Makerere Institute of Social Research

The Architecture of Post-Cold War Africa:
Between Internal Reform
and External Intervention

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SPEAKERS, PAPER ABSTRACTS, SHORT BIOGRAPHIES
(In order of presentation)

Siba Grovogui, Johns Hopkins University, USA

Title: *Satanic Tropes: Sarkozy and Africans, The Invisible and the Undesirables*

Abstract: Contrary to conventional wisdom, the responsibility to protect is neither new in its inception nor politically neutral in its execution. It is also not new or surprising that 'responsibility', in the sense of transparency and accountability of the protector, remains absent from the essential features of the responsibility to protect as currently practiced. This is the lesson to be taken from interventions in Libya and Cote d'Ivoire. While the idea of responsibility is founded on a moral invocation of human solidarity, the responsibility to protect has been used by hegemonic powers to establish a normative order based on a hierarchy of subjects. One part of humanity, generally the West, holds the Rest, Africans in particular, in a trusteeship for which the former is unaccountable. In this sense, the endurance of the idioms of responsibility and protection in international relations lie in their instrumentality. One finds the original language of the responsibility to protect in the General Agreement of the Berlin Conference, the legal foundation of colonial protectorates, the dispositions of the League of Nations Mandate system, and even the UN Trusteeship Council. The foundation of the trust upon which the responsibility to protect rests has mutated. It is found today in a near-political theology according to which the West is justified in its unilateral use of violence against Africans in however it conceives this violence as long as the end is the salvation of Africans. This is how one is to judge Sarkozy's pre-intervention comment that Africans have not entered civilization and his and Cameroon's determination at the UN to keep the African Union out of the resolution of the Libyan – and to some extent—Ivorian conflicts.. In this essay, I examine the moral predicates and jurisprudence in practices of protection and raise questions about sovereignty and the constitution of social, political, legal, and economic orders during and after intervention.

Bio: Siba N'Zatioula Grovogui is professor of international relations theory and law at The Johns Hopkins University. He is the author of *Sovereigns, Quasi-Sovereigns, and Africans* (University of Minnesota Press, 1996) and *Beyond Eurocentrism and Anarchy* (Palgrave, 2006).

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Makau Mutua, Buffalo Law School, The State University of New York

Title: *The Responsibility to Protect as an African Paradox: The Cases of Somalia and Kenya*

Abstract: Prima facie, the Responsibility to Protect appears to be unproblematic as matter of law and morality. It seeks to extend international responsibility to protect the rights of citizens against egregious violations by their state. It draws its internal logic from human rights normativity and international humanitarian law. In this sense, the Responsibility to Protect is a higher form of human intelligence. It is for this reason that states and civil societies have embraced the principle. However, when pushed to their logical conclusion, both the theory and practice underlying the Responsibility to Protect bare important tensions and raise unsettling structural questions in the international legal order. The case of Somalia – stateless since the early 1990s – points to hypocrisy in the construction and application of the doctrine. The case of Kenya – in the aftermath of the 2008 post-election mayhem – has been more promising. Why the divergence between the two cases? Can the doctrine be divorced from geopolitics and the strategic interests of imperial states? What can be done about its asymmetrical application? Finally, whose sovereignty will be curtailed, and how can Africa help reconstruct the doctrine?

Bio: Makau Mutua is Dean, SUNY Distinguished Professor and the Floyd H. & Hilda L. Hurst Faculty Scholar at Buffalo Law School, The State University of New York. He is the Director of the Human Rights Center and teaches international human rights, international business transactions, and international law. He is author of the author of *Human Rights: A Political and Cultural Critique* and editor of *Human Rights NGOs in East Africa: Political and Normative Tensions.*

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Adam Branch, Makerere Institute of Social Research and San Diego State University, USA

