International Refugee Rights Initiative

Citizenship Rights and the Prevention of Atrocity Crimes:

Contributions to the General Assembly dialogue on the Responsibility to Protect:

State Responsibility and Prevention

September 2013

Citizenship rights, as understood by IRRI, refer to the right of an individual to an identity, to belonging and to a functional place in the polity. Denial of citizenship rights is a risk factor for marginalisation, exclusion and, ultimately, the commission of atrocity crimes. Building inclusive and durable frameworks for meaningful access to citizenship rights – primarily at a national level but also at local, regional and international levels – is critical, therefore, to "building resilience" against mass atrocity.

The adoption of the responsibility to protect as part of the World Summit outcome document represented a historic commitment to protecting populations from genocide, ethnic cleansing, war crimes and crimes against humanity ("atrocity crimes"). By affirming the responsibility of states to protect populations within their borders, and by affirming the right of the international community to take action if they fail to do so, the emerging norm frames relations between the citizen and the state as one of mutual responsibility rather than that of a dominating state imposing unlimited control over the individual. In so doing, the international community was continuing a trend of limiting sovereignty through the imposition of obligations vis a vis the individual, which has influenced the emergence of other human rights standards. However, in emphasising the *primary* responsibility of the state to protect populations, the norm emphasises the continuing need for effective relationships to be forged between the individual and the state in order to assert this protection in practice. In this context, citizenship rights, referring, as understood by IRRI, to the right of an individual to an identity, to belonging and to a functional place in the polity, are critical for understanding the operationalization of the norm.

On 11 September 2013, the UN General Assembly will convene a dialogue to discuss the Secretary-General's latest report on the implementation of the responsibility to protect: "The Responsibility to

Protect: *State Responsibility and Prevention*".[1] The focus on prevention is timely, as the norm has too often been presented narrowly as nothing more than a justification for military action, or has been conflated with the doctrine of humanitarian intervention. In addition, this focus is particularly amenable to a citizenship analysis. Denial of citizenship rights is a risk factor for marginalisation, exclusion and, ultimately, the commission of atrocity crimes. Building inclusive and durable frameworks for meaningful access to citizenship rights – primarily at a national level but also at local, regional and international levels – is critical to building resilience against mass atrocity. Furthermore, citizenship can be a framework within which individuals can mobilise collective action for the protection of rights: gaining an understanding of how conceptions of citizenship and identity operate at these various levels can inform appropriate protective actions that can be mobilised on these same levels.

The International Refugee Rights Initiative (IRRI) welcomes the report is hopeful that this will form the basis of an open and useful dialogue in the UN General Assembly, and will provide a guide for states wishing to take action to prevent atrocity crimes. This paper is an effort to input IRRI's specific expertise on the issue of citizenship as relevant to the broader issue of the operationalisation of the responsibility to protect and the systematic or structural prevention of atrocity crimes.

The paper draws primarily on research carried out by IRRI over the past five years in the Great Lakes Region of Africa focusing on the relationship of citizenship and belonging to displacement. To date, IRRI has carried out eight studies in the region, all with marginalised groups that have been displaced from their homes, using a qualitative social science methodology.[2] In all of the cases examined, the commission of atrocity crimes has been both a cause of exile and a barrier to its resolution.[3] The paper also draws on IRRI's experience in advocating for citizenship rights in the region individually and through the Citizenship Rights in Africa Initiative (CRAI). It is hoped that it will contribute to a deeper understanding of the Secretary-General's report, informing both the UN General Assembly debate on the report and the identification of concrete steps that can be taken by states and civil society in operationalising its recommendations.

How are citizenship and mass atrocity prevention linked?

