



JUSTICE RAPID RESPONSE

BRUSSELS 2008

JUSTICE RAPID RESPONSE COORDINATING GROUP MEETING
30 April 2008

HOSTED AT THE MISSION OF CANADA TO THE EUROPEAN UNION
AVENUE DE TERVUREN, 2
1040, BRUSSELS

– MEETING REPORT –

SUMMARY OF OUTCOMES OF THE JRR COORDINATING GROUP MEETING

The outcomes of the JRR Coordinating Group, held at the Mission of Canada to the European Union on 30 April 2008, were as follows:

1. The following documents were amended and adopted during the meeting:
 - a. the Terms of Reference of the Coordinating Group, as reflected in Annex I;
 - b. the “Frequently Asked Questions”, as reflected in Annex II, which will be circulated to the JRR Policy Group and posted on the JRR website;
 - c. the Terms of Reference for the Permanent JRR Secretariat on an ad referendum basis, as reflected in Annex III.
2. Participants welcomed the report of the Kenya National Commission on Human Rights (KNCHR) on the investigations undertaken with NPWJ and, considering that the lessons learned are extremely relevant to future deployment of the JRR, requested the KNCHR and NPWJ to prepare a report to circulate as an annex to the meeting report.
3. Sweden agreed to provide feedback on the pilot mission, including the consideration of whether it should be a moot or real pilot mission and whether it should respond to potential requests that may be received. To that end, NPWJ agreed to look over requests that have been sent to them (in their organisational capacity) and inform members of the Coordinating Group accordingly.
4. To facilitate institutional memory and enhance future outreach work, Canada agreed to undertake the following tasks:
 - a. prepare, in coordination with the Interim JRR Secretariat, a list of meetings undertaken since the Venice JRR Conference and circulate it to the Coordinating Group for review before onward transmission to the Policy Group;
 - b. prepare a list for new opportunities for State to State outreach and send it to the Interim JRR Secretariat for onward transmission; and
 - c. translate JRR documents into French, Arabic and Spanish
5. Noting that increased State participation would be beneficial, participants agreed to undertake steps to activate or reactivate State participation in the JRR mechanism, both by State members of the JRR Coordinating Group and through civil society engagement with their own or other governments.
6. Noting with appreciation the report of the Institute for International Investigations (IICI) on training and rosters, participants requested the IICI to circulate an addendum to that report including options for roster management.
7. To facilitate the process of finalising issues relating to training, participants welcomed the offer of ZIF to convene a meeting in Berlin to discuss the development of curricula for JRR training purposes.
8. States members agreed to provide feedback, through the Interim JRR Secretariat, on potential funding mechanisms, including requirements for participation in a trust fund; whether their development agencies could be a useful vehicle; and whether they are able to fund administrative costs of the Secretariat. The Interim JRR Secretariat agreed to prepare a list of potential private donors or foundations for funding JRR-related activities.
9. The Interim JRR Secretariat agreed to turn the guidelines for deployment into a flow chart depicting what happens when a request is received for consideration by the Coordinating Group: this may have an impact on the terms of reference of the Permanent JRR Secretariat, which may need to be amended accordingly.

REPORT FROM THE JRR COORDINATING GROUP MEETING

Opening remarks

The meeting of the Justice Rapid Response Coordinating Group was opened with welcome remarks from Ambassador Ross Hornby of the Mission of Canada to the European Union. Ambassador Hornby expressed Canada's ongoing support for the JRR mechanism and the role that it will play in bringing an end to impunity.

Goals for the JRR Coordinating Group Meeting

During the most recent JRR meeting in New York in November 2007, there was a significant advancement of the mechanism with the official establishment of the JRR 'Policy Group' and the JRR 'Coordinating Group', which met during the day after the JRR was established. This second meeting of the JRR Coordinating Group in April 2008 was held to report back on progress made in relation to specific tasks allocated at the first meeting and to define further the next steps for continuing to move the JRR mechanism forward, with a view to producing concrete results that can be shared at the next Policy Group meeting later this year.

To that end, the JRR Coordinating Group meeting focused on four main areas:

1. 'Where the JRR is now', with a review of the Terms of Reference of the Coordinating Group and review of the outreach conducted thus far;
2. 'Where the JRR should go', with lessons learnt from the No Peace Without Justice/Kenya National Commission for Human Rights mission in Kenya;
3. 'How do we get there', with a presentation and discussion on rosters and training; and
4. 'Next steps', with a brief discussion on funding of the JRR and a review of the Terms of Reference of a Permanent JRR Secretariat.

Where the JRR is now

Initial Terms of Reference of the Coordinating Group

After reading through the Initial Terms of Reference of the Coordinating Group the floor was opened for comments. After some discussion and amendment of the text, the terms of reference of the JRR Coordinating Group were adopted as a draft for onward transmission to the JRR Policy Group.