Title: *"Protecting" Africa: The Politics of the Responsibility to Protect*

Abstract: The Responsibility to Protect has, since its invention, been closely identified with Africa. R2P's rapid rise, however, has occurred despite fundamental disagreement over what it is and what its political consequences are for Africa. This paper will inquire into the politics of protection by framing R2P as part of a broader shift in which civilian protection has been asserted as the dominant normative orientation for political order in Africa. First, it will trace the emergence of the concept of protection in the late 1990s. Second, it will delineate the logic of protection and argue that it represents a departure from human rights-based interventions, implying instead a deeply conservative vision of politics in which the ultimate political goal of *all* political organization is to protect human life. Third, using illustrations drawn from international intervention in Libya and the current effort against the LRA, the paper will examine the political consequences of the institutionalization of the protection norm and argue that protection reorients political institutions and actors towards technocratic administration without democratic accountability and can lead to the militarization of society and politics. Finally, the paper will argue that protection is a response to a historical context in which the possibility of radical political change has been declared over. It concludes with a consideration of how other historical experiences might offer the resources to imagine alternative national and international normative orders that refuse protection's evisceration of democratic politics.

Bio: Adam Branch is Senior Research Fellow at the Makerere Institute of Social Research and Assistant Professor of Political Science at San Diego State University, USA. His work examines the politics of Western intervention into political violence in Africa, with a particular focus on Uganda. He is the author of *Displacing Human Rights: War and Intervention in Northern Uganda* (Oxford, 2011).

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Ronald C. Jennings, London School of Economics, UK

Title: *International Order in the Age of Cosmopolitan Criminal Law: Lessons from the Yugoslavia Tribunal*

Abstract: With the International Criminal Court preparing to issue its first judgment within the coming year (in the Lubanga case) and now exercising its jurisdiction in the DRC, Uganda, Sudan, and Libya, this is a critical moment to reflect on the recent experiment in the criminalization of the international legal order and whether it can serve as the basis for a fair or neutral international order. To make sense of this, it will be useful to inquire what lessons might be learned from the experience of the Yugoslavia tribunal (ICTY), the first properly cosmopolitan criminal court, and its implications for the subsequent development of international law. Though the issue has not been discussed since by the Security Council (in creating later tribunals and jurisdictions), at the time of the creation of the ICTY it was clearly acknowledged by all of the states' parties that no precedent existed for any kind of international criminal law. As a result, the Council's decision to base the new international criminal law jurisdiction on its Chapter VII powers has meant that, as a matter of law, the new regime must be understood as the product of the *emergency* and *executive* powers of the UN system and is based on a precedent establishing the legality of *ex post facto* lawmaking—neither of which can be understood as properly legal and both of which violate crucial terms of international law. Beyond even this, however, a careful analysis of the ICTY's Tadić Decision (which serves as the legal precedent on which international criminal law is now based), suggests that a properly cosmopolitan criminal law regime necessarily creates—for the first time in world-history—a transnational system of *sovereign law* which, though we remain after two decades with no name yet for this institution, necessarily bringing in much of the corpus of modern statist systems of criminal justice and which comprehends itself as a properly unitary, top-down and subjecting system incapable of coexisting with a system of state sovereignty, 350 years of international law (including the human rights mechanisms), or regional or local variations in legal regimes. In sum, just as it was a century ago, the Congo, in particular, and Africa, in general, are the objects through which a radical reorganization of global power and rights is taking place, one already fundamentally redefining the political rights of citizens of democratic sovereign states, undermining the possibilities for democracy in all but a few super-sovereign states, and ultimately threatening to create a new dual and hierarchical global system based on a division between sovereign democratic citizens and global subjects.

Bio: Ronald C. Jennings received his PhD in anthropology from Columbia University in New York in 2011, and he is currently a Royal Society Newton International Fellow located in the Department of Anthropology at London School of Economics. His work addresses the question of how we should understand the cosmopolitan power to punish the criminal embodied in the new global criminal courts.

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Betty Murungi, Vice Chair of the Kenya Human Rights Commission

Title: *The Domestic Costs of R2P*

Abstract: In December 2007/2008, Kenya experienced widespread violent conflict following disputed elections. Drawing on commitments made in the Constitutive Act of the African Union and the member states of the United Nations Responsibility to Protect doctrine, timely intervention by the African Union (with resources from the international community) mediation of the conflict was initiated with Kofi Annan playing the lead role. Within 45 days, a political solution was crafted and agreed upon. Among major achievements was an immediate end to open violence, the formation of a coalition government that include the two major political parties and a raft of transitional justice reform a to be implemented over the short term to address inter-alia, the electoral system, the violence, historical injustices and the raging humanitarian crisis.