Atrocity crimes often deliberately target specific groups, communities or populations.[4] Indeed genocide is, by definition, the targeting of a group on the basis of their identity. Although war crimes and crimes against humanity do not necessarily require a link to identity, in practice it is uncommon for such crimes to be committed in a widespread way without an identity based driver. These crimes, therefore, are facilitated by the assertion that certain persons, or groups of persons, do not have the right to belong – or even, in the case of genocide, to exist. As is recognised in the Secretary-General's report, "genocide is an extreme form of identity based crime."[5]

Identities are expressed, enjoyed and protected at multiple levels, including local, national, regional and international. The ability to access each of these levels of belonging, and to assert the "right to have

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[1] In August 2013, the UN Secretary-General, Ban Ki-moon published his fifth Report since 2009 on the Responsibility to Protect. See UN General Assembly Security Council, Report of the Secretary-General on the Responsibility to Protect: *State Responsibility and Prevention*", 9 July 2013.
[2] The studies have examined populations in Burundi, Democratic Republic of Congo (DRC), Rwanda, South Sudan, Sudan, Tanzania, and Uganda. Please find a list of all relevant IRRI papers at the end of this briefing.
[3] Indeed, forced displacement can itself constitute a war crime or a crime against humanity in certain circumstances.
[4] Secretary General's report, p. 3.
[5] Ibid.

rights"[6] or citizenship as broadly understood, can be critical to accessing protection and preventing mass atrocity. Although identities function in a highly complex and variable way, the effectiveness of *national* belonging is often, in practice, the most critical to ensuring access to rights for groups and individuals. Thus while the right to have rights is "predicated on our shared humanity not on territorialised belonging encapsulated in citizenship… in practice, the effective proof of citizenship is a necessary foundation for the exercise of rights."[7]

Citizenship rights allow individuals and groups to express their identity, to belong and to assert rights vis a vis the state. Where these rights are denied, populations face exclusion and marginalisation and an increased risk of human rights violations generally and atrocity crimes specifically. The systematic organisation of a polity, therefore, (whether at a local, national, regional or international level) needs to be done in such a way as to strengthen individual identification with, inclusion in, and engagement with, the polity (i.e. the practice of "citizenship"). When this is done effectively, the risk of atrocity crimes is likely to be reduced.

Access to national citizenship rights and the prevention of atrocity crimes

Indeed, empirical data has shown this to be the case: IRRI's research has shown that access to strong and inclusive citizenship is critical to building resilience to atrocity crimes, while denial of citizenship rights increases the likelihood of the commission of such crimes. It is clear, however, that these violations can occur in a number of ways. For instance, certain patterns of violation were found to be particularly salient in the context of displacement as explored by the project. Some of the specific issues that came through are discussed below in turn, including access to legal citizenship, the need for more comprehensive approach to repatriation, the need for careful management of transitional justice processes and the requirements of inclusive governance. These issues are not exhaustive of all issues related to operationalising the responsibility to protect, but are intended to demonstrate areas in which IRRI's research findings have particular salience to the forthcoming dialogue.

De jure citizenship

The Secretary-General's report refers to denial of citizenship as one of a series of measures of social discrimination that can indicate an elevated risk of atrocity crimes: "Social discrimination includes measures such as denial of citizenship or the right to profess a religion or belief, compulsory identification and limitations on basic rights such as marriage or education that target members of a community."[8] Indeed, the formal denial of citizenship and citizenship rights has been a driver of conflict and mass atrocity in a number of crises in Africa, from Cote d'Ivoire to the Democratic Republic of Congo (DRC) to Zimbabwe. As noted by the Secretary-General, the denial of formal legal citizenship is only one of a myriad of discriminatory measures that can signal a risk of atrocity crimes.

As stated above, citizenship rights are deserving of particular attention because the right to citizenship is a doorway to accessing other rights, including not only the right to engage politically, but also the ability to access rights such as education, access to land and livelihoods. For instance, denial of identity documentation, which is often tied to the formal denial of citizenship, can be linked to the denial of

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[6] Hannah Arendt, 1986, *The Origins of Totalitarianism*. Andre Deutsch, pp. 295-296. As cited in Open Society Justice Initiative, 2007. "More Primitive than Torture: Statelessness and Arbitrary Denial of Citizenship in Africa – A Call to Action." Background Briefing for Africa Programming Advisory Committee Meeting. Kampala, Uganda, February.
[7] Open Society Justice Initiative, 2007.
[8] Secretary General's report at para 19.

voting rights and the right to be heard and access the justice system. It can also increase the vulnerability of individuals to arbitrary arrest and other human rights violations.

