VRWG Guidelines for Protecting Victims

Background

These Guidelines suggest standards of good practice for lawyers, civil society groups working with victims and other intermediaries involved in some way in the context of proceedings before the International Criminal Court (ICC). They recognise the various actors who may come in contact with victims and the multiple risks and challenges arising from such contacts, and are aimed at fostering the positive engagement of victims in the ICC process in a way that respects their need for safety, security and dignity.

The Guidelines emerged from discussions amongst members of the Victims Rights Working Group (VRWG), initiated in particular by Avocats Sans Frontières and REDRESS.

Victims, as defined in Rule 85 of the ICC’s Rules of Procedure and Evidence, may participate in the Court’s proceedings; they also have a right to apply for reparations. However, victims require access to information, legal advice and representation. They may need assistance and advice in filling out forms and in taking decisions about their involvement with the Court – all functions which are fulfilled by lawyers and local intermediaries, often in consort with local and/or international NGOs.

Due to lack of security in all the situations before the Court, the

General Principles

A. Information & Sensitisation on Participation

1. Information should be provided in a neutral manner, allowing victims to take an informed decision about their wish to participate. Both the positive and the negative sides of participation or other engagement with the Court should be portrayed, balancing encouragement with caution, highlighting that participation is a right, not an obligation;

2. Managing expectations: In providing information and advice, there is a need to manage expectations. Creating both false hopes and unnecessary frustrations should be avoided. The difference between participating in the “situation” and participating in the “case” should be explained, as appropriate, giving clear indications on the rights granted to both categories of victims;

3. Immediate Needs: The immediate needs of victims in an ongoing conflict are for survival and security rather than justice or reconciliation, though the latter may take on greater prominence if and as the security situation improves;

4. Accuracy of Information: It is paramount that intermediaries and lawyers give correct information. Intermediaries should not answer in place of the Court;

5. Gender sensitivity: Consideration of the gender aspects of crimes is crucial. Taboos surrounding Gender Based Violence (GBV) and the need for prosecuting GBV must be considered a priority. Targeted strategies need to be devised in order to reach GBV victims as well as minorities or vulnerable groups such as children, the disabled and the elderly.

B. Confidentiality and security

1. Intermediaries and lawyers need to assess security risks, including the psychological impact of actions and the need for confidentiality in working with victims;

2. Discretion, confidentiality and protection of identity are paramount, not only to protect the victim, but also to protect intermediaries who otherwise may be put at risk by association;

3. Victims, their guardians and, partners and family members should be advised not to disclose to anyone the fact that they are participating in the “case” should be explained, as appropriate, giving clear indications on the rights granted to both categories of victims;

4. Intermediaries and lawyers should ensure the safety and security of victims. Devising security plans to protect the identity of the victims may be a possible strategy, in which case security plans could cover:

- all contacts with victims (including location and timings);
- all ICC related activities that involve victims (e.g. general outreach / trainings); information management, such as how they will hold, transmit and protect oral, written or electronic information. Intermediaries and/or lawyers should be sure to retain a copy of all application forms and correspondence with the Court. This will greatly enhance follow up with the Court. However, plans should be made to ensure that copies of application forms and other data relating to the identity of applicants are kept in total security. For instance, victims should be referred to by pseudonyms or code numbers. Data linking the code numbers and the forms should be kept securely away from the security risk locality (e.g., in the capital city or at another location). Access to the linking information should be restricted. Electronic information should be protected by using encryption protocols, off-site storage and similar protective
5. Intermediaries and lawyers should explain to victims the risks of participation or otherwise engaging with the Court, for example, that anonymity cannot be guaranteed throughout the proceedings, and this should be discussed and re-assessed at each meeting. The Defence team and the Prosecution, as well as other bodies of the Court are likely to have access to victims' identity at certain stages. Even if guarantees of confidentiality are put in place, there is no absolute protection of victims' identity.

6. There is a need to ensure internal vetting of all persons involved including drivers and translators;

7. Attention and care should be given to ensuring that interpreters or support persons are, as far as possible, culture, gender and/or age appropriate to the victim;

8. Psycho-social and other appropriate support structures, such as a referral agreement, should, as far as possible, be available for vulnerable victims;

9. It is crucial that all intermediaries and lawyers working with vulnerable victims (particularly victims of GBV or child victims) receive special training in trauma, gender issues, women’s rights, child rights and child protection, and relevant cultural considerations as appropriate.

