

Civil Society & International Criminal Justice Mechanism Engagement Roundtable Readout

Although the work of international criminal justice mechanisms (ICJMs) and local civil society organizations (CSOs) often overlap, this shared mission has not always led to close cooperation. According to a report entitled *International Criminal Tribunals and Civil Society: Impediments and Opportunities for Engagement* by the Syria Justice and Accountability Centre (SJAC), CSOs are often an untapped source of local knowledge, including direct access to the community, contextual knowledge, and a supply of documentation. The report outlined recommendations to both ICJMs and CSOs, including for ICJMs to make space for local CSOs by meeting them where they are and for CSOs to partner with like-minded organizations and put in place a clear methodology for documentation. Ultimately, however, the report argued that there is a skewed power dynamic, with ICJMs having access to resources and information about criminal processes that CSOs cannot obtain on their own, and ICJMs should, therefore, make the first steps towards engagement.

On **13 November 2018**, SJAC, Impunity Watch, and REDRESS convened an expert roundtable with the goal of exploring the findings of the report among relevant stakeholders and providing a space for further discussion. As the international community explores alternative avenues for criminal accountability, innovative approaches for civil society engagement are warranted. The conveners sought to challenge common preconceptions that impede engagement and generate new ideas for exploration.

The first session focused on **Overcoming the Challenges of Impartiality and Lack of Resources**. Although there is growing consensus that civil society can provide valuable contributions to international criminal prosecutions, in practice, the resistance continues to center around the potential tainting of investigations and the lack of time and resources mechanisms have to broadly engage. For practitioners who have worked at ICJMs for a decade or more, there was wide agreement that the outlook and appreciation of CSO contributions have evolved considerably over the years and many lessons can be learned from past successes and mistakes.

- Establish a vision for engagement early in an ICJM’s mandate: To this end, participants emphasized that it is crucial for an ICJM to establish a vision early on for how it will engage with CSOs. By having a vision, an ICJM can clearly explain the goals and purpose of engagement and set red lines for what is not possible. Moreover, the mechanism can budget accordingly and socialize its vision amongst donors to ensure it has the necessary resources for implementation. One participant said that ICJMs must understand that they are there to serve justice for victims first and foremost, which should help guide the vision for engagement.
- Build in opportunities for engagement throughout: Another participant iterated that engagement is most effective when it is built into every step of the process, such as when designing security protocols, to understand the context in which local actors are working and ensure that they are not put at risk as a result of participating in engagement. The issue of feedback loops and ensuring continuous dialogue were also raised as approaches to engagement that could help develop closer relationships with CSOs and improve the quality of information that CSOs submit to a mechanism.
- Continue even during the winddown phase: As a mechanism is winding down, participants discussed possibilities for continued engagement, such as sharing as much information as possible with the wider public. The MICT has been trying to do this for information related to the ICTY, but such initiatives are resource intensive. One participant said that this is one of the most valuable steps an ICJM can take because researchers and journalists can learn a lot from the information which they can disseminate more broadly.
- Combine broad and targeted engagement, but be transparent: When asked to comment on whether broad or targeted engagement is more useful as a means to preserve the impartiality of an ICJM, one participant responded that it should be a combination of the two. To reach the widest number of stakeholders, broad engagement is important, and based on a better understanding of the CSO landscape, the ICJM can choose to engage with a targeted subset capable of providing valuable information. Another participant commented that an ICJM cannot realistically engage with everyone, so the criteria for why an ICJM has chosen to engage with some and not others must be clearly defined and transparent.