IRRI's research in Sudan and South Sudan has demonstrated the extent to which lack of access to formal citizenship rights can heighten the vulnerability of populations to mass atrocity. In the aftermath of the secession of the South, both countries revised their laws on citizenship. The new law in the North would seem to exclude anyone who has a claim to South Sudanese citizenship – even if that person does not seek to activate that claim. Because the law in South Sudan is relatively broad, a large number of individuals might be excluded formally from citizenship in this way. One southern woman married to a northerner put the issue in this way, "[Secession] was very bad for us, because now you feel like you are a stranger in Khartoum... I am treated differently in the streets. Even the children during the Heglig problem, would say to us 'you made us sick. Go back home dirty Southerners!'"[9] In addition, the identities of those from border areas such as the Nuba from Southern Kordofan have had their legitimacy to belong called into question. In a society where atrocity crimes have already been committed and are likely continuing, there is particular cause for concern about the fate of these populations: this exclusionary rhetoric could easily be manipulated in such a way as to justify atrocity crimes.

Notwithstanding the clear evidence of the linkage of denial of access to citizenship with human rights violations, conflict and atrocity crimes, the definition of who is, or is not, a citizen has traditionally been seen as the exclusive purview of states, not subject to international standards. This position is now beginning to be eroded: specifically, the statelessness conventions have set standards on measures to be included in national citizenship provisions so as to reduce statelessness, and the United Nations High Commissioner for Refugees (UNHCR) has undertaken a campaign to increase state adherence to the statelessness conventions. The circumstances surrounding the manner in which citizenship and citizenship rights are denied has also been recognised as raising issues in terms of fundamental rights such as the right not to be subjected to torture and inhuman or degrading treatment.

At least one international body has recognised the critical need for international action on citizenship in the context of enhancing peace and security and preventing the recurrence of atrocity crimes. The founding Pact on Security, Stability and Development in the Great Lakes Region of the International Conference on the Great Lakes Region (ICGLR) seeks to take an integrated approach to addressing the myriad conflicts in the region with its ten protocols, including a Protocol on the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes Against Humanity. The Pact recognises the issue of citizenship as a major challenge for states in the region. For example, it commits to "adopt a common regional approach for the ratification and implementation of the UN Conventions on statelessness, harmonise related national laws and standards."[10] Its Programme of Action, which is an "integral" part of the Pact,[11] calls for the elaboration of a mutually consistent legal and policy framework to respond to statelessness regionally, including the drafting of model legislative provisions on citizenship and nationality which should include: guarantees of non-discrimination, the grant of citizenship to individuals who have a real and effective link with the state, conditions for the loss and acquisition of nationality, effective judicial remedies in the event of refusal or withdrawal of nationality,

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[9] International Refugee Rights Initiative, "The Disappearance of Sudan? Life in Khartoum for Citizens without Rights," May 2013. p. 10.
[10] Pact on Security, Stability and Development in the Great Lakes Region, Article 68.
[11] Pact on Security, Stability and Development in the Great Lakes Region, Article 3 (1).

and measures to facilitate citizenship of refugees and displaced persons where their citizenship status remains unresolved.

In addition, the African Commission on Human and Peoples' Rights has recently joined the ICGLR in recognising citizenship as an important challenge facing the continent, adopting a resolution on the right to a nationality.[12] The resolution clarifies existing standards relating to and calls on states to reform their laws in order to ensure that national legislation is not discriminatory. Finally, the resolution calls for the adoption of a protocol to the African Charter for Human and Peoples' Rights on the Right to a Nationality. IRRI has joined with the Open Society Institute and a number of African civil society organisations to form the Citizenship Rights in Africa Initiative (CRAI) which is, *inter alia*, advocating for adoption of the protocol.

However, the international community needs to do much more to recognise that access to citizenship is a core human rights concern and to elaborate clearer international standards relating to citizenship law and practice.

Return and reintegration as a genuinely durable solution

The commission of atrocity crimes is often cyclical. Indeed, the Secretary-General's report identifies a history of atrocity as one of the factors that can lead to a greater risk of new atrocities, particularly where those have not been adequately addressed.

