

**CIVIL SOCIETY TOOLKIT
ON
JUSTICE OPPORTUNITIES
FOR INTERNATIONAL CRIMES**

INTRODUCTION 2

FACT-FINDING MISSIONS AND INTERNATIONAL INVESTIGATIVE MECHANISMS 3

INTERNATIONAL CRIMINAL COURT (ICC)..... 5

INTERNATIONAL COURT OF JUSTICE (ICJ)..... 6

UNIVERSAL JURISDICTION..... 6

INTRODUCTION

Civil society and other interested parties play a vital role in seeking justice and accountability for serious violations of international human rights and humanitarian law.

Amongst other important support, domestic and international civil society may: (1) provide technical assistance to victims in order to access courts; (2) help court and investigation staff to understand the context in which alleged violations occurred; (3) advocate for fairer and more efficient ways to access to justice; or (4) monitor on-going court cases.

It summarises the work of **United Nations Fact-Finding Missions** and **International Investigative Mechanisms**, the **International Criminal Court**, and the **International Court of Justice**, as well as the potential to bring cases under **universal jurisdiction**.

We intend this Toolkit to be useful for anyone interested in international justice and accountability. It uses the term 'civil society' to include all interested parties including lawyers, activists, and victim-survivor organizations and others.

Please Note: Nothing contained in this Toolkit is provided as legal advice.

The content has been produced by the Asia Justice Coalition secretariat. It should not be taken to reflect the views or positions of all members.

Last updated March 2024.

FACT-FINDING MISSIONS AND INTERNATIONAL INVESTIGATIVE MECHANISMS

(MISSIONS AND MECHANISMS)

Fact-finding missions/commissions of inquiry and investigative mechanisms (missions and mechanisms) are not courts; their purpose is to document or gather information on international human rights and humanitarian law violations as soon as possible after the violation takes place. This information may be used to: make findings regarding the type or prevalence of violations; make recommendations to address these findings; raise international attention regarding the violations; and, in the case of investigative mechanisms, provide information to courts for use in prosecutions.

Understanding Missions & Mechanisms

Fact-Finding Missions Or Commissions Of Inquiry

International fact-finding missions and commissions of inquiry are temporary, non-judicial bodies with mandates to investigate, arrive at findings, and make recommendations regarding alleged international human rights and humanitarian law violations. They may be established by bodies of the United Nations such as the General Assembly, the Security Council, or the Human Rights Council. Their mandates differ in temporal and geographic scope, as well as in subject matter and actors at the centre of the investigation, as decided by the mandating authority.

They may serve as a precursor to trials under domestic or international law or may lay the groundwork for broader truth-telling processes.

They are often led by a committee of international experts, or 'members,' who have substantial experience in international law. Members are expected to be independent and impartial, as well as of high moral standing. However, it is not always required by the mission or commission's mandate that its members have experience in the relevant context, nor are they often required to have relevant local language skills.

Examples of recent 'fact-finding missions' include: [Myanmar](#), [Venezuela](#), and [Libya](#). Recent 'commissions of inquiry' include: [Syria](#), [DPRK](#), [Burundi](#), and [South Sudan](#).

Investigative Mechanisms

Like fact-finding missions and commissions of inquiry, international investigative mechanisms are temporary, non-judicial bodies tasked collect and preserve information regarding serious violations of human rights and humanitarian law. Investigative mechanisms are also mandated by UN bodies, such as the Security Council, the General Assembly, and the Human Rights Council, and are staffed by internationally recognized experts with requirements much the same as fact-finding missions/commissions of inquiry.

However, investigative mechanisms are intended to help future criminal prosecution. Investigative mechanisms are mandated to analyze the information collected in order to compile 'case files' that can be given to national, regional, or international courts for prosecution.

Examples of investigative mechanisms include for [Syria](#) (established in 2016), [Iraq](#) (2017), and [Myanmar](#) (2018).

What Could Civil Society Consider Before Engaging?

Civil society engagement with missions or mechanisms can be [very valuable](#). However, all civil society actors [must have a clear understanding of how their work will be used](#). This is because civil society may be unable to control how that information is used once it is shared. Moreover, missions or mechanisms generally will not provide funding or security to civil society engaged in collecting information.

Civil society can ask missions or mechanisms the following:

- What kind of information are you collecting? Do you have protocols you can share with us regarding the collecting of information?

- How will you use information that we provide to you? Will you provide feedback regarding information that we provide?
- How long will you store the information that we provide to you?
- Will you notify us when you are using or acting on the information that we provide?
- Will you update us on your progress? If so, how often?
- Will you be publicly reporting? If so, when?
- (If providing victim/witness statements) Will you be contacting us if you intend to contact the victims or witnesses from whom we have taken statements?
- What protections do you have in place to protect the data and/or identities of those whose information we are providing? Of our staff/volunteers?
- How can we provide feedback/recommendations to you?

Civil society that collects information potentially for the purpose of providing such information to a mission or mechanism should 'do no harm'. This means mitigating risks to: (1) those providing information; (2) the information itself; and (3) those collecting information.