- Broad engagement should include vulnerable populations: Participants discussed the importance of engagement, not just of well-known groups, but also those who are most vulnerable, such as victims with disabilities and those living in remote parts of the country.
- Trust-building is key: Another former ICJM practitioner explained how CSOs had been very reluctant to engage with the tribunal when it was initially established because of a deep lack of trust. Trust was gradually built over time, particularly after one key CSO began supplying the mechanism with documentation, but it improved even more after CSOs were actually participating in connecting victims to the ICJM. In addition to trust, several participants said that managing expectations of CSOs and the public is one of the most important outreach responsibilities of a mechanism. Lack of trust may not be due to the actions of an ICJM. A representative of one mechanism explained how the beginning of outreach to civil society proved very difficult due to animosities among the groups, so the ICJM organized the groups in a way that enabled more constructive dialogue. After several consultations, the ICJM also learned the root causes of CSO frustrations and was able to take steps to remedy them, including by facilitating dialogue between CSOs and local judicial institutions.
- Systemizing engagement has pros and cons: Participants generally agreed on the value of systemizing engagement. However, the design of the system itself may also hamper engagement. In one ICJM, victims were parties to the cases which allowed them to shape the scope of the proceedings and provide meaningful input, often through CSOs. Consequently, CSOs were able to support the court's outreach activities. Since the participation was a built-in feature of the cases, there was no issue with impartiality – it was expected for the court to engage in this way. However, later cases did not include victims as civil parties, so engagement did not happen systematically and the benefits of previous engagement were lost.
- Understand the resource limitations of CSOs: On the issue of resources, one participant said that the reality of limited funding also means that ICJMs and CSOs may be in competition with one another and CSOs in competition amongst themselves, which can hamper engagement. Accountability mechanisms may have greater flexibility than other transitional justice mechanisms that tend to be more under-funded.
- CSO engagement is only one aspect of outreach: One participant raised the issue of wider outreach to not only CSOs, but also media outlets, political groups, and other institutions to ensure that key stakeholders in society understand the ICJM's progress and are not misrepresenting its work to their constituents.
- Leverage partnerships with international NGOs if needed: Some participants discussed the role of intermediary/international NGOs in facilitating engagement, particularly to help an ICJM reach groups that are difficult to access. It was raised, however, that international NGOs also need to be mindful of ways in which they conduct outreach in order to be sensitive to the needs of local groups.
- Measure the impact of engagement: One participant noted that ICJMs should measure the impact of engagement and put in place benchmarks to help assess the progress and successes of their activities.

During lunch, **Catherine Marchi-Uhel, the Head of the International, Impartial, and Independent Mechanism (IIIM)** to investigate serious crimes in Syria, provided remarks about why the IIIM undertook an initiative to engage Syrian civil society early in its mandate and the plans and challenges she foresees in the future. She began by explaining the IIIM's mandate to collect, preserve, and analyze evidence which has required broad engagement, including with civil society groups. In addition to collecting evidence, she said that engagement has enabled the IIIM to explain to CSOs and Syrians generally what the IIIM is and why they should contribute. The Lausanne platform that gathered the IIIM and Syrian CSOs has been an important vehicle to facilitate dialogue and to explore opportunities for cooperation and a two-ways communication. Additionally, the IIIM is seizing every opportunity to meet with as many NGOs as possible and it has initiated a regular bulletin of information to more regularly engage and to also communicate to CSOs that are not able to attend the Lausanne meetings. Marchi-Uhel recognized that it is not an easy process to engage, particularly because of the IIIM's limitations as compared to a court, which mean that there are not as many visible successes to demonstrate publicly. Listening to feedback, particularly when it is negative, is not always pleasant, but it is essential in this field and increases a mechanism's legitimacy and credibility. But it is a balance between genuine listening and being clear that an ICJM cannot take direction from CSOs or any other external actor. Just like civil society engagement, the use of technology has changed drastically over the past decade, and there are increasing amounts of information available on social media. This creates real challenges and opportunities and the need for certain standards to be adopted that are new to CSOs and ICJMs. The preservation of material

and an ICJMs digital management system must be done to meet the standard of international courts and tribunals. In all, Marchi-Uhel said the IIIM has taken a more coordinated, collaborative approach to investigation, and will continue to make improvements because doing so is critical to its mandate.

The second session, **How, When, and By What Means Should Engagement Happen**, explored the steps and processes needed once an ICJM decides to prioritize engagement. From the variety of models that have been used in other contexts, this session asked participants to reflect on the key lessons that can be used to inform the design of future frameworks.