Outreach

Several meetings were conducted in 2007 with a variety of institutions to increase awareness about the JRR and to encourage engagement, including in particular:

- (a) United Nations bodies: the Office of the Deputy Secretary-General (DSG), the Office of Political Affairs, the Department of Peacekeeping Operations, the Office of Legal Affairs and the new Rule of Law Coordinating Group, set up under the auspices of the Office of the DSG;
- (b) the International Criminal Court: the Office of the Prosecutor, the Registry, the Office of the President and the Hague Working Group of the ICC's Assembly of States Parties;
- (c) the European Commission;
- (d) the Office of the High Commissioner for Human Rights; and
- (e) Chatham House in London, at which a presentation on the JRR was made to a wide range of government representatives and non-State actors.

REPORT FROM THE JRR COORDINATING GROUP MEETING

The general response from these efforts has been enthusiasm mixed with an element of caution, because the JRR is still lacking the structure required for States and institutions to become more fully engaged and involved. Participants, particularly Canada, agreed to prepare brief written summaries of the various meetings that have taken place to date; the Interim JRR Secretariat will compile these notes and circulate them to the JRR Policy Group.

States present at the Coordinating Group meeting agreed to continue raising awareness within their own governments as well as among other States about the JRR. The role of civil society in promoting awareness among their own and other governments was also highlighted as an important mechanism to increase State involvement in the JRR. It was agreed that States should be encouraged to nominate focal points: this marks a political commitment beyond being a member of the Policy Group, without committing to the level of involvement required to be a member of the Coordinating Group.

It was agreed that both civil society and governments, particularly those that may use the JRR in the future, must be aware of the initiative through outreach conducted on the ground. In this respect, the need for special efforts to be taken to sensitise policy-makers and civil society in participating countries was noted and it was agreed that working with civil society (including Parliamentarians) is an important component of the JRR outreach strategy. This will be highlighted in future plans and outreach work.

It is important, however, to assess the scope of outreach that should be done at this stage, since it is important not to raise expectations that cannot be met. As such, given the limited time and resources currently available and the fact that the JRR is not yet in a position to deploy, it was agreed that efforts should be focused on getting the JRR closer to its operational phase. At that time, broader outreach on the ground in a variety of countries must be implemented. Indeed, this form of outreach will become increasingly important once the JRR is a functioning facility. In the meantime, outreach should continue through individual efforts of 'spreading the word' at relevant meetings and other opportunities, focusing in particular on broadening the scope and number of States involved in the JRR mechanism.

In this context, the particular situation of Sierra Leone was discussed, highlighting the leading role demonstrated by Sierra Leone in engaging States in the JRR mechanism, particularly those States with experience in conflict and post-conflict accountability efforts. Given the change of government at the end of last year, it was noted that to keep Sierra Leone engaged to the same degree, it will be important to engage civil society and the Parliament to support these efforts, as well as undertake outreach directly with the new administration. Canada agreed to support Sierra Leone in these efforts, noting the pivotal role played by Sierra Leone in the JRR since the very beginning of the process and in light of several successful initiatives to engage the previous administration, in particular through a publicly-broadcast meeting with the former President in 2006, through direct support for outreach efforts and through providing diplomatic support and resources.

In order to facilitate the outreach processes in different fora, a "Frequently Asked Questions" document was prepared and presented by the Interim JRR Secretariat (NPWJ), based on JRR meeting reports and other documents, the outreach meetings and the feasibility study; the document was considered and adopted by the Coordinating

Group. As such, it will be posted on the JRR website and will be circulated to the Policy Group. In order to facilitate outreach, Canada kindly agreed to continue to translate documents into French and further agreed to have key documents also translated into Arabic and Spanish.

Where the JRR should go

Experiences from the KNCHR-NPWJ documentation project in Kenya¹

Shortly after the post-election violence began in Kenya, in early January 2008, the Kenya National Commission on Human Rights (KNCHR) requested NPWJ to assist with the investigation and documentation of the mass violations of human rights that were taking place in Kenya at that time. NPWJ was able to deploy a team on a preliminary fact-finding mission within a few days of receipt of the request. This experience demonstrated that the process must be started as soon as possible after the events to be investigated have commenced and that even an initial assessment mission can establish that efforts are being taken towards accountability, which is important to ensure that accountability is part of the political settlement of these kinds of situations. In Kenya, during the initial periods of violence, when all sides were claiming that the other sides were committing crimes, there was a political window of opportunity to ensure that accountability was kept in the public arena and in the minds of those negotiating the political settlement. This window was filled by the KNCHR, which had the mandate and legitimacy to investigate human rights violations, which ensured that the opportunity to include accountability in Kenya's future plans remained open and had an influence on the political settlement that was eventually adopted. In this respect, the involvement of foreign experts on the ground both bolstered the strength of KNCHR's commitment, demonstrated visibly to the people of Kenya that the international community was expecting accountability to be part of the resolution of the problem and amplified the voice of the KNCHR and others on the issue of accountability.

By the end of January 2008, NPWJ had brought together a full team of experts to train KNCHR staff on techniques in documenting the violations and support the initial investigations; and had provided technical expertise, training, creating and using the database, identifying crime bases and documenting information, while it was still fresh. NPWJ also assisted the KNCHR to develop an outreach strategy, to engage the people of Kenya in the work being carried out by the KNCHR, which was conducted at the same time as the investigations began. This was essential, particularly during the interviewing of victims and witnesses, in order to explain why and how this work was being done and to foster cooperation of those people with information useful for the investigations.