C. Special considerations regarding child victims:

1. The participation of children as victims should be guided by the principle of the best interests of the child. Because of their age, level of maturity and individual special needs, children should be afforded special physical and psychosocial protection. All child victims should be treated with respect and dignity.

2. Any participation of children should be on the basis of informed consent of the child as well as the child’s parents or guardian;

3. The confidentiality and anonymity of the child should be guaranteed by the Court as far as possible. Steps should be taken to ensure the privacy and confidentiality of child victims through all stages of participation and thereafter;

4. The security of the child and of child protection workers is paramount and should not be compromised. The risk of exposing a child victim or those working with the child must be carefully assessed at every step of the process;

5. Children participating in ICC proceedings have the right to be heard and to express their views. As such, legal representatives should ensure that children have the opportunity to express their views should they wish to do so, in an appropriate manner. Child victims and their guardians should be kept informed about all aspects of their participation and the proceedings;

6. As far as possible, intermediaries and lawyers working with children should have specialized training and prior experience in interviewing children in order to prevent/minimize their retraumatization. In cases of sexual violence and when requested, the interpreter should be of the same gender and culture as the child’s.

The following measures may apply to all interested parties, including local intermediaries, local NGOs, international NGOs and lawyers:

The identification of Victims in relation to the ICC

i. Ideally, victims should first be exposed to information about the Court so that they themselves can make contact with relevant persons rather than be identified by intermediaries as potentially interested victim-applicants. However, for a variety of reasons, such as insufficient outreach, difficult access and security concerns intermediaries may need to proactively seek out victims in order to facilitate their participation.

ii. It is recommended that victims that are contacted in relation to potential participation should have some recourse to psychosocial support through an existing programme with expertise in trauma, where possible, particularly in the case of vulnerable victims, such as victims of GBV or child victims. [NGOs or intermediaries may wish to make arrangements with or identify additional actors that may be able to provide psychosocial support as appropriate and where feasible].

iii. In the case of child victims, children contacted in relation to participation in proceedings should preferably be in the care of their families or legal guardians i.e. reunited children. Separated or “unaccompanied” children should not be actively encouraged to apply to participate if their support structures are uncertain. The increased insecurity, instability and vulnerability of “unaccompanied children” should be considered: the primary interest for such children is to provide them with a sustainable supportive environment, such as reunification with their families where appropriate. Child victims should have access to follow-up psychosocial support from a child protection agency or other field based programmes.

iv. Careful consideration should be given to the likelihood that each individual victim will be granted victim status by the Court. As regards applications to participate, attention should be given to the two possible avenues of participation, and intermediaries should clearly explain the differences and implications of each avenue, as follows:

- Participation in the “Situation”. With respect to participation in the investigation phase or “situation”, (e.g., the situation in Darfur, Uganda or Eastern DRC) the victim must have suffered physical, psychological or material injury as a result of crimes listed in the Rome Statute that took place after 1 July 2002;

- Cases. In order to participate in a specific case against a named suspect or accused person (e.g. the Lubanga case), the crimes committed should precisely match the crimes identified in the Arrest Warrant or Summons against the suspect or accused;

- Evidence. In order for an applicant to be granted the right to participate in proceedings, it is necessary for certain basic information to be provided. Intermediaries or lawyers should be extremely familiar with the application forms and the Court’s requirements prior to providing assistance to victims in making their applications. They should make sure to:
i. Provide evidence to prove the identity of the victim (e.g., a document issued by a recognized public authority stating the name and the date of birth of the holder, and showing a photograph of the holder, for example a ‘voting card’ or identity card); AND

ii. Provide evidence that the individual applicant suffered harm as a result of crimes that are relevant to the « situation » or « case » before the Court; AND

iii. If there is a legal representative, provide a valid power of attorney and where appropriate, proof of ‘indigence’; AND

iv. Have a clear and safe way of contacting the applicants if the Court requires any further information. The intermediary or lawyer should be sure to have sufficient contact information for the victim, including contact information of a close friend or other trustworthy individual who can be contacted if the victim is unreachable. The lawyer or intermediary should also provide clear and easily accessible contact details to the victim about where he or she may be contacted, in case the victim wishes to provide new information or update his/her address.