While the development of this consensus (and its outcomes, including ICC intervention, promulgation of a new constitution) was an important milestone in international relations, it nevertheless neglected to take into account that protection in the Kenyan context is not a value neutral phenomenon. Political and identity cleavages burst wide open in the period after the international intervention and Kenya has the last three years been very ill at ease with itself. This paper examines these multiple dilemmas while addressing the causes and solutions to the cyclical violence experienced over the years.

Bio: Kaari Betty Murungi is a feminist lawyer with expertise in international human rights law and transitional justice. She is the founding director of Urgent Action Fund-Africa. In 2005-2006, she was a Fellow at the Harvard Law School's Human Rights program and was named the 2005 International Advocate for Peace by the Cardozo School of Law. She is an advocate of the High Court of Kenya and a member of FIDA Kenya and the Law Society of Kenya.

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L. Muthoni Wanyeki, former Executive Director, Kenya Human Rights Commission and Sciences Po, Paris

Title: *Criminal Justice in Kenya: Agency or Instrumentalisation, Compromising or Leveraging Political and Social Justice?*

Abstract: The violence that followed the announcement of the so-called Presidential elections results in Kenya in 2007/8 was, ultimately, stemmed by the mediation agreements brokered by the African Union-backed Kenya National Dialogue and Reconciliation. The KNDR was unique in two ways worthy of mention. First, it drew upon and leveraged domestic pressures and suggestions from both Kenyan civil society and, eventually, the Kenyan private sector for a comprehensive settlement. Second, the rest of the international community soon threw itself behind the AU's effort, ensuring financial and technical support, as well as a combination of carrots and sticks necessary to keep negotiations on track.

The comprehensive settlement thus covered what was understood by domestic pressures to comprise both the immediate and more long-term or root causes of both the elections fiasco and the violence. One outcome has been internal reform, most notably the achievement of Kenya's new Constitution, 2010 after almost two decades of struggle for the same. Another outcome has been the Kenyan situation before the International Criminal Court.

This paper argues that Kenya was not a case in which either domestic actors or the AU were instrumentalised by the rest of the international community. It also posits that, at least in Kenya, the pursuit of criminal justice for the violence (if not for the elections) has, in fact, leveraged the achievement of political justice as well as the placement (if not achievement) of social justice on the public agenda. Why and how this was the case is explored. Tentative conclusions are also drawn in respect of domestic actors, the AU and the rest of the international community with respect to external intervention.

Bio: L. Muthoni Wanyeki is doing her graduate studies at L'Institut d'etudes politiques (Sciences Po) in Paris, France. At the time of covered by her paper, she worked as the Executive Director of the Kenya Human Rights Commission (KHRC)—a key member of Kenyans for Peace with Truth and Justice (KPTJ), the ad hoc coalition of citizens and governance, human rights and legal organizations formed to address both the elections and the violence of 2007/8. KPTJ continues to follow and support implementation of the KNDR.

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Alex de Waal, World Peace Foundation, Fletcher, Tufts University, Boston, USA

Title: *Violence and Somalia's Globalized Political Economy*

Abstract: This essay analyses the crisis of modern political authority in Somalia, with an emphasis on the regional and international dimensions of that authority. Noting that the governance of Somalia over recent decades has been based on struggles for control over resources, including especially sovereign rents, it investigates the interaction between the domestic political marketplace and regional and international engagement during successive phases of modern Somali history. In response to the constraints and opportunities of a state-less but globally integrated political economy, Somalis have developed a resilient and adaptive governance system. Successive international and regional military interventions, whether multilateral or unilateral, have consistently entrenched Somalia's rentier political marketplace and the associated systemic violence.