One element of this dynamic can be seen in patterns of displacement. Although displacement is not always as a result of atrocity crimes, atrocity crimes nearly always lead to large scale displacement. If the displaced are not assisted to re-establish their lives as citizens – either through return or through integration in host countries – then their on-going plight is likely to exacerbate tensions and fuel new cycles of violence. For example, the refusal of the Habyarimana regime in Rwanda to allow Tutsi refugees to repatriate was a contributing factor in the formation of the Rwandan Patriotic Front, which invaded Rwanda from Uganda and took over power after the 1994 genocide. Failure to adequately reintegrate returning populations and permit access to full citizenship, nationally and locally, in eastern DRC has likewise fuelled on-going conflict and mass atrocity and has led to renewed flight. This failure is evidenced both by the tens of thousands of Congolese refugees who remain in exile unable to return to DRC, many of whom are living in dire circumstances in neighbouring Rwanda and Uganda; and by the fact that many who have returned have been forced to flee once more. The on-going cyclical conflicts in eastern DRC transect this displacement: disaffected populations that continue to be marginalised and excluded from meaningful political processes and see no alternative means to regain access to their homes except through force are vulnerable to recruitment by the plethora of militias operating in the region. Indeed, one of the stated reasons for the current armed rebellion in eastern DRC by the M23 rebel group is the failure to repatriate Congolese refugees in Rwanda.

It is clear, therefore, that truly durable solutions to crises of displacement – solutions that allow the displaced access to full citizenship rights – are critical to preventing new cycles of atrocity. However, globally over the past few decades there has been an increasing emphasis on repatriation as the preferred solution to crises of displacement coupled with a destructive reductionist approach to repatriation. Increasingly, the success of the repatriation project has become focused on the number of returnees rather than on the sustainability or durability of their return. In this context, repatriation is

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[12] African Commission on Human and Peoples' Rights, Resolution on the Right to a Nationality, April 2013.

reduced to a primarily humanitarian process and is disengaged from the individual's capacity to meaningfully (re)assert citizenship or rights in their country of origin. In this context, our research points to the need for greater recognition of the need for *political* reintegration, creating the conditions for a new relationship between individual returnees and the state, which offers greater hope for return to function genuinely as a durable solution.

In the context of Rwanda, IRRI's research has shown that the lack of political space in Rwanda has been a major obstacle to the return of refugees. Refugees indicated that a number of government policies including the operation of the *gacaca* courts and legislation on genocide ideology were promulgating and reinforcing a singular version of history, thereby solidifying ethnically aligned divisions between victims and perpetrators. As a result, the association of guilt with Hutus, and in particular those who remain outside the country, has made it unsafe for many to return. Our research has demonstrated that many Rwandan refugees believe that there is little room for their story to be heard at home, in particular those that relate to their desire to seek justice for the killings and disappearance of members of their families, crimes that may have been committed by persons connected with the current ruling party. This is fuelling their on-going resistance to return and may, in the long term, contribute to another round of violence. In the meantime, it is creating serious instability for those who remain in exile.

The international community, including both states and UNHCR, must re-think the approach to repatriation and shift from a focus on ensuring high numbers of returnees, to ensuring durable and sustainable repatriation that will allow returnees to access rights and function as full citizens on return.

Transitional justice, ending displacement and preventing mass atrocity

The Secretary General notes that in "societies that have lived through atrocity crimes, a fair and inclusive transitional justice process can prevent relapse into further violence." However the opposite should also be considered – that poorly managed transitional justice processes may increase the risk of future violence.

In the research on Rwandan refugees discussed above, IRRI found that the operation of the *gacaca* courts were among the mechanisms used to exclude returnees and enforce a singular state sponsored history. Far from achieving their stated purpose of achieving justice for atrocities committed in Rwanda, refugees claimed that the courts were created to reinforce notions of collective guilt on the part of Hutus and to facilitate the silencing of critics who could easily be accused of genocide related crimes and subjected to expedited trials lacking important fair trial guarantees.

This example highlights the need for transitional justice to be carefully managed in order to successfully reduce, rather than exacerbate, the tensions that caused the crimes that these processes seek to address.

Ensuring inclusive governance

Ultimately, the extent to which citizenship has meaning is inextricably linked to good – and inclusive – governance. As the Secretary General says, "[b]uilding resilience implies developing appropriate legal frameworks and building State structures and institutions that are legitimate, respect international human rights law and the rule of law in general, and that have the capacity to address and defuse

sources of tension before they escalate. It means building a society which accepts and values diversity and in which different communities coexist peacefully."