Several challenges were faced during this stage, with the primary challenge being one of funding. Substantial costs were incurred during the first assessment and deployment phase, without the guarantee of future funding, which causes uncertainty regarding possibilities for future deployment, even in the short-term. If the work is to be done in a time sensitive situation, funding must be available quickly in order to respond quickly in a way that enables ongoing planning in light of the conditions on the ground. Furthermore, it would have been beneficial to have foreign expert deployment for a longer, more consistent period, which would have allowed the work to be completed sooner. It is not necessary to have a large number of people for a long period of time

¹ More details on the KNCHR-NPWJ documentation project in Kenya are available in Annex IV.

but rather there needs to be a sufficiently sustained presence over a sufficient period of time to keep work and support going to ensure that the JRR could finish what it starts. This challenge, also closely linked with the financial challenges, could be addressed in part through management of rosters, where experts would identify the period of time they are available and the overall presence could be well managed in advance of deployment.

On training, it was evident during the Nairobi experience that experts have their own methods and materials for this type of training. In this case, the experts were able to adapt quickly and many have worked together on previous occasions, so they were able to provide cohesive and comprehensive training on all aspects of the investigations and of information management and analysis. Nevertheless, a systemised training package, designed to respond to the type of request for assistance, may have made the initial phase more harmonised and easier to implement.

Finally, it is important to note that each situation is unique; Nairobi, for example, has a good infrastructure in terms of water, electricity, internet connections and communications, which made that aspect of deployment run reasonably smoothly. In JRR missions, the infrastructure of the country in question will need to be assessed carefully to ensure that deployment is conducted as smoothly as possible.

How do we get there?²

Rosters

The importance of clear criteria and guidelines for roster selection and management was highlighted as the first step towards developing a workable JRR roster. Additional issues discussed included: consistency about various parts of the roster was also highlighted as an operational necessity, in relation to matters such as eligibility, skills and qualifications of experts and information relating to availability; access to the roster, including who has access to what information, bearing in mind national laws on privacy and data management; and funding, including information on funding of experts on mission.

It was suggested that a complete JRR roster could be managed centrally by one entity, to facilitate the development and use of the roster. In that case, State actors and other JRR participants could build their own rosters then feed the information into a single central JRR roster. This would have the benefit of ensuring all information is coordinated and consistent and having relevant information in one place, to facilitate searching and maintenance capabilities and to streamline the processes leading to deployment of experts on mission. In this context, thought needs to be given as to whether the roster should be an online system where JRR participants or individual experts have the responsibility to enter information directly into the roster, or whether it should be a more moderated system, whereby the entity responsible for managing the roster receives information from JRR participants and enters that information into the roster themselves.

The JRR Secretariat could be responsible for the development and management of the JRR roster, to encourage broader ownership of the roster as a whole (which would be

² The revised background document on rosters and training was circulated to JRR Coordinating Group members and will be circulated to the wider Policy Group after revisions discussed during this Coordinating Group meeting.

difficult if the roster were to be managed by a State participant, for example). On the practical level, the JRR Secretariat could either maintain the roster itself or could outsource its maintenance, while retaining responsibility for overall management, particularly *vis a vis* the JRR Coordinating Group and Policy Group. In this respect, it would be useful to identify existing roster management mechanisms and explore whether they could be used for the JRR and under what terms.

The JRR roster could be based on a database template that is the same for all JRR participants, which would facilitate ease of compilation of information on all experts available to participate in JRR missions. The JRR roster could either be based entirely on a pre-existing model or could be designed specifically for the purposes of the JRR, drawing on a variety of models that already exist for this kind of purpose.³ It was highlighted that if the JRR roster were to be developed from scratch, the kind of software that would be used, e.g. off-the-shelf software or open source software, should be given careful thought so as to maximise flexibility in its future development.

The need for the roster to be effective and efficient was highlighted as a key element in maximising its use in identifying individual experts and teams of experts that could be deployed for the purposes of the JRR. It was noted that there are several ways of facilitating quick identification of suitable persons to participate in JRR missions, including ability to search the roster by a range of criteria, including name, profession, expertise, sex, nationality, age, language and relevant key words; information on individual experts could contain a macro that gives a ‘snapshot’ of the candidate to enable a quick assessment of a candidate’s strengths for a position, including information on availability, contact details, referee details and a short professional summary; and conducting “pre-search” searches so that when a set of requirements is entered into the computer, the names of potential team members that come up will have already been electronically cross-matched, including their potential availability and response time.

One common problem in maintaining these kinds of rosters is ensuring information is up to date. As such, the JRR roster could contain a certain amount of automation to ensure it can easily be kept up to date, including keeping track of the amount of time individual experts have been included in the roster; whether there is any training that individuals are required to undertake; and sending periodic reminders for individuals on the roster to ensure their profiles and information are up to date. This could also be used as a means to ensure that the roster contains not only a large number of candidates, but also a wide range of qualifications and skills, which would be important when considering team composition for deployment.