**Vulnerability and Security Assessment**

i. A vulnerability assessment should be made for each victim, which considers the potential physical, psychological or other risks that the individual may face as a result of their involvement with the Court.

ii. Attention needs to be given to assessing the overall security situation of as well as any specific threats to the victim and/or intermediary. It will be useful to identify and monitor specific threats, for instance, monitoring persons associated to an accused that continue to operate in the locality of the victim. In undertaking a security assessment, a variety of sources should be consulted in order to receive the maximum information, for example, UN or humanitarian security assessments when available and/or other agencies on the ground. When the security threat is acute, considerations of safety may outweigh the potential benefits of participating in proceedings.

iii. Attention should be given to the psychosocial condition of the victim in relation to his or her capacity to maintain confidentiality and to work responsibly with the intermediary. Since the Court’s proceedings will be lengthy, the relationship of mutual confidentiality must be able to be sustained over a long period of time. In a variety of situations a victim may turn against those who are trying to help him or her and expose intermediaries or other victims. (e.g. This may be the case in the context of children formerly associated with armed conflict, who may return to their former military chiefs.)

**Meeting Locations**

i. The location of meetings relating to victim-specific applications, including the completion of application forms, should be as inconspicuous as possible. They should be selected on the basis of security and confidentiality – ideally in a safe location where the victim might normally go at that time such as a treatment centre.

ii. If the victim is receiving psychosocial, medical, physiological or other support, the meeting could take place in the same centre where such care is normally provided, preferably in a room normally used for that purpose in order to avoid suspicion or the possibility of exposing the victim.

iii. Alternative locations should be selected on a case-by-case basis depending on the risks, both in and/or outside the community; at a school, religious building, library, skills training centre, etc. Where necessary, a plausible alibi can be established between the intermediary and victim, which can explain why the victim was at that location at that time with the relevant persons (e.g. for training, counselling, etc.). Indeed, parallel activities can be organised (training, sensitisation) for this purpose.

**First Meetings**

i. Victims have a right to be treated with respect, dignity, compassion, and humanity. As a matter of principle all meetings should avoid any possible humiliation or distress to victims. Meetings should also avoid excessive inconvenience to victims. As far as possible meetings should seek to empower victims and foster a sense of ownership over their involvement and engagement in the investigation or case. The manner in which they are involved in the process of justice, may have a significant impact on the value victims attach to eventual outcomes.

ii. If consent is given, the intermediary can assist the victim in completing the form(s), and in obtaining relevant supporting documentation. Alternatively, but also only if consent is given, the intermediary can arrange for a lawyer to assist in filling out the form(s). Victims should never be made to feel under pressure to give their consent. If they are not comfortable, they should be reassured that it is their right and not an obligation.

iii. At these introductory meetings, the victim should be informed of the Court’s processes and of his or her rights before the Court. The victim should be informed about protection issues, issues concerning legal representation and legal aid, and the possibility of applying for reparations. Expectations should be managed, with potential difficulties highlighted from the outset. The objectives for the first meeting might be: a) to reconfirm informed consent and b) to familiarize the victim with the ICC.

iv. The first meeting should establish how and when contact will be made to provide follow up on the application or obtain documentary evidence. The intermediary or lawyer should prepare the victim for slow developments and the possibility that the application may be rejected.

**Follow up meetings**

i. A plan for regular follow up should be agreed upon with the victim in order to ensure he or she is kept informed of developments (or lack thereof), and given opportunities to ask questions, seek advice or raise concerns. Victims may feel vulnerable after disclosing information about their victimisation and have the right to be informed about decisions that concern them as well as about the broader developments regarding the situation and case that relate to them.

ii. If the victim’s application to participate is rejected, it should be explained with compassion by the intermediary and/or lawyer as soon as possible. Other options for redress could be discussed as appropriate. Security permitting, it may be useful to facilitate the creation of support networks where victims may be able to discuss issues they share in common and support each other.

iii. When the victim’s application is successful, or requires further
information, the intermediary or lawyer should collect such information from the victim.

iv. Follow up meetings should take into account the needs of the victim. For instance, if the victim is a child, meetings should avoid interference with school times. If the victim has child care obligations, meeting times might be arranged to suit child care arrangements.