This [includes](#):

- Keeping the identities of your sources confidential, storing that information securely, and, as far as possible, being able to trace the information back to its source.
- Refraining from coaching victims or witnesses for particular information.
- Recognizing any court investigators will need to re-interview victims or witnesses and finding ways to minimize the risk of re-traumatization or producing conflicting statements.
- Receiving informed consent from anyone that provides information, and notifying them that the information may be provided to another actor which then may provide it to a court. It is possible such information may eventually be disclosed to the defence in a trial.
- Considering the physical safety and psychological wellbeing of your staff or volunteers collecting information.

It is also very important to manage expectations of those providing information. As noted above, neither missions nor mechanisms are themselves courts, and therefore they will not result themselves in criminal trials.

INTERNATIONAL CRIMINAL COURT (ICC)

The International Criminal Court (ICC) is the only permanent international court established to investigate, prosecute, and try individuals accused of committing the most serious international crimes. The [Rome Statute of the International Criminal Court \(Rome Statute\)](#) both established the ICC and sets out the ICC's jurisdiction. The principle of complementarity means that national courts retain the primary jurisdiction to investigate and prosecute international crimes, but that ICC can hear a case where a Rome Statute country is 'genuinely unwilling or unable' to do so. The ICC has special offices dedicated to providing support to victims and assisting victims to participate in cases.

Understanding The ICC

The ICC is [composed](#) of four organs: the Presidency, the Chambers, the Office of the Prosecutor (OTP), and the Registry. In addition to these organs, there is the Assembly of States Parties (or all the countries who have agreed to the Rome Statute) and the [Trust Fund for Victims](#).

The ICC can hear cases that concern crimes that allegedly took place after 1 July 2002. Defined in the Rome Statute, these crimes include:

- '[Genocide](#)', or certain acts with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group;
- '[Crimes against humanity](#)', or certain acts as a part of a widespread or systematic attack directed against any civilian population;
- '[War crimes](#)', or certain acts that amount to grave breaches of the [Geneva Conventions](#) and other serious violations of the laws of war; and
- '[Aggression](#)', or acts including invasion, military occupation, and annexation by the use of force, blockade of the ports or coasts.

The criminal conduct must take place at least in part in the territorial jurisdiction of a State Party.

What Could Civil Society Consider Before Engaging with the ICC?

There are [several opportunities](#) for civil society to engage with the ICC.

- Civil society may provide information to the OTP [at any time](#). There is no specific format for communications. While, in theory, the OTP will notify the submitter when the information has been received, in practice the OTP may not have the capacity to respond. There is no guarantee the OTP will take this information into consideration.
- In cases where the Prosecutor declares the intention to commence an investigation, victims can make representations to the Court through the Legal Representatives of Victims (Rome Statute Article 15(3)). To make representations, individuals must meet certain criteria defined in Rule 85 of the [ICC Rules of Procedure and Evidence](#).
- The ICC can also ask for assistance from civil society (Rome Statute Article 44). However, no funding for this assistance is provided by the ICC or the OTP.
- Finally, if the investigation leads to criminal proceedings, civil society can ask the Court for permission to provide formal legal submissions on particular issues called *amicus curiae*, or 'friend of the Court' briefs.

Before engaging, it may be useful [for civil society to consider](#):

- What are our goals in engaging with the ICC? Is it to assist victims to connect with the Court? Is it to provide information to the OTP? Is it to give a legal opinion as an *amicus curiae*?
- Which organ or office with the Court will help us to assist that goal?

INTERNATIONAL COURT OF JUSTICE (ICJ)

The International Court of Justice (**ICJ**) resolves disputes between countries and provides opinions and decisions on the implementation of international obligations, particularly regarding treaties.

The ICJ has increasingly become important for international justice and accountability because it can hear cases that involve countries breaching their obligations under the *Convention against Torture* and the *Genocide Convention*. The ICJ has also [increasingly ordered](#) provisional measures—interim orders made to protect the rights of the parties—that can be requested by Parties to a matter or on its own motion. Additionally, it has [established an ad hoc committee](#) of judges to monitor compliance with provisional measures.

Understanding the ICJ

The ICJ is the judicial organ of the UN ([Chapter XIV of the UN Charter](#)). All members of the United Nations are Parties to the *Statute of the International Court of Justice (ICJ Statute)*. The ICJ has jurisdiction [under its Statute](#) to hear disputes referred to it by countries regarding international obligations, such as obligations that a country accepts when it becomes a party to a treaty.

There are two types of matters before the ICJ:

Advisory proceedings are opportunities for the other UN agencies to request the ICJ's on a legal issue. Advisory opinions are not binding, but they may indicate how the Court would interpret particular international legal obligations.

Contentious cases are between countries; only countries may be parties in cases before the Court (ICJ Statute [Article 34\(1\)](#)). These cases may include territorial and maritime boundary disputes and the interpretation of treaties. Although future decisions do not need to follow what is decided in a contentious case, the decision is binding on the parties of the case.

Like other complex judicial bodies, proceedings before the ICJ are lengthy. Cases progress through several stages.

