



VRWG submission ahead of the discussions on intermediaries to take place in The Hague Working Group

11 March 2013

The Victims Rights Working Group (VRWG)¹ is pleased to share these remarks ahead of discussions on the issue of intermediaries, which will take place in the context of the *Facilitation on Victims and affected communities and Trust Fund for Victims, including reparations* on 13 March 2013 in The Hague. The VRWG welcomes the invitation by the facilitators for NGOs to provide information and we look forward to continuing the constructive dialogue on this important issue.

Who is an intermediary?

An intermediary is an individual or non-governmental organisation (local or international), which, as the Court Guidelines set out, "facilitates contact or provides a link between one of the organs or units of the Court or Counsel on the one hand, and victims, witnesses, beneficiaries of a project of the Trust Fund or affected communities more broadly on the other".² They are often active members of affected communities, who hope to bring an end to impunity and to contribute to justice. They have both a personal and professional stake in the Court's success. Intermediaries play an essential role in supporting the delivery of the Court's mandate³ as they provide specialist information, services and expertise, and link various organs of the ICC with key constituencies on the ground. In particular:

- Local organisations organise outreach activities directly or at the behest of the Public Information and Documentation and the Victims Participation and Reparation Sections acting as a multiplier for the Court's outreach efforts given the constraints on its budget. In addition, intermediaries often assist the Court in organising its outreach work, complementing and supplementing direct outreach carried out by the Court with victims and affected communities particularly at the grassroots level. They also assist victims to apply to participate in proceedings, thereby expediting/assisting the work of the already overburdened VPRS, and will maintain contact with victims, assisting legal representatives once they have been appointed;
- Intermediaries facilitate contact between the Office of the Prosecutor (OTP) or Defence counsel and witnesses and victims at ground level ;
- The Trust Fund for Victims works with partners to fulfil its assistance mandate and to implement reparations decisions.

¹ The VRWG is a network of over 500 national and international civil society groups and experts created under the auspices of the Coalition for the International Criminal Court in 1997.

² ICC, *Draft Guidelines governing the Relations between the Court and Intermediaries*, Draft April 2012, p.5.

³ This was also recognised in the Court's jurisprudence: Decision on the Applications for Participation Filed in Connection with the Investigation in the DRC by Applicants, *Situation in the DRC* (ICC-01/04-545), Pre-Trial Chamber I, 4 Nov. 2008, para. 25.

The Court itself notes in its *Report of the Court on the Revised Strategy in relation to victims: Past, present and future*:

“[t]he synergies created by working with intermediaries has a number of positive affects which include: 1) it limits victims exposure to danger which might result due to their direct interaction with the Court; 2) intermediaries are often able to access locations that are inaccessible to Court staff; 3) The ICC system would be unable to field the number of staff required to reach out to all the victims and affected communities with which the Court currently communicates. The expenses involved would be insupportable, and would only rise exponentially as the number of potential victim participants increase with each new case and the relevant charges brought by the Prosecutor and confirmed by the Pre-Trial Chamber.”⁴

Challenges

In supporting the work of the Court intermediaries have faced a number of challenges. They generally work in volatile environments, often at their own risk, with few resources and reduced staff. Over the last decade, the tasks delegated to intermediaries have increased due to the Court’s increasing workload and its own restricted resources, as well as the ICC’s limited field presence as well as security concerns that impinge on staff ability to travel. Intermediaries are able to access regions that Court staff are not. They speak local languages, and have direct access to victims and local networks. However, the framework within which intermediaries operate still remains unclear. Many intermediaries have also needed training and capacity building in key areas relating to the work entrusted to them such as protection and security. In addition, different entities of the Court have adopted different approaches to the financial, logistical and material support that they provide to intermediaries who are assisting them to fulfil their mandate.

The Court’s Guidelines on Intermediaries

The Court has acknowledged the need to better articulate its relationship with intermediaries and has drafted Guidelines on the Relationship between the ICC and intermediaries ('the Guidelines').⁵ The Guidelines, which have already benefited from extensive consultations between the Court and civil society, will provide the much needed basis upon which to establish clear mutual responsibilities and entitlements between the Court and intermediaries. They reflect best practices to date at the Court as well as judicial requirements and some organs and units are already operating in line with the substance of the document.⁶

The Guidelines also seek to address some concerns about the role and use of intermediaries raised during legal proceedings by Defence lawyers and later by Judges themselves, who criticized the Prosecution’s lack of supervision over the work entrusted to them.⁷ Defence counsel have also raised challenges relating to the use of intermediaries in fulfilling the victims’ mandate of the Court

⁴ Report of the Court on the Revised Strategy in relation to victims: Past, present and future, ICC-ASP/11/40, footnote 19.