Another common problem in maintaining these kinds of rosters is ensuring that individuals on the roster are sufficiently skilled and qualified to be included in the roster. In this respect, it was noted that where individuals are included in the roster under the auspices of a JRR participant, responsibility for vetting could lie with the JRR participant and the entity responsible for roster management could accept that all vetting requirements have been completed. If individual applications are to be accepted for inclusion on the roster, another form of vetting would have to be considered, such as the applicant being required to undertake some training and/or to sign a declaration that

³ The models used by ZIF, CANADEM, NORDEM and AFDEM were highlighted as being the most relevant for the purposes of a JRR roster.

complies with whatever vetting system might be adopted. Participants agreed that further thought would be required about whether the JRR roster could include experts in their individual capacity, given the nature of the JRR as an inter-governmental cooperation mechanism.

On the basis of the discussions outlined above, the Institute for International Criminal Investigations (IICI), which was tasked with development of this issue at the November meeting, agreed to develop three options that address the above criteria for further consideration by the JRR Coordinating Group.

Training

The importance of ensuring a common baseline of knowledge on a range of issues among experts who may participate in a JRR mission was again highlighted as being fundamental to ensuring the success of those missions. While several training syllabuses had been canvassed, none of them in themselves were considered to be sufficient in and of themselves to form the basis for meeting this need.

As such, it was noted that a common training syllabus could be developed to meet the potential needs of a JRR mission, namely:

1. Generic training, including modules on:
 - (a) elements of international humanitarian law and human rights law;
 - (b) evidence in international trials, including sexual violence and modes of liability;
 - (c) military organisation and operations
 - (d) documenting evidence
 - (e) investigation standards, which could be those already in use at the ICC or other international tribunals.
2. Specific pre-deployment training, to be adapted prior to each JRR mission, including modules on:
 - (a) security in the field;
 - (b) local conditions;
 - (c) cultural considerations; and
 - (d) country contextual information.

It was noted that the generic training requirement could be met through a number of ways, not just through participation in a specific JRR generic training course, including one outsourced to a pre-existing institution or organisation. Other potential ways to meet the requirement include participation in a course from a recognised institution; participation in a recognised training program organised by a JRR participant; or recognition of prior learning.

It was estimated that pre-deployment training would take 3 to 4 days and generic training would take 5 to 10 days. Given that pre-deployment training can only take place once a potential mission is identified, it was suggested that the two types of training would better be held separately and not combined. Given that it is a reasonably large time investment in any case, experts included on a JRR roster could, if necessary, undertake the generic training at any time suitable to them.

ZIF reported that they would be in a position to hold a meeting on curriculum development in Berlin, under the auspices of the European Group on Training. It was recommended that the JRR Coordinating Group accept this offer and that the ICC be invited to participate and present modules on international standards.

Next steps

Rosters and training

The next steps will involve the wider circulation of the paper on rosters and training with a view to adopting concrete recommendations. Particular attention will be paid to exploring existing roster management mechanisms that could be used for JRR and identifying under what terms such mechanisms could be used. The establishment of a management system of rosters is an important step towards becoming operational and an essential aspect of solidifying support for the JRR, from States as well as non-State institutions, as it would demonstrate the serious nature of the JRR mechanism.

Funding

In relation to deployment of experts, the lessons learned, particularly from the Kenya experience, show that quick release of funds is essential to enable the JRR to make rapid deployments. A standing fund or trust fund, in which States voluntarily make deposits in advance of a mission, would be the most practical solution to the funding challenges. States participating in the Coordinating Group meeting were tasked with finding out how their funding mechanisms operate in this regard; whether they would be able to contribute to such a trust fund; whether the State would have to be on the board of the trust fund; how quickly the funds could be deployed; whether development agencies could play a role in this regard; and whether any States would be willing to fund administrative support for the Secretariat. It was noted that while this is a difficult task, particularly given that States may be reluctant to fund something that is not yet operational, it would be useful to have the initial responses of the State members of the Coordinating Group on the potential mechanisms through which this trust fund could operate.

The administrative costs of the Interim JRR Secretariat, which to date have been borne primarily by NPWJ, are ongoing. While the costs are substantial for NPWJ, Canada noted that they constitute small amounts in relation to the size of grants Canada normally gives and invited NPWJ to submit a proposal for funding of the Interim JRR Secretariat, pending identification and establishment of a permanent JRR Secretariat.

Private/public partnership

An alternative for funding through private partnerships was briefly discussed, namely how to market and attract private partnership to this public enterprise. Corporate social responsibility is becoming a norm and there are, for one example, large and active law firms seeking to support international efforts and gain visibility in this area. This topic should be kept in mind for further discussion and brainstorming.

Pilot mission

The representative of Sweden agreed to follow-up with colleagues on the status of implementing a pilot deployment mission. As potential requests for assistance have already been made known to NPWJ, in its organisational capacity and not as the Interim

JRR Secretariat, some more thought will be given as to whether any of these should be turned into a 'pilot mission'.

Terms of Reference of the Permanent Secretariat

The Terms of Reference of the Permanent Secretariat were presented and discussed by the JRR Coordinating Group. The terms of reference were crafted so as to define in broad terms the role of the Permanent Secretariat and how it would operate in the implementation phase of a JRR mechanism, including pre-deployment and deployment phases. Once the text is agreed, it will allow for a tender or call for proposals to be launched and for the selection process to begin.