What Could Civil Society Consider Before Engaging with the ICC?

The ICJ's mandate does not require it to engage with civil society. Furthermore, its [Statute](#), [Rules](#), and [Practice Directions](#) provide only limited opportunities for civil society engagement.

The type of proceedings dictates how civil society may engage with the ICJ.

In **advisory proceedings**, the ICJ has [only granted civil society the opportunity to directly engage](#) in the proceedings once. Nevertheless, under the Court's [Practice Direction XII](#), documents given through the [Court Registrar](#) by civil society will be made available for countries and UN bodies to use. These documents will not become a part of the case file, however.

In **contentious cases**, ICJ Statute [Article 50](#) permits the Court, at its own discretion, to request a specialized information from a relevant civil society organization. However, if specialized assistance is requested, it is important to note that the Court does not provide funding such assistance.

Even if there are few opportunities to engage directly, civil society reporting is still important. This is because the ICJ judges have the discretion to take into consideration information outside of what has formally been provided by the Parties (see [Nicaragua \[30\]](#)). In [limited circumstances](#) (at 155), this has included publicly advocacy reports that were not specifically submitted to the Registrar. Civil society organizations can also attempt to engage countries directly. Advocacy towards countries may encourage initiation of a case. In an ongoing case, information provided to case parties may help to inform pleadings.

UNIVERSAL JURISDICTION

[Increasingly](#), national jurisdictions exercising universal jurisdiction over international crimes can help to prevent impunity by prosecuting in instances where the relevant country is unwilling or unable to do so. This relates to the

principle of complementarity discussed above: *national* jurisdictions retain the primary responsibility to prosecute international crimes with the *international* system—including the ICC—as a ‘last resort.’

Understanding ‘Universal Jurisdiction’

When a domestic court exercises universal jurisdiction, this means that the court is using a legal ability to hear a case of non-nationals committing crimes that took place outside of the territory of the country in which the court sits and where those crimes were against other non-nationals. This is often justified with the belief that some crimes are so heinous that they should be able to be tried anywhere. Such crimes include genocide, war crimes, and crimes against humanity. The exercise of universal jurisdiction is a way to seek criminal accountability for international crimes in domestic courts.

What Could Civil Society Consider In Pursuing Cases Under Universal Jurisdiction?

Like all court cases, success is not guaranteed when bringing a matter under universal jurisdiction. It is very important to seek legal advice. It is also important to be realistic and recognize pursuing a case under universal jurisdiction can take a long time. Many times, cases will not go to prosecution; if they do, they may not result in a guilty verdict.

However, if considering where to bring a case under universal jurisdiction, it may help to consider:

- **Whether the country’s domestic law allows for universal jurisdiction and incorporates international crimes.** While many countries in Europe have provisions for universal jurisdiction in their domestic law for war crimes, crimes against humanity, and genocide, countries in Asia are more likely to allow universal jurisdiction only for certain acts that are ‘grave breaches’ under the Geneva Conventions.
- **Whether the country has recognized certain treaties, such as the Geneva Conventions, their Additional Protocols, and the Convention against Torture.** This is because these treaties also include an obligation to ‘extradite or prosecute’ an alleged perpetrator of certain treaty-based crimes. Be aware that this obligation does not *create* the jurisdiction through which a court may prosecute a perpetrator, but this may make it more likely that prosecution is possible.
- **Whether the country’s courts and prosecutors have familiarity or experience with international criminal matters and the courts, prosecutors, or police have investigative capacity for complex cases.** For example, some European countries have specialized units to assist in prepare cases and prosecuting war crimes.
- **Whether there is domestic political will for the exercise of universal jurisdiction.** Some countries that permit universal jurisdiction nevertheless require that the country’s highest law officer, such as the Attorney-General, must approve prosecution. Likewise, because universal jurisdiction cases are complex and lengthy, they require the dedication of extensive State-resources.
- **Whether there is access to potential evidence through an international investigatory mechanism** that has already lent legitimacy to requests for prosecution or ease the resource requirements for compiling case files.
- **Whether there is any other active prosecution elsewhere** and being clear what legal ‘gap’ the case is filling.
- **Whether the accused may be present, or plans to be present, in the country’s territory.** Opinion and practice is divided regarding whether universal jurisdiction may be exercised if the accused is not physically within the country’s territory. Some countries allow a case to be opened when the accused is absent, some require that an accused is in its territory ‘voluntarily’. ‘Voluntarily’ excludes presence because of extradition.

ABOUT THE TOOLKIT

This Toolkit is a result of a multi-week training conducted by the Asia Justice Coalition secretariat for civil society representatives across Asia.

This translation is an abridged version of the Toolkit provided in English and found [here](#).

ABOUT THE COALITION

Founded in 2018, the Asia Justice Coalition's purpose is to improve the legal landscape in Asia to ensure justice and accountability for gross violations of international human rights law and serious violations of international humanitarian law. The Coalition operates through collaboration, resource-sharing, and coordinating efforts between local and international civil society organizations working in the region. Its work is accomplished by undertaking joint activities relating to justice and accountability and engaging in collective advocacy.

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