Recent research conducted in Khartoum with marginalised groups demonstrates the extent to which Sudan is on a trajectory that continues to generate exclusive forms of governance. Following the secession of the Republic of South Sudan in July 2011, spaces for belonging – as evidenced by the ability to access one's rights – have further contracted, hardening the fault lines that separate insiders from outsiders. As a result, many people view their citizenship as having no meaning. In the context of the loss of territory and resources, new conflict, and rising opposition, the state has continued to create a polity that is strongly exclusionary. It is clear that until these core governance issues are addressed, and until marginalised communities can expect a reasonable stake in decision making that affects them, there will be no end to conflict in Sudan. Yet the international community has long allowed its focus to be split by Sudan's alternating conflicts in the South, Darfur, eastern Sudan and now Southern Kordofan and Blue Nile. The international community must recognise the need for a comprehensive approach to Sudan's crises that appropriately places these core governance issues at the heart of any international response.

Furthermore, neither Sudan specifically, nor Africa generally, are exceptions in this regard. Governance issues are universally symptomatic of conflicts and atrocity crimes, and therefore should be part of the international community's approach to preventing atrocity crimes.

Multiple levels of citizenship and access to protection

Although access to *de jure* citizenship at the national level is, in practice, critical to accessing rights, mobilisation of other levels of belonging can play an important role in ensuring protection. At the regional and international level the activation of identities broader than national citizenship can provide a rallying cry for the activation of new modes of protection.

The interaction between local belonging and national citizenship

Although access to *de jure* citizenship is critical, our research has demonstrated the extent to which access to national citizenship is only the first step to ensuring access to citizenship rights. Legal access to citizenship means little if individuals and groups are not accepted at the level of the communities to which they belong.

The situation of Kinyarwanda speakers in eastern DRC is salient in this regard. National legislation adopted by the government in 2004 appears to clarify the position of this population by granting the vast majority citizenship. However, research carried out by IRRI in North Kivu in 2009, and among refugees from the region in Rwanda in 2011, clearly showed that this national legislation was not being consistently applied at the local level where the right of this group to belong remains severely contested in many places. Refugees in Rwanda saw affirmation of their citizenship as a critical pre-requisite for their ability to return. They identified a need to be recognised as Congolese citizens, but also realised that this would have limited salience if they were not accepted in the areas to which they were to return and where local leaders play a significant role in determining access to land and other resources.

The gap between the law and policy, and between the situation at the national and local levels, therefore, are realities that must be taken into account in carrying out national assessments of risk and resilience, as recommended by the Secretary-General. The Secretary-General rightly points out that

"There is no one-size-fits-all approach to atrocity prevention": circumstances in one country can also vary significantly from region to region, and that there may be a need to tailor approaches at the regional and local levels as well as the national one.

Regional and international forms of "citizenship" and the prevention of mass atrocity

Where state protection fails, the World Summit Outcome document indicates that the international community should step in to provide support to the state in question, or failing that, take direct action to ensure protection. However, in practice such support may be more easily mobilised if it can draw on shared supra-national identities, including regional ones, to mobilise that support.

The Secretary-General's report emphasises the potential role of supra-national organisations, for example regional bodies, in promoting adoption of these mechanisms. In particular, the report notes the efforts of the ICGLR to establish a regional committee on the prevention of atrocity crimes and its support to its 12 member states to establish national committees on the prevention and punishment of the crime of genocide, war crimes, crimes against humanity and all forms of discrimination.

IRRI welcomes the establishment of these committees and calls on the international community to take action to support these mechanisms to ensure that they are able to intervene effectively to address the risk of atrocity crimes in the region.

Similarly, the concept of "community citizen", or regional citizenship, as defined by the Economic Community of West African States (ECOWAS)[13] is good practice that could be emulated in, or adapted for, the Great Lakes Region and the East African Community.

Conclusion and recommendations

In conclusion, therefore, our research has shown the need – as well as the usefulness – of viewing both causes and solutions to atrocity crimes through the lens of citizenship. Fair and equitable access to citizenship, we argue, creates a framework for preventing atrocity crimes.