Bio: Alex de Waal is executive director of the World Peace Foundation and a research professor at Tufts University. From 2009 to 2011 he served as senior advisor to the African Union High Level Implementation Panel for Sudan. His academic research has focused on issues of famine, conflict and human rights in Africa. His books include, *Famine Crimes: Politics & the Disaster Relief Industry in Africa*; *Darfur: A New History of a Long War*; and *Famine that Kills: Darfur, Sudan.*

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Abdi Ismail Samatar, University of Minnesota & University of Pretoria

Title: *Producing Vulnerability and the Responsibility to Protect in Somalia*

Abstract: The "Responsibility to Protect" dictum assumes an ideal world in which power is at the disposal of justice. Realizing this ideal to advance justice is rare because of the way in which power is unevenly distributed between the North and the Global South, and between those who hold or seek state power and the citizenry. It appears that the genealogical ancestor of the Responsibility to Protect was the "mission to civilize the primitives" in the former colonies. In this instance, European imperialism proclaimed that its mission in the colonies was to lead the natives from inertia into the modern world, which apparently meant taking the natives' resources, and developing economies that were subservient to those of Europe. Since then, the Euro-American impositions on the Third World have taken many forms. One of the latest incarnation of these policies is the Responsibility to Protect which has been used against a select countries/regimes where the West consider opportune to intervene for strategic or resources reasons. Unfortunately, this genealogy of exploitative interventions has been facilitated by certain African leadership that either brutalized their population or mismanaged their economies in ways that invites draconian policy impositions which further erode the livelihoods of the people. Therefore, the "Responsibility to Protect" is a double edged sword whose lineage is odious, but which also has certain positive purchasing power in a world riddled with contradictions.

These imperial projects and their local and regional counterparts take various forms in different African countries, and the Somali case has its unique qualities that distinguish it from all others. Given this, we need to examine the "right to protect" contextually and historically. In Somalia, a particular combination of brutal military dictatorship, in the context of the late Cold War, and a sectarian opposition endorsed by Ethiopia destroyed all state institutions and produced Africa's first collapsed state. Consequently, most of the "Peace and reconciliation" efforts made in the last 21 years have been driven internally and externally by non-civic agendas. The fundamental aims of these actors were not to provide safety and security for the local population so they can rebuild their national institution and livelihoods. Instead, local warlords, and sectarian political actors including religious ones devastated the population, while IGAD members and international actors attempted to maximize their interests. The net-result of these engagements has been an entirely disabled Somali population whose vulnerability has been a gain for others. Rather than getting genuine protection, the population has been devastated by warlord brutality, Ethiopian occupation, Al-shabaab, the multifaceted War on Terror, Kenyan occupation, and the famine.

This presentation will look at the Somali catastrophe historically and politically. It will use a number of short case studies to illustrate the destructive role played by the dynamic interplay between external and internal forces. Given that context, it will also argue that the "right to protect" comes as an afterthought of the violent processes that have made the Somali people exceptional vulnerable. Consequently, the "right to protect" does not offer the type of assistance the population needs to help themselves rebuild their national and local capacities.

Bio: Abdi Samatar is Professor of Geography at University of Minnesota, USA. His research focuses on the relationship between democracy and development in the Third World in general and Africa in particular. His books include *An African Miracle: State and Class*

Leadership and Colonial Legacy in Botswana Development; *The State and Rural Transformation in Northern Somalia, 1884-1986*; and *The African State: Reconsiderations.*

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Brian Raftopoulos, Solidarity Peace Trust & University of the Western Cape

Title: *The Challenges of Zimbabwe's Inclusive Government*

Abstract: In 2008, in the aftermath of defeat in a parliamentary election and the first round of a Presidential election, Mugabe's ruling party effectively blocked a transfer of power to the opposition through the worst political violence in Zimbabwe since the massacres in the south-west of the country in the mid 1980's. The political impasse led to the signing of a SADC led Global Political Agreement, which has sought to pave the way for a generally acceptable election process in the face of competing national and international pressures for change. The paper tracks the contours of these competing pressures and sets out the political questions it raises for former liberation movements, opposition parties, and regional organizations, in the face of Western agendas for change in the country, and in the context of the dominant international discourse of human rights and humanitarian intervention.