Closing

The JRR Coordinating Group members present at the meeting were thanked for their continued participation and dedication to the JRR mechanism. The meeting provided an opportunity to update the Coordinating Group of the progress to date, to hold concrete discussions on various issues and to further identify areas that need to be discussed in more concrete terms to move the process forward, namely the recommendations on rosters and training and the terms of reference of the Permanent Secretariat.

The meeting closed with the members of the JRR Coordinating Group thanking Canada and the Mission of Canada to the European Union, including Ambassador Ross Hornby, for their hospitality and thanking NPWJ for organising the meeting in their capacity as Interim JRR Secretariat.

Annex I **Terms of Reference of the JRR Coordinating Group**
April 2008

1. Review documents adopted at meetings of the Policy Group in order to develop more detailed operational guidelines for the Justice Rapid Response mechanism, for consideration by the Policy Group
2. Develop Terms of Reference for a permanent Secretariat of Justice Rapid Response, for consideration by the Policy Group
3. Select potential candidates of the permanent Secretariat for consideration by the Policy Group and make a recommendation on the best candidate to the Policy Group
4. Continue developing an outreach strategy to raise awareness of Justice Rapid Response, for consideration by the Policy Group
5. Develop common criteria for rosters for consideration by the Policy Group
6. Develop appropriate training syllabus for experts by consulting with existing training institutions and potential end users, for consideration by the Policy Group
7. Design a pilot deployment for consideration by the Policy Group
8. Give instructions to and oversee the work of the interim Secretariat on behalf of the Policy Group
9. Keep under review the Terms of Reference of the Coordinating Group and propose further amendments to the Policy Group, as needed.

Annex II

Frequently Asked Questions



JUSTICE RAPID RESPONSE

2008

1. WHAT IS THE JUSTICE RAPID RESPONSE?

The Justice Rapid Response (JRR) is an international cooperative mechanism for the supply of expertise and assistance in response to a request by a State or international institution, where the identification, collection and preservation of information would assist a wide range of international and transitional justice options. As a mechanism that does not need to be created anew each time there is a justice emergency, the JRR will: significantly reduce response times for the provision of assistance that is both impartial and meets international standards; share the burden of assistance through coordination of the resources of States, international organisations and civil society; and, as a global effort, provide capacity-building by involving all States in the mechanism, irrespective of resources. The specific functions most likely to be carried out by the JRR mechanism include: pattern of violence investigation; forensic mapping; documentary evidence investigation; visual image collection; identification of potential witnesses; and identification of massacre sites.

2. WHY IS THE JRR MECHANISM NEEDED?

In the aftermath of conflicts 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. Societies coming out of conflict 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, if appropriate, 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. The JRR enables the coordination of this work quickly and cost-effectively.

3. WHO IS INVOLVED IN THE JRR MECHANISM?

In 2003, a group of countries including Finland, Germany, Lichtenstein, Sweden, Switzerland and the United Kingdom commissioned a comprehensive feasibility study to take JRR from theory to practical application. Seven meetings involving representatives of governments, civil society and international justice institutions to define and launch the JRR concept have taken place from April 2004 to November 2007, with five being held in New York, one in The Hague and one in Venice. To date, support for the JRR has grown considerably, with participation in consultative meetings on the JRR by several non-State actors and by the following countries, many of which have experience in conflict or post-conflict accountability efforts: Afghanistan, Austria, Belgium, Canada, Colombia, Cote d'Ivoire, Democratic Republic of Congo, Denmark, Egypt, Estonia, Fiji, Finland, Germany, Hungary, Iraq, Italy, Jamaica, Kenya, Latvia, Liberia, Liechtenstein, the Netherlands, Norway, Sierra Leone, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, the United Kingdom and the United States of America. Several non-governmental organisations, inter-governmental organisations and United Nations agencies are also actively involved in the JRR Policy Group, the decision-making body, and the smaller JRR Coordinating Group, which oversees the work of the Secretariat and brings recommendations to the Policy Group. No Peace Without Justice is presently acting as the Interim JRR Secretariat, a role it has fulfilled since 2006. The Chair of JRR is presently held by Canada.

4. WHERE DOES THE JRR MECHANISM CURRENTLY STAND?

The New York November 2007 meeting adopted the Guidelines for Cooperation and Deployment, thereby formally establishing the JRR mechanism. The Guidelines adopted foresee two main bodies

for the JRR mechanism: the JRR Policy Group and the JRR Coordinating Group, both of which were also established in November 2007. The JRR Coordinating Group met under the Canadian Chair on 30 April 2008 in Brussels and its recommendations will be considered at the next meeting of the JRR Policy Group later in the year.

5. WHAT CAN TRIGGER A JRR MISSION?

While JRR capability is deployable in a variety of situations, it can only be initiated upon a specific request by the State where the mission would be deployed, or an international organisation (including an international justice institution) with jurisdiction in a particular situation.

