEWARN)** in 2002 to act through national **Conflict Early Warning and Early Response Units (CEWERU)**, which gather information and act on potential or ongoing threats through field monitors. One example took place in August 2011 in Kenya, when the Ethiopian CEWERU, acting on recommendation by its Kenyan counterpart, initiated a fact-finding mission to identify perpetrators of killings and cattle raiding in a conflict-prone border region.
- The **Economic Community of West African States (ECOWAS)** has a important assessment architecture and can dispatch field monitors within its **Observation and Monitoring Centre** as well as authorize fact-finding missions to respond to threats to populations. This was seen in northern Mali in March 2012 when ECOWAS deployed a fact-finding mission to assess reported

THREE PILLAR FRAMEWORK OF THE RESPONSIBILITY TO PROTECT

United Nations (UN) Secretary-General Ban Ki-moon established the three-pillar framework of the Responsibility to Protect (RtoP, R2P), in his 2009 Report *Implementing the Responsibility to Protect*:

- **Pillar One:** The state bears the primary responsibility to protect their population from genocide, war crimes, crimes against humanity and ethnic cleansing.
- **Pillar Two:** The international community, i.e. the UN, regional organizations, governments and civil society, must assist states in fulfilling their protection obligations.
- **Pillar Three:** When a state manifestly fails to protect its population or is in fact the perpetrator of these crimes, the international community has a responsibility to take collective action in a timely and decisive manner to prevent or halt the commission of mass atrocities. Such action must be on a case-by-case basis using a broad range of political, economic, humanitarian, and should peaceful means prove inadequate, coercive measures, including the use of force as authorized by the Security Council and in accordance with the UN Charter.

massive displacement from clashes between rebel groups. ECOWAS has also initiated responses by other actors when populations in the region have been threatened, as evidenced in September 2009 when ECOWAS, alongside the UN and the AU, immediately called for an inquiry into a massacre at a stadium in Conakry, Guinea. The UNSG responded to the request in late October, and established a Commission of Inquiry with support from the UNSC, AU, and ECOWAS.

- The **Organization for Security and Co-operation in Europe (OSCE)** uses its Policy Support Service to share information between headquarters and OSCE-regions. The OSCE also deploys fact-finding and field assessment missions, as it did in the occupied territories of Azerbaijan surrounding Nagorno-Karabakh in 2005 and 2010 following a sectarian conflict involving claims of ethnic cleansing by Armenian and Azerbaijani communities. The OSCE also worked with UN bodies and the European Union to establish the Kyrgyzstan Inquiry Commission to investigate alleged mass atrocities that took place in southern Kyrgyzstan in June 2010.
- The **Union of South American Nations (UNASUR)** intervened in Bolivia, following a bloody clash in the Pando province in September 2008, by organizing a meeting between the disputing parties and deploying a fact-finding mission, marking a significant departure from the region's culture of non-interference.

The role of individual governments and civil society

National actors can contribute resources or personnel to fact-finding and assessment missions, and can respond to protect populations within its borders by developing national early-warning mechanisms to trigger action, and missions to assess the progress of political, economic or social reforms and the level of civil stability. Governments are also responsible for cooperating with observer missions should they take place within their state, including by ensuring freedom of movement and approving necessary visa applications.

Civil society is an important source of assessment and reporting at all levels to raise awareness and alert actors to threats of mass atrocities, and may independently send fact-finding teams, or provide personnel for missions authorized by regional or international arrangements. Civil society also mobilizes constituents globally and garners international attention to crises, pressuring international and regional actors to investigate potential threats and states to cooperate with investigations.

Strengthening fact-finding and assessment

Although fact-finding and assessment are crucial to prevent and respond to mass atrocity crimes, these tools face challenges and must employ best practices in implementation:

- **Access to information** may be limited in countries where the media is largely state-controlled or when journalists' and observers' access to the country is denied.
- **Insufficient sharing of information and analysis** between international, regional and civil society actors can hinder rapid response to threats, especially in regions with no operational early warning systems. Sources and information attained must be corroborated between actors to increase credibility and serve as a basis for action.
- Fact-finding and assessment missions on the ground must have **adequate resources, planning, civilian and security support** and be given **clear mandates with feasible, public expectations**.
- **Consistent, impartial reporting by missions** as well as **timely follow-up on their recommendations** by relevant international and regional bodies help ensure the effectiveness and credibility of these mechanisms.
- Observers and experts must be **trained to recognize warning signs of mass atrocity crimes**, including conflict-related sexual violence, to identify potential or imminent threats to populations in the early stages of crises.
- **Operational challenges on the ground**, including limited freedom of movement, lack of resources and risks to personal security may obstruct the progress of special rapporteurs and fact-finding and assessment missions.

ICRtoP

INTERNATIONAL COALITION FOR **THE RESPONSIBILITY TO PROTECT**

For more information, visit our

Website: responsibilitytoprotect.org

Blog: icrtopblog.org

Facebook: facebook.com/icrtop

Twitter: twitter.com/icrtop

Sign up for our listserv: responsibilitytoprotect.org/subscribe

The International Coalition for the Responsibility to Protect convenes and collaborates with civil society, Member States, and regional and sub-regional organizations to continue close scrutiny of the consistent implementation of the third pillar and develop effective methods to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.

Contact Us:

708 Third Avenue, 24th Floor

New York, NY 10017

tel: 212.599.1320

fax: 212.599.1332

info@responsibilitytoprotect.org