⁵ ICC, *Draft Guidelines governing the Relations between the Court and Intermediaries*, Draft April 2012 (on file with the author).

⁶ As the Bureau has noted in its report on strategic planning: “The draft guidelines reflected modifications identified as necessary during the Court’s continued review. They incorporated policies necessary to align the guidelines with those derived from the Lubanga ruling, and included provisions on the accountability of intermediaries. They reflected responses to the challenges experienced by the Court, including the need for clarity in the relationship with intermediaries, security, and the financial burden to some intermediaries of their interaction with the Court. The draft guidelines are subject to periodic review and assessment and would be revised if necessary, in the light of the experience of the Court.”, Report of the Bureau on the Strategic planning process of the International Criminal Court, ICC-ASP/11/30, , 6 November 2012, para 12.

⁷ See Judgment pursuant to Article 74 of the Statute, *Lubanga*, 14 March 2012, ICC-01/04-01/06-2842,<http://www.icc-cpi.int/iccdocs/doc/doc1379838.pdf>.

including errors made by persons helping victims to fill out forms, objections to intermediaries using victim participation to achieving political or personal agendas, and objections to intermediaries influencing victims when filling out forms.⁸

The Guidelines seek to clarify what is expected of intermediaries, and include a Code of Conduct as an annex. They also recognise *inter alia* the need for intermediaries to be trained in relation to key aspects of the work they are asked to undertake, for them to benefit from protection on a case by case basis and, upon prior agreement with the Court, for certain expenses to be reimbursed. While the Guidelines can still be improved and recognise that their content will have to adapt to the practice and experiences, **the VRWG strongly believes that the immediate implementation of the Guidelines is essential.** Further tailoring of the document should be done through regular reviews, including the monitoring process envisaged in the draft.⁹

In times of budgetary constraints, intermediaries' contribution to the Court has increased as a means to counterbalance insufficient presence in the field. It is our understanding that the Court will present the draft Guidelines to the Committee on Budget and Finance in light of their financial implications. An essential element to making these Guidelines a reality will indeed be the provision of adequate resources to ensure their full implementation, in particular, in relation to protection related costs, reimbursement of expenses and capacity building. The text of the Guidelines itself foresees that implementation of certain aspects will only be possible as far as the financial resources of the Court allow.

The VRWG wishes to reiterate that intermediaries should not be called to act as substitutes for staff shortages, in particular in the field. The ICC must have adequate field presence to implement its mandate and intermediaries should undertake tasks that they are better placed to perform than Court staff (such as access to some regions, knowledge of local languages, and direct access to victims, etc.). While civil society has much to contribute, NGOs and local activists acting as intermediaries also have their own mandate and priorities which may not always coincide with the Court's. In addition, civil society should not be expected to take risks the Court's staff are not able or willing to take.

As the Court expands its reach into new countries and regions the assistance of NGOs and intermediaries will continue to be needed, and **the implementation of the Guidelines should increase efficiency in the Court's operations.** For example, improving training and support to local intermediaries who assist victims to complete forms should reduce the number of incomplete application forms, which have constituted one of the main challenges to victim participation. Incomplete applications have led to delayed transmission of applications to Chambers and have required extra efforts and resources to seek and obtain missing information. By investing in improving the quality of assistance provided by intermediaries to victims at the outset, the victim application process would be significantly more efficient.¹⁰

⁸ See, 'The Participation of Victims in International Criminal Court Proceedings – A Review of the Practice and Consideration of Options for the Future', Redress Trust, October 2012, page 27, http://www.redress.org/downloads/publications/121030participation_report.pdf.

⁹ Monitoring and review are essential elements of the Draft Guidelines framework including through the engagement of the Working Group on Intermediaries and the convening of a permanent internal mechanism for receiving recommendations and exchange of experiences. State parties will also be key to this interaction. For more information on the VRWG's remaining concerns in relation to the draft Guidelines please see : VRWG – International Criminal Court at 10: the implementation of victims rights – Issues and concerns presented on the occasion of the 11th Session of the Assembly of States Parties, November 2012, http://www.vrgw.org/VRWG%20Documents/201114_VRGW_ASP11-ENGLISH-VERSION.pdf.

¹⁰ Redress, Supra n 8 at page 22, 26.