6. HOW WILL REQUESTS FOR JRR ASSISTANCE BE MADE?

When a request for assistance is made, there will be a quick, thorough, impartial and consistent assessment to enable JRR participants to decide on the most appropriate response. The basic issues to be assessed are: legitimacy; genuineness; feasibility; and usefulness. More specifically: does the requesting authority have the necessary legal basis to issue the request; is the request's main purpose the furtherance of accountability mechanisms in aid of lasting peace and security; is this a feasible mission, i.e. are the assurances, especially concerning the security situation, realistic and is the requesting party representing an accurate picture of the situation and its own capabilities to contribute; and is JRR assistance what the situation calls for, i.e. would the deployment of a JRR team make a sufficiently significant difference to the situation? As part of this assessment, a team of experts will undertake a technical evaluation and, where that evaluation is positive, will develop a draft plan of action that would help facilitate the speed of deployment. The plan of action will include the following elements: expertise required; number of experts required; security and logistics needs of the deployment; timetable for deployment; estimate of time needed for the mission; and contingency arrangements.

7. HOW WILL THE JRR BE FINANCED?

JRR is a practical expert service and if the requesting entity can afford to do so, it would pay the costs of the requested mission. However, it is anticipated that in many cases, States emerging from conflict would frequently be unable to meet these costs. Therefore, in addition to recurring costs (e.g. training), JRR participants and others would finance the cost of deployments. The financing of JRR is as flexible and versatile as possible, to allow for the widest possible participation and the most efficient distribution of the burden, with a view to ensuring that participation in JRR will depend on interest and expertise, and not on the availability of resources. This ranges from participants who can provide expertise but cannot pay for training or deployment, to participants who can only offer financial contributions to a mission, to participants who can pay for the training and deployment of their own and other countries' experts.

8. WILL THE JRR MECHANISM COMPETE WITH INTERNATIONAL JUSTICE INSTITUTIONS?

The JRR is not an international justice institution and does not have any judicial function. The role of the JRR is limited to that of a cooperative mechanism to provide technical expertise for the preservation of evidence and other information and to ensure that such 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. It is complementary to international justice institutions, which can also request its deployment when they have jurisdiction over a situation.

9. WHAT ARE THE NEXT STEPS FOR THE JRR MECHANISM?

During the November 2007 meeting, initial terms of reference for the JRR Coordinating Group were developed and interested States and non-State participants voluntarily assumed responsibility for the completion of various tasks. These tasks include the development of more detailed operational guidelines, terms of reference for a Permanent Secretariat, an outreach strategy to raise awareness of the JRR mechanism to potential end-users and other supporters, common criteria for rosters, a training syllabus and a pilot deployment mission.

The JRR Coordinating Group met on 30 April 2008 in Brussels, at which time members of the Coordinating Group discussed the progress made to date and continued to define the next steps for moving the JRR mechanism forward; the meeting report and recommendations will be circulated shortly and will be the basis of discussion at the next JRR Policy Group meeting, later in the year.

Annex III Permanent JRR Secretariat Draft Terms of Reference

Note: the term used in the Terms of Reference are the same as those in the Guidelines for Cooperation in the JRR Mechanism and Guidelines for Deployment of a JRR Mission

Requests for Missions

1. The permanent secretariat shall receive and process requests received from a State or international institution pursuant to the guidelines for cooperation and deployment as adopted by the Policy Group on 28 November 2007.
2. The Secretariat will undertake any other duties relating to missions as directed by the Lead State.

Duties in respect of a Mission

3. Under the direction of the Lead State, the Secretariat may:
 - a. Facilitate the composition of teams to be deployed on a particular JRR mission, including contacting experts who meet the requisite criteria;
 - b. Facilitate any required pre-deployment training;
 - c. Assist with organising logistical arrangements required for a deployment, including arranging flights, accommodation and other similar matters;
 - d. Distribute any documentation required, including training syllabuses and materials for local personnel where required;
 - e. Assist with the availability of financial support for the Mission, including liaising with contributing entities and managing any pool of funds available for the deployment of Missions

Ongoing Administrative Duties

4. The Secretariat will undertake all administrative tasks related to the JRR mechanism, including, but not limited to:
 - a. Maintaining a current list of Participants with all necessary contact details;
 - b. Under the direction of the Chair of the Coordinating Group, organizing an annual meeting of the Policy Group;
 - c. Under the direction of the Chair of the Coordinating Group, recording and distributing minutes of the meetings of the Policy Group;
 - d. Under the direction of the Chair of the Coordinating Group, organizing meetings as necessary of the Coordinating Group;
 - e. Under the direction of the Chair of the Coordinating Group, recording and distributing minutes of the meetings of the Co-ordinating Group;
 - f. Supervise the administration of training and cataloguing of training materials;
 - g. Supervise the maintenance of rosters;
 - h. Maintaining the JRR website;
 - i. Keeping information materials up to date and responding to requests for information relating to the JRR;
 - j. Administering the funds provided for implementing the functions within these Terms of Reference, including regular financial reporting to the Coordinating Group or Policy Group, as decided by the Policy Group;
 - k. Maintaining any funds as directed by the Policy Group.

