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NO PEACE WITHOUT JUSTICE
WORKING PAPER
**Background**
The Mediterranean and the Middle East is a region in which there has been little focus on accountability for the past. Despite the widespread commission of violations of international human rights and humanitarian law in many countries, it is one of the most under-represented regions at the International Criminal Court’s Assembly of States Parties and there have been few attempts to address accountability needs through formal or informal mechanisms, with the exception of the Equity and Reconciliation Commission in Morocco, the Iraqi Special Criminal Tribunal and, most recently, the Special Tribunal for Lebanon. There are many voices in the region calling for justice and accountability, in particular from civil society, which has identified a clear need for accountability and transitional justice to be included among reform priorities as countries in the region make the transition towards peace and democracy.

In periods of transition, particularly where there have been widespread violations of human rights or after an armed conflict characterised by violations of international criminal law, there is a need to address the wrongs of the past, in order to recognise the suffering of the victims, to promote reestablishment of the rule of law and to maximise the potential for reaching sustainable peace, which is crucial for social, economic and democratic progress.

In this respect, accountability mechanisms have an important role to play during a reconstruction or transitional phase, by providing a framework within which past wrongs can be identified, discussed and dealt with. There are many ways societies can address the need for accountability, including through judicial, non-judicial, quasi-judicial or neo-traditional methods at the local, national or international level, or combinations thereof. The particular situation in each country, including the nature of the violations that were committed, together with the potential and limitations of each accountability mechanism will be important in determining which accountability mechanism or mechanisms to use, whether judicial or otherwise in nature; in determining whether the appropriate approach is local, such as the Rwandan Gacaca system, national, such as national prosecutions or truth commissions, such as the cases in Morocco and Algeria, or international, such as the International Criminal Court or the Hariri Tribunal in Lebanon, or a combination thereof; and in developing principles for how the mechanism or mechanisms will operate and –when there is more than one- how they will work together to reach their mutual goals.

Particularly where violations have been widespread, it may be appropriate to establish more than one type of accountability mechanism, depending on the needs and aspirations of the society in question, the level of kind of violence and violations, and the gravity and severity of the crimes in question. Where more than one mechanism is selected, the various accountability mechanisms should operate in harmony, with each making a meaningful contribution to the success not only of its own endeavours, but also to other mechanisms set up to deal with the same situation.

However, formal judicial institutions sometimes claim to be mindful of other accountability mechanisms without fully understanding the potential they may have for contributing to their own mandate, and without appreciating their limitations. Similarly, accountability mechanisms are sometimes designed and operated without sufficient consideration as to whether, how and to what extent they can contribute to the fulfilment of each State’s responsibility to address these issues and to promote of the rule of law. The lack of interaction between institutions, civil society organisations and single individuals can inhibit the exchange of experiences, policy priorities and information, which prevents growth of capacity, political will and knowledge on how to integrate efforts to end impunity and promote the rule of law.
To address these gaps, there is a pressing need to take stock of the realities on the ground and ensure that discussions on these issues are shaped by the thoughts and experiences of actors with direct experience in accountability mechanisms, particularly in conflict, post-conflict and transitional settings. This is the most effective way to enhance the effectiveness of efforts to ensure accountability.

**Arab Working Group on Transitional Justice**

Recognising the significance of these issues, particularly at a time when the international community is increasingly debating how to address impunity in various situations, No Peace Without Justice has been providing assistance since 2007 to the Al-Kawakibi Democracy Transition Centre, together with various partners from many countries from the Region - from Tunisia to Pakistan, from Afghanistan to Sudan - to take stock of the realities on the ground and ensure that discussions on these issues are shaped by the thoughts and experiences of actors with direct experience in accountability mechanisms, particularly in conflict, post-conflict and transitional settings. The specific objective of the Arab Working Group on Transitional Justice is to contribute to the effectiveness of national accountability mechanisms in implementing complementarity. To that end, roundtable discussions were organised to bring together those people with knowledge, experience and interest of the realities on the ground, first to identify what justice or accountability processes the country has experience with; and second, what systems are there or have there been to address accountability. Since then, the Arab Working Group on Transitional Justice has continued to engage partners and stakeholders from the region with a view to developing this program further and to promote accountability and transitional justice as a key policy priority for State and non-State actors in the region.

**International criminal justice and accountability**

The international criminal justice system is based on the principle that there is individual criminal responsibility for the commission of war crimes, crimes against humanity and genocide, most recently codified in the Rome Statute for the International Criminal Court (ICC). All States have an obligation either to prosecute individuals suspected of having committed such crimes or to extradite them for prosecution elsewhere, either because a State has become a party to a treaty that establishes that obligation, or through customary international law that is applicable to all States. The Rome Statute is founded on complementarity: the ICC can only act where States are unwilling or unable genuinely to investigate and prosecute crimes under its jurisdiction: those crimes should be addressed at a national level wherever possible, with the ICC acting as a catalyst, as a guardian and as a last resort. Although non-States Parties are not generally subject to the ICC’s jurisdiction, the Rome Statute provides a useful starting point for all States concerning their obligations under general international law.

Since each State, whether party to the Rome Statute or not, is responsible for addressing violations of international criminal law and human rights, the role of national mechanisms and institutions is critically important to addressing impunity worldwide. It is therefore becoming increasingly important to give support to the practical operation of ICC complementarity and to promote local efforts to narrow the impunity gap designed to strengthen the rule of law, including an assessment of whether, how and to what extent other accountability mechanisms could or should interact with international criminal proceedings.