Specifically, we recommend the following:

- Modify monitoring relating to human rights and atrocity crimes prevention, for example at the level of international treaty monitoring bodies and the UN Special Advisor for the Responsibility to Protect, to better recognise denial of citizenship as a causal factor for atrocity crimes by
    - Including access to *de jure* and *de facto* citizenship in the analysis framework currently being developed by the Special Adviser on the Responsibility to Protect for analysing the risk of atrocity crimes;
    - Encouraging other relevant monitoring and early warning actors to systematically include these issues as a key human rights and atrocity prevention concern; and
    - Including monitoring and analysis of regional and local variations in the experience of these rights.
- Strengthening the international and national legal framework relating to the reduction of statelessness and the right to nationality (including in situations of state succession) in addition

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[13] ECOWAS Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment.

to encouraging the adoption of new international or regional standards and law on the right to nationality and the equal enjoyment of citizenship.

- The International Conference on the Great Lakes Region and its member states, supported by international partners as appropriate, should be encouraged to implement the ICGLR programme of action on citizenship rights, including as a progressive model of transnational cooperation around the right to nationality, which recognises the relationship between citizenship rights and the prevention of conflict and mass atrocity.

- The international community must reconceive its approach to repatriation and return, expanding its focus beyond a narrow humanitarian approach to view repatriation as a process of renegotiating citizenship. This re-conception would place key markers such as access to justice and political participation at the centre of assessing the success of repatriation exercises.

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The research findings referred to above were published by the International Refugee Rights Initiative in a series of nine papers (all available for download on www.refugee-rights.org):

o **_Going Home or Staying Home? Ending Displacement for Burundian Refugees in Tanzania_**. Working Paper 1, November 2008, conducted in partnership with the Centre for the Study of Forced Migration and the University of Dar es Salaam, Tanzania.

o **_"Two People Can't Wear the Same Pair of Shoes": Citizenship, Land and the Return of Refugees to Burundi._** Working Paper 2, November 2009, conducted in partnership with Rema Ministries, Burundi.

o **_Who Belongs Where? Conflict, Displacement, Land and Identity in North Kivu, Democratic Republic of Congo_**. Working paper 3, March 2010.

o **_A Dangerous Impasse: Rwandan Refugees in Uganda_**. Working paper 4, June 2012, conducted in partnership with the Refugee Law Project, Faculty of Law, Makerere University, Uganda.

o **_Hoping for Peace, Afraid of War: the Dilemmas of Repatriation and Belonging on the Borders of Uganda and South Sudan_**. Working Paper 5, November 2010, _Authored by Lucy Hovil and published by the United Nations High Commissioner for Refugees._

o **_Shadows of Return: The Dilemma of Congolese Refugees in Rwanda_**. Working Paper 6, June 2011.

o **_Darfurians in South Sudan: negotiating belonging in two Sudans_**. Working Paper 7, May 2012.

o **_"I can't be a citizen if I am still a refugee": Challenges in the Naturalisation Process for Burundians in Tanzania_**. Working Paper 8, April 2013.

o **_The disappearance of Sudan? Life in Khartoum for citizens without rights._** Working Paper 9, May 2013.

About the International Refugee Rights Initiative (IRRI)

IRRI is dedicated to promoting human rights in situations of conflict and displacement, enhancing the protection of vulnerable populations before, during and after conflict. IRRI accomplishes this by:

- tackling the exclusion and human rights violations which are the root causes of flight;
- enhancing the protection of the rights of the displaced, and
- promoting policy solutions which enable those affected by conflict to rebuild sustainable lives and communities.

IRRI grounds it advocacy in regional and international human rights instruments and strives to make these guarantees effective at the local level.

Focusing on Africa, IRRI works with networks of advocates to identify the key challenges facing vulnerable communities and collaborates to advance changes in law, policy and practice. IRRI accomplishes these objectives by developing and implementing innovative legal and advocacy strategies, conducting policy-oriented legal and field- based research and leveraging African regional and sub-regional governance structures. Partnership with networks of civil society and non-governmental organizations (NGOs) across the continent is a hallmark of our work, including through IRRI stewardship and development of the Darfur Consortium. Our dual bases in Kampala and New York position us to act as a bridge between local advocates and the international community, enabling local knowledge to infuse international developments and helping integrate the implications of regional and international policy at work on the ground.