Annex IV - Experiences from the KNCHR / NPWJ Mission in Kenya

Background

1. Events in Kenya captured the world headlines in January and February 2008 after an Election that had promised so much for democracy in Africa and for the world went terribly wrong. After all the good news on democracy in Africa- South Africans celebrating the 14th anniversary of post apartheid democracy this year, relatively open elections- in spite of the problem of entrenchment of powerful and dominant ruling parties in over a dozen African countries and some of Africa's most bitter conflicts coming to an end; elections in Sierra Leone, Liberia which elected Africa's first woman President and Elections in the Democratic Republic of Congo; Kenya's December 2007 contest was seen as an opportunity to showcase to the world that Africa was quickly coming of age in terms of democratization.
2. These grand hopes that energized democracy's optimists in Kenya and in Africa were severely jolted by the catechism of madness that soon overtook Kenya after announcement of presidential Election results on December 30th 2007. The announcement of the results was followed by rioting, excessive use of force by Police in response and ethnic in-fighting that led to the deaths of over 1,500 people in barely one month while over 300,000 were left homeless and internally displaced. It was extremely shocking to realize that the threat of political terror and violations of personal integrity rights remained a distinct possibility in an open and more democratic Kenya, just as they were during the repressive Moi era.
3. The Election Trigger: All independent observers said that the tallying process was so flawed that it was impossible to tell who had won the presidential election. Since 1992, Kenya's elections had become progressively better and fairer, culminating in the 2002 elections which were the best ever, and the 2005 constitutional referendum. The effect of this progression was that Kenyans finally believed in the power of the vote as a way of peacefully resolving differences, a fact confirmed by voting trends in parliamentary elections that saw almost 70% of incumbents lose their seats. When this sense of empowerment was subverted, and peaceful legal spaces for protests were disallowed, it was not surprising that frustrations boiled over and violence ensued.
4. The events in Kenya in January and February 2008 were such that the thin thread holding Kenya together threatened to snap. Kenya's facade that there was national unity had been shattered by a single blow underpinned by tribal animosities and other deep lying causes ignited by the disputed Election. What went on in Kenya was a political crisis with ethnic manifestation because politics in Kenya has been organized ethnically. The problem in Kenya's politics is that the country seems to concentrate more on distributive issues that are very easy to turn into emotive ethnic politics of the elite. This is the politics of who has "eaten". For example, it is very easy to point out that so and so has been appointed to this or that position, so "we" as an ethnic group are now eating, and this is now good politics. This type of distributive politics has cleaved Kenya's 42 tribes into competing chains of patronage based on elite competition for jobs, contracts, bribes, business, etc and Kenyans seem to firmly believe that political parties should be owned by tribes for the sake of such elite bargains.

5. Clearly there are cleavages and differences in Kenyan society that have erupted brutally to the surface. But these have erupted due to the failure of peaceful means of resolving and addressing these differences, including the failure of elections and political reforms promised to Kenya in the 2002 elections.
6. In a deeply painful and costly manner--in terms of lives lost and destruction wrought--the crisis in Kenya has given the country a unique opportunity to move forward in a way that pro-democracy activists have been advocating for the last 20 years. In a sense, Kenya is at its "civil war" moment that the US was at in 1861. Just as that war was pivotal in establishing and solidifying the democratic credentials of the US, this moment could lead Kenya to much greater heights if properly handled both domestically and internationally. In this context, the successful mediation that was led by Kofi Annan, Graca Machel and Ben Mkapa has given the best chance for Kenya to move forward, though there are a myriad of titanic challenges.

Moving to Action

7. In mid January 2008, the KNCHR-a national human rights institution established by an Act of Parliament to promote and protect human rights in Kenya--contacted No Peace Without Justice (which also serves as the Interim Secretariat for the JRR Mechanism) based on their experience in the documentation of mass atrocities with a formal request to assist with the documentation of the widespread human rights violations that were taking place so as to start the accountability process for those responsible--especially those who could have ordered, planned, financed and /or otherwise instigated the violations, so that there would be a deterrence for future would be perpetrators. The purpose of the request was primarily to document and collect information regarding serious violations of human rights committed in Kenya during the post-election period, with a view to potential prosecutions for those who bear the greatest responsibility and to informing the work of other accountability processes that could be engaged.
8. NPWJ was able to send an assessment mission to Nairobi in only a matter of days after this request and a formal cooperation agreement was signed between the two institutions, where NPWJ would second personnel to the KNCHR to provide all the necessary expertise needed to document and investigate widespread human rights violations and possible violations of international humanitarian law. NPWJ would also provide assistance to the KNCHR in all aspects of the investigations and further coordinate assistance from other foreign organizations pursuant to the Partnership Agreement which contributed greatly to the Commission's capacity building work internally and externally.

Training & Personnel

9. Indeed only 3 days later NPWJ managed to assemble and fly a high powered team of experienced international law experts/investigators to Kenya to embark on an intensive training process for KNCHR staff and civil society players in Kenya to facilitate deployment of investigation teams to the field. Between 22nd and 28th January, NPWJ facilitated an intensive crash course by bringing in

experts from various fields to train KNCHR staff, KNCHR volunteers and a number of civil society representatives on principles and techniques in documenting and gathering information on mass atrocities.