Bio: Brian Raftopoulos is Director of Research, Solidarity Peace Trust, and Research Fellow, Centre for Humanities Research, University of Western Cape. He is author or editor of *Sites of Struggle: Essays in Zimbabwe's Urban History*, *Becoming Zimbabwe. A History from the Pre-colonial Period to 2008*, and *Striking Back: The Labour Movement and the Post-Colonial State in Zimbabwe 1980-2000*, among other books.

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Paris Yeros, Catholic University of Minas Gerais, Brazil

Title: *The Internationalisation of Rural Conflict in Kenya and Zimbabwe: Why Regional Autonomy Matters*

Abstract: This paper aims to compare the internationalisation of rural conflict in Kenya and Zimbabwe, with special interest in the way the two conflicts have been handled by regional and extra-regional states and organisations. While rural conflict, in its diverse forms, is a constant and necessary dynamic of capitalist penetration, it rarely escalates to an international political crisis. When the conflict does escalate, it does so, typically, because it destabilises the process of accumulation by dominant international capital, either by threatening property rights directly and/or control of the state apparatus. In turn, the resolution of the crisis becomes a struggle over the form and substance of the negotiations with regards to property rights and the character of the state. The cases of Kenya and Zimbabwe have similar historical origins, but their recent crises have been very different in their escalation and resolution. In Kenya, the land question degenerated into an ethnicised conflict led by competing petty bourgeoisies, while the subsequent negotiations were controlled from the outset by Western states and the World Bank, which effectively steered ´conflict resolution´ away from the land question. In Zimbabwe, the land question was confronted by a popular radical nationalism, with which the petty bourgeoisie was forced to close ranks; the subsequent negotiations were shielded at the regional level

by SADC, to the twin effect of excluding the West and committing all parties to a radical land redistribution programme. These cases demonstrate clearly that regional autonomy is fundamental to the progressive resolution of rural conflict and national development.

Bio: Paris Yeros is Adjunct Professor of International Relations at the Catholic University of Minas Gerais, Belo Horizonte, Brazil, and Research Associate of the African Institute of Agrarian Studies. He is editor or author of books including *Reclaiming the Land, Reclaiming the Nation, Poverty in World Politics,* and *Ethnicity and Nationalism in Africa.*

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Mahmood Mamdani, Makerere Institute of Social Research

Title: *Political Violence and Political Order: Global and Local*

Abstract: There are today two principal threats to law-regulated order in the contemporary world. Each stems from a different kind of state-organized violence, one international, the other domestic. States that are prone to export violence across borders invest heavily in arms. They station troops, equipment, bases, permanently around the world, outside their own borders, in peacetime or wartime, as a matter of normal practice. These are the *rogue states.* Then there are the states that are unable to keep order within their own borders. They are either themselves a key source of that disorder or are just unable to maintain disorder. These are the *failed states*. The UN was created to address the threat to international order from rogue states. It was created to guarantee international peace, to ensure that the armed forces of no state shall cross borders and disturb international peace. But today the UN presents itself not as a guarantor of international peace but of domestic peace in countries with internal discord. Instead of providing an antidote to the problem of rogue states, it claims to provide a solution to the problem of failed states. And that solution is precisely what it was designed to prevent: armed interventions across national borders. I will look at the recent experience of external interventions to reflect on two questions. First, is humanitarian intervention turning into a language justifying the intervention by rogue states in the internal affairs of failed states? Second, what lessons can we draw from a comparative understanding of external intervention in African countries, in particular Kenya, Ivory Coast and Zimbabwe?

Bio: is Director of the Makerere Institute of Social Research. He is the author of, among other books, *Saviors and Survivors: Darfur, Politics, and the War on Terror; Good Muslim, Bad Muslim: America, the Cold War and the Origins of Terror* (Pantheon 2004); *When Victims Become Killers: Colonialism, Nativism and Genocide in Rwanda* (Princeton 2001); and *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton 1996).