- Start by understanding the CSO landscape: One participant began by explaining that the conflict context he is familiar with requires an ICJM to first expend a genuine effort to understand the diverse CSO landscape prior to engagement because CSOs are not always “the good guys.” Some CSOs play a negative role in conflicts and should not necessarily be trusted to provide reliable information. By understanding the conflict dynamics and CSOs’ roles, an ICJM can make informed decisions about how to proceed.
- Also understand that CSOs can make or break an ICJM: In another participant’s experience, a CSO’s relationship with an ICJM is not static and can change drastically over time depending on how the work of the mechanism is perceived. Whether or not the perception is fair, when CSO attitudes change, it can have destructive consequences to an ICJM’s mission. Thus, the type of engagement and the goals are important to define early on, while also adapting to the changing situation.
- Clarify what is and is not possible: One participant said that while it is difficult to appropriately engage CSOs during an investigation, it is possible and should be done. But what is communicated is important and a mechanism needs to be clear about what is possible to share and engage on and what the limits are. This is one of the only ways to avoid inflating expectations and causing frustration with the process. Particularly for mechanisms with a limited jurisdiction and mandate, explaining how jurisdiction can be activated is crucial.
- Explain what an ICJM needs from CSOs: In one participant’s experience with a recent engagement effort, she found that it was helpful to communicate the standards of evidence and explain how CSOs can come forward with evidence or connections to victims/witnesses. The creation and dissemination of clear guidelines was useful in this regard. The issue of training was also raised by other participants.
- Use a range of tools: There is not one single engagement approach that is going to be effective. Rather, participants discussed how a range of tools and approaches will have greater impact. In some contexts, for example, the use of radio programs, TV, and short movies will engage more people than written material or online content, particularly when significant numbers of people are illiterate or do not have Internet access.
- Grassroots networks are an asset: One participant explained how engagement efforts can build a grassroots network to disseminate information, reach local CSOs, and garner the participation of victims. These networks take time to develop, but they can have an enormous impact in socializing justice efforts and allow an ICJM’s outreach efforts to more easily trickle down to the wider public.
- Create a special budget for engagement/outreach: One participant explained how an ICJM will struggle with outreach if it does not have a special budget dedicated to it. Donor states may resist because “outreach” is not explicitly written into ICJMs’ mandates, but it is an inherent responsibility regardless.
- Remember it’s not just about CSOs: At least one participant emphasized that engagement with CSOs is good, but there are a range of key actors. Thus, an ICJM should communicate with the wider public who also needs to understand its work and not only rely on CSOs as intermediaries to reach local populations.
- Never overlook the importance of security: Security was raised repeatedly as a concern to both ICJMs and CSOs and some participants suggested that there be more collaboration between ICJMs and CSOs to overcome the increasing security threats.
- Be accountable/responsible to affected populations: Several participants encouraged international NGOs and ICJMs to be responsible to the people that they are working with. One participant from an international NGO that had worked extensively with victim groups said the spotlight should be on the local CSOs with internationals playing more of a background supporting role throughout the engagement.
- CSOs are more effective in coalitions: One participant had mentioned that the work of the Coalition for the ICC took the work of civil society to the next level. By working together, another participant explained that

the CICC was able to create a strong platform for civil society to have their voices heard, first in the creation of the Court and since the ICC has been working.

- **Avoid working in a vacuum:** Multiple participants brought up the increasingly hostile political atmosphere towards international justice and human rights. Negative perceptions about the ICC and other ICJMs are putting CSOs that engage with those mechanisms at risk. More CSOs than ever are feeling pressure to leave their home countries and work in exile. ICJMs are also facing pressure, but one participant said that ICJMs should be acknowledging the impact on local CSOs as well and evaluating what role they can be playing to push back against the hostility and increase their budgets for security. Similarly, another participant expressed frustration at the governments that have been increasingly turning a blind eye towards justice, even in Western countries, and concern that international lawyers and justice actors are continuing their work in a vacuum without recognizing how local actors and victims are being impacted.

Next Steps: Overall, participants agreed that more time and thinking should be devoted to this topic as it is a crucial issue for both ICJMs and human rights and justice-sector CSOs. Many expressed an appreciation for the opportunity to convene and learn from each other’s experiences and requested that follow-up activities be organized to provide such opportunities in the future. Some of the participants’ suggestions for follow-up programs related to this topic were:

- The convening of a follow-up event that unpacks the practicalities of what should be communicated, to whom, by whom, and when to create a shared strategy to support justice/accountability in a given context.
- The establishment of a working group to convene once a quarter to delve deeper into these issues for the purpose of creating an outreach mechanism;
- Creation of guidelines for how CSOs can engage with judicial mechanisms and submit information to them, whether they be domestic courts in universal jurisdiction cases or ICJMs, that provides concrete, practical information on submissions but that is broad enough to be applicable to many contexts;
- Collaboration between ICJMs and CSOs to create benchmarks/indicators for measuring success and failure of meaningful engagement which can be adapted by the IIIM and other mechanisms to track progress;
- Collaboration to make all or certain information about international crimes and their context publicly available in one place to raise awareness, educate, and facilitate research;
- Collaboration on integrating justice and accountability more firmly into political processes and peace negotiations to address detainees, vet future political candidates, establish truth processes, and reform the security sector based on the evidence;

It should be noted that the event did not allow time for a discussion of these suggestions, so the above bullet points do not necessarily enjoy consensus among participants. However, they are a starting point for further discussion and provide avenues for organizations to brainstorm potential joint activities.