**Justice Rapid Response mechanism**

The Justice Rapid Response (JRR) is a multilateral stand-by facility to deploy rapidly criminal justice and related professionals, trained for international investigations and at the service of States and international institutions. It allows the international community to provide much needed support for compliance with and the effective enforcement of international criminal
justice, thus helping to make justice an integral and constructive part of conflict resolution and post-conflict peace-building. At the request of a State or international institution with jurisdiction, JRR experts can deploy quickly to identify, collect and preserve especially the most perishable information about crimes under international law and massive human rights violations, and reporting back to the requesting authority would be in a position, if requested, to make recommendations as to the most appropriate remedies under the circumstance. JRR’s goal is to ensure that expertise is maintained from mission to mission and is deployable quickly and efficiently, without having to be recreated anew each time there is a need. In this way, it can significantly reduce response times in providing assistance that is both impartial and which meets international standards. The specific functions carried in this context: pattern of violence and initial fact finding investigations and conflict mapping; forensic mapping; documentary evidence investigation; visual image collection; identification of potential witnesses; and identification of potential crime scenes, including massacre sites.

In situations where serious crimes under international law may have been committed, there is often a short security and political window of opportunity to identify, collect and preserve information that would be essential to determine and support the most appropriate accountability processes for that situation. During conflict or in its immediate aftermath, societies are frequently not equipped, and the international community is not currently well-organised, to take advantage of such windows of opportunity. Yet the sooner information is collected after the events, the less likely it is that crucial evidence will be lost and the more likely that it can help decision-makers decide what is the most appropriate accountability mechanism(s) for that situation. The activities that will be of highest value to any accountability mechanism include the early location, gathering and preservation of physical, documentary and testimonial information of potential evidentiary value. The early commencement of steps towards an accountability mechanism could also serve to restore the population’s confidence in the rule of law. Even if not always called upon, the existence of such a stand-by facility with a rapid deployment capability could help reduce the scale of violations and hasten the success of peace-talks. The JRR enables the coordination of this work quickly and cost-effectively.

The JRR mechanism was formally established in November 2007 and became operational in October 2009: there are now 66 deployable experts from all regions of the world on the JRR Roster. The first group of 18 experts from 10 countries from Europe, North America, Africa, the Middle East and the Caribbean were certified to the JRR roster after a training course held in Berlin in May 2009. The experts participating in the course were nominated by States and international institutions and selected by the Coordinating Group at its meeting in February 2009. In September 2009, the first JRR Certification Workshop was held in Brussels to certify 16 experts sent by twelve different States and international organisations who were already fully trained for international criminal justice-related deployment for the JRR Roster. Since then, a further certification workshop was held in Brussels in February 2010 and the second full training course was held in Buenos Aires in May 2010. There are 47 States participating in the JRR, which is chaired by Canada and for which No Peace Without Justice acts as the Secretariat.

When Justice Rapid Response became effectively operational as of October 2009, it immediately received renewed, strong statements of support from several potential end-users including the UN Department of Peacekeeping Operations (DPKO) and the Office of the High Commissioner for Human Rights (OHCHR), reaffirming the utility of such a roster to the fulfilment of their mandates. It also received its first request for deployment in its very first month of operation and was able to respond successfully to assist with the International Commission of Inquiry for Guinea.
Assessment of needs

There is now a need to start focusing on accountability needs in the region, by making realistic assessments of the options available and developing considerations on how to strengthen potential mechanisms so that they can contribute to implementing the principle of complementarity, narrowing the impunity gap and promoting the rule of law.

In assessing the needs in the region and in considering what type of accountability mechanism would be useful to address those needs, two sets of questions can be posed. The first category of questions relates to the contextual factors surrounding the establishment or operations of the accountability mechanism, such as:

- whether there has been a change of leadership in the area/country and its impact, if any, on the accountability mechanism;
- what percentage of the population was affected by the crimes to be addressed through the accountability mechanism;
- how many years have gone by since the crimes were committed or are they ongoing;
- has there been an official amnesty;
- what sorts of laws exist, if any, to address the crimes.

The second category of questions relates to the accountability mechanism(s) in theory and in practice, including the following types of questions about various non-judicial, quasi-judicial or neo-traditional accountability mechanisms:

- what are the ingredients and components of the mechanism, such as:
  - who selects the members and with what method;
  - can they recommend prosecutions;
  - does it hold public hearings and/or closed hearings;
  - does it have subpoena powers;
  - does it work mainly in the capital or does it have regional or itinerant components;
  - what sort of outreach strategy does it have;
- what were these mechanisms designed to achieve, such as:
  - confidence in the rule of law;
  - redress for victims;
  - individual or systemic accountability;
  - preventing the involvement of the courts;
  - "closing the chapter";
  - preventing repetition of the crimes;
  - insulating current and future governments from other claims from victims;
  - determining who should be excluded from running for public office;
- does the mechanism have a limited life span?
- was it intended to comply with rule of law?
- was the rule of law part of its purpose?
- did the mechanisms achieve what they were meant to or did they achieve something better or worse?
- did the mechanisms work? If so, how? If not, why not?
- what impact did the mechanisms have on victims and on the population in general?

It is anticipated that the elaboration and analysis of the variables and the results of each of the accountability mechanisms assessed will allow an analysis of which contextual elements or “external components”, together with which ingredients or “internal components”, have the potential for achieving which results.