10. After the training KNCHR /NPWJ started deploying on a gradually increasing scale, with NPWJ providing support and training for new staff, developing a customized database and also deploying its own experts to work as seconded personnel to the KNCHR field teams. Between 4th February and the end of April 2008, KNCHR had deployed nearly 20 missions, each lasting an average of 8 days, to all the conflict areas to interview victims and witnesses who recounted their experiences. Outreach work was conducted simultaneously, particularly during the interviewing of witnesses and victims as they must understand why the work is being done. Kenya has had similar problems in the past (though nothing to compare to the recent atrocities); nevertheless, ethnic fighting and violence has occurred previously so the outreach work involved explaining what work was being done and that the work will assist whatever accountability mechanisms may be established in the future. Further, KNCHR /NPWJ interviewed public officials, security personnel, the provincial administration community, religious and political leaders and elders, all of whom provided an overview of the conflict as they witnessed it in their areas of residence or jurisdiction
11. These field teams were supported by a corresponding number of people at the Operations Secretariat where KNCHR initially hired 25 full time data entry Assistants (as of the end of April there are now 2 shifts of 25) to key in information that is brought from the field by the investigation teams into the database. To ensure accuracy and consistency, data entry persons received a crash course from NPWJ on the basics of international humanitarian law and a manual was prepared outlining data entry procedures to ensure that the database was clear, consistent, complete and correct.
12. Information was also collated from open sources, informed persons, experts and others, through targeted interviews and debriefings by experienced analysts. There is an Operations Center manned on a 24 hour basis to keep in constant communication with the field teams. The KNCHR has also set up a registry to receive and process information related to the post election violence.

Organization of information & Analysis

13. NPWJ assisted KNCHR with the design, establishment and set up of a data base for the purposes of analysis so that data entry assistants enter the field records into digital format. A range of diverse information has been incorporated into a fully searchable data base including news reports, situation reports, press releases and reports from major human rights organizations. These open sources and other secondary material are being used to provide background material for the field teams, to cross-check information gathered in the field and to fill in any gaps.
14. All information is collated and stored in such a way as to enable easy search and retrieval in order for it to be used by analysts and to ensure the security of the information, also with a view to the protection of individuals providing information.
15. In the next phase, NPWJ will draft international experts to assist KNCHR to analyze the data gathered. The purpose of analysis is to compare and cross-check

vast amounts of information concerning the same acts or similar acts that took place during the same time periods in different parts of the country, to identify patterns of violence and to separate random acts from organized, systematic criminal acts. A progress report was released towards the end of March and a full report is expected to be complete in June 2008.

Fundraising

16. KNCHR /NPWJ put together a joint funding proposal which was discussed with the major donors and Kenya's development partners in Nairobi in early February 2008. Indeed so far KNCHR/NPWJ were able to raise within 2 months almost the entire envisaged budget for the duration of the project which is US\$ 1,500,000.

Support from the OHCHR

17. At the time the training was being conducted by NPWJ, KNCHR sent a team to Geneva to meet with the High Commissioner who was preparing to send a fact finding team to Kenya. The High Commissioner was briefed fully on the KNCHR/NPWJ documentation and this work received her unequivocal support. Indeed during the 3 week fact finding mission by the OHCHR team in February, OHCHR closely consulted and sought advice from the KNCHR/ NPWJ and some very useful insights were provided to OHCHR in addition to the sharing of information.

Inquiry from the ICC.

18. The Office of the Prosecutor from the ICC has sought information from the KNCHR on the post Election violence and especially whether or not there was a plan or policy to commit attacks against the civilian population. KNCHR on advice from NPWJ has informed the OTP that at this stage, investigations are still ongoing and it would be premature to share written information on some of the issues. Nevertheless, the KNCHR has invited the OTP to Nairobi to discuss the impressions that have been gathered to date as the KNCHR/ NPWJ continue their work.

Lessons Learnt

19. One of the primary lessons learnt is the need for speedy deployment. The speed with which NPWJ was able to move and assist KNCHR to deploy investigation teams-when violations were still ongoing-meant that it became difficult to sweep issues of accountability under the carpet as the political protagonists worked on a political settlement. And the fact that KNCHR had international support to conduct the documentation not only insulated KNCHR from attack by the political class, it also meant that a window of opportunity remained open long enough for accountability to become one of the key outcomes of the mediated settlement. The joint work of KNCHR /NPWJ thus offers Kenya its best chance to break an entrenched culture of impunity taking into account that these type violations were experienced in the 1992 and 1997 Elections

Challenges

20. The biggest challenge has been the time lapse between when proposals for funds are sent out and when these funds become available, taking into account the need to gather as much evidence when it is still as fresh as possible. Though this challenge was overcome through NPWJ advancing funds to meet the costs of training and deployment of foreign experts up front, it would be very welcome if donors are able to move quickly since the essence of JRR (much as this was not a JRR response) lies in being able to deploy rapidly.
21. The issue of to whom funds are disbursed will also be important for the JRR: in this case, funds were receivable either by KNCHR or by NPWJ. One might foresee an instance where this could bring problems for the JRR, for example if an international justice institution were asked by a State to conduct investigations that may involve State officials while the State, and not the international justice institution, retains complete budgetary and financial control. In such a case, one could foresee questions of independence and bias being raised, which could jeopardize the mission.
22. Furthermore, it would have been beneficial to have foreign expert deployment for a longer, more consistent period of at least 2-3 months, which would have allowed the work to be completed more quickly; this challenge is also closely linked to the financial challenges .