Legal Representation

i. Assistance and advice from a lawyer is recommended from the earliest moment of involvement.

ii. While some lawyers and intermediaries may be funded by NGOs or act on a pro-bono basis, victims may wish to apply for legal aid from the Court. The intermediaries and/or lawyers should advise the victim about legal representation through the Court, particularly as there may be ‘enhanced rights’ for victims represented by a ‘common legal representative’ appointed by the Court.

iii. Once the victim has been granted “victim status” by the Court for a situation or case, the victim may be assigned a common legal representative or receive legal representation by the Office of Public Counsel for Victims (OPCV).

iv. In addition to the general criteria for lawyers working with the ICC (which include 10 years relevant practice at a national bar and a letter of good standing from the national bar), legal representatives of victims should also have experience in representing victims, particularly where vulnerable victims, such as victims of GBV or child victims are concerned. Where child victims are concerned, special training on child representation is recommended. The ICC may provide such training so it is advised that lawyers contact the Office of Public Counsel for Victims or the Gender and Children’s’ Unit in the Office of the Prosecutor (OTP).

Legal Aid and Common Legal Representation

i. If a lawyer (that satisfies the criteria to be on the Court’s list of counsel) is not available at the application stage, intermediaries may assist victims in declaring their indigence to the Court as soon as possible in view of obtaining legal aid;

ii. Avoiding Conflicts of Interest: As the court may assign “common legal representation”, intermediaries or lawyers might take care to provide information that might assist in identifying a potential conflict of interest when completing the application forms. This might include, for example, if there are ongoing disputes between individual victims which are proposed to be represented as a group, or if there are very different or irreconcilable views amongst the victims about the emphasis of the participation or issues relating to reparation. Where possible, the identity of perpetrators should be included in the form. If the identity is not known, other information such as the group, faction and/or estimated age of the perpetrator can be included.

In the event of exposure

i. Rapid response or contingency plans should be put in place from the outset. These plans should provide clear instructions on what to do if a victim (or close relative) receives a serious threat in relation to his or her participation (which could include anonymous calls, intimidation, etc.). Contingency plans should include contact numbers available 24 hours a day that the victim can call and a safe location that the victim can go to immediately. Plans should also include immediate measures to be taken by an intermediary who may be put at risk. Such measures may include contacting the UN peace keeping mission (human rights section) if one is operating in the country, the International Committee of the Red Cross (ICRC) or other humanitarian agency.

ii. In the event of exposure of a victim, the lawyer or intermediary should contact the Victims and Witnesses Unit (VWU) and ask them to undertake an immediate security assessment for potential inclusion in the Court’s Protection Programme, which may include use of a safe house or relocation. The victim or intermediary assisting that victim may also contact the Victims Participation and Reparations Section (VPRS), who should have knowledge of the victim due to the application presented. VPRS can then contact VWU for them to undertake their security assessment and eventually include the victim in the Court’s Protection Programme.

iii. In the event of exposure of a victim who is represented by the Office of Public Council for Victims, the victims or intermediary should contact the OPCV, which can then contact VWU for them to undertake their security assessment and eventually include the victim in the Court’s Protection Programme.

iv. In the event of exposure of an intermediary, it is unclear if the intermediary could be considered eligible for inclusion in the Court’s Protection Programme as “others at risk on account of testimony given by such witnesses”. While protection in accordance with the Statute is defined, as being for “witnesses, victims who appear before the Court and others who are at risk on account of the testimony given by such witnesses”, there have been indications that the Court’s protection programme may be applied relatively widely. There are indications that such a wider interpretation may include groups such as “informers” that the Prosecutor relies upon. However, there are still no clear assurances that the Court will provide protection for intermediaries.

Summary of Security Measures

- All identifying information should be kept anonymous – location, name etc;
- From the beginning, the victim and/or guardian should be advised not to disclose involvement with Court to anybody;
- Intermediaries should develop clearly understood safety plans for victim and guardian (location of meetings, etc.);
- Intermediaries should seek to ensure psycho-social support and monitoring;
- Confidentiality and anonymity of the victim should be preserved during all phases of the Court’s proceedings. Special measures may be provided to participating victims (use of pseudonyms & common legal representation). If victims were to travel to The Hague, additional court room measures would be put in place;
- The Victim & Witnesses Protection Program should provide the necessary protection, including, if necessary, the provision of a safe house or relocation in case of exposure and serious security risk, and psychosocial support; the exact role of intermediaries in the protection program will be determined.