

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Guidelines Governing the Relations between the Court and Intermediaries

**for the Organs and Units of the Court and Counsel working with
intermediaries**

March 2014

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Introduction

Context

The Court underlines the importance of the development of a model of international criminal justice and, as clearly defined in the Court Strategic Goals, aims at being a well-recognized, adequately supported institution and a model of public administration. To implement these overall strategic goals, the Court has elaborated upon several strategies in specific areas, such as outreach and victims, which were drawn upon in the present Guidelines.

The Court recognizes the importance of synergy and complementarity to achieve common goals. As such, the Court recognizes the importance of the contribution of entities and individuals actively seeking lasting respect for and enforcement of international justice. Conversely, the Court recognizes the importance of preventing any cooperation by the Court with others when that cooperation would be prejudicial to or inconsistent with the rights of the accused and to a fair and impartial trial.

Activities of the Court take place in different countries, each of which involves distinct challenges. To facilitate activities in the field, the Court uses different forms of field presence. The effectiveness of the Court's activities also depends to a large extent on the cooperation it receives from community, regional, national (governmental) organizations and individuals operating in the country where the Court functions. To accomplish the objectives of the Rome Statute and to carry out their functions effectively, the different organs and units of the Court and Counsel¹ establish contacts within local communities and work together with local actors, i.e. so-called intermediaries.

Depending on their knowledge, experience and location, intermediaries may provide valuable support to the organs or units of the Court or Counsel, particularly to VPRS, Prosecution, PIDS and TFV, such as access to (remote) affected geographical areas; certain experience; cultural, linguistic or geographic proximity to affected communities or the ability to work with a low profile.

The nature of the Court itself, with its many different organs and units, significantly complicates the relationship between the Court and intermediaries. While intermediaries may assist and support, they should not be called upon to undertake core functions of the Court. However, this seemingly clear restriction is blurred by the fact that core functions may differ from one organ or unit of the Court to another.

Similarly, although several parts of the Court and Counsel rely on and cooperate with intermediaries, the selection criteria, nature of the relationship, and level of support provided may vary between different organs and units of the Court and Counsel. Even within the same organ or unit of the Court or Counsel, different categories of intermediaries

¹The term "organs and units of the Court and Counsel" will be used throughout this document. The main parts of the Court that interact directly with intermediaries are OTP, VPRS, PIDS and the TFV. Other units (VWU, OPCV) might work with intermediaries, as other units/organs are working with them.

may perform different functions. When these variations are coupled with the reality that intermediaries may not understand the nature of the Court's many different organs and units, the need to establish a clear and consistent approach towards intermediaries becomes paramount.

The above-described pervasive variations in the use of and approach to intermediaries also means that Court-wide standardization of all aspects concerning intermediaries may not be possible. Nonetheless, the present Guidelines ("The Guidelines") provide a framework with common standards and procedures in areas where it is possible to standardize the Court's relationship with intermediaries. Within this framework, the organs or units of the Court or Counsel could then adopt specialized policies in accordance with any specific legal obligations under the Statute.

The Guidelines are based first and foremost on the legal structure of the Court, and take into consideration the relevant jurisprudence of the Court. It is recognized that the Guidelines do not in any way bind or limit the Chambers' exercise of their powers.

The aim of the Guidelines is fourfold:

- to preserve the integrity of the judicial process to the maximum extent possible;
- to provide guidance to staff of the Court and improve efficiency of the Court's operations;
- to provide transparency and clarity for third parties who may interact with the organs or units of the Court or Counsel; and
- to provide guidance on the relationship between the Court and intermediaries.

The following principles guided the formulation of the Guidelines. First, it is paramount that intermediaries uphold the highest standard of confidentiality and respect the impartiality and independence of the Court while carrying out their activities the same way as Court's staff do. Second, there is a need to ensure that intermediaries are not a substitute for staff for the implementation of the mandate of the Court. Third, it must be ensured that the cooperation with intermediaries is not prejudicial to or inconsistent with the rights of the accused or a fair and impartial trial. Fourth, the Court's engagement with intermediaries incurs rights and duties for both parties. Fifth, intermediaries at risk on account of the activities of the Court fall within the Court's general system to assess risks and its general principles of risk management as elaborated in Section 5, and have a duty to perform their functions in a manner that prevents or minimizes any risk to themselves or to other persons.

With regard to implementation of the Guidelines, the criteria for reasonability, objectivity, impartiality, non-discrimination and proportionality will be met while being flexible enough to accommodate operational needs and take into account the capabilities and financial resources of the Court.

Existing Legal Framework, Court Decisions and Policies

Although there is no direct legal basis relating to intermediaries found in the Rome Statute or the other core legal texts of the International Criminal Court, except in the Regulations of

the Trust Fund for Victims², the role of third parties of various kinds and capacities is directly or indirectly mentioned in these texts. For example, regulation 86.1 of the Regulations of the Court anticipates that NGOs and individuals may assist in the dissemination of Standard Application Forms for victims' participation. With regard to protection, rule 87 of the Rules of Procedure and Evidence refers to possible orders from Chambers to apply protective measures for persons at risk on account of the activities of the Court.

The Court's case law³ addresses intermediaries either by reference to the function they fulfil, e.g. assisting victims, or by reference to protection - particularly with respect to redactions under rule 81(4). In light of the Appeals Chamber's judgment on disclosure⁴ and subsequent case law⁵, it is understood that intermediaries, whatever their functions, may fall within the broader category of persons "at risk on account of the activities of the Court"⁶, thereby qualifying for protection. The need for and level of protection - as well as which organ or unit of the Court is to provide this protection⁷ - will be determined on a case-by-case basis based on the risk to which the particular intermediary is exposed⁸. It deserves to be noted here that this document, the form contract and the Code of Conduct were revisited after the 14 March 2012 *Lubanga* judgment⁹ to ensure that they addressed the concerns raised by Trial Chamber I.

The need to develop clear and transparent policies is rooted in the Court's overall strategic goals to be: (1) a model of international criminal justice; (2) a well-recognized and adequately supported institution; and (3) a model of public administration. In particular, Objective 3 of the first Strategic Goal is to further develop policies for implementing the quality standards specified in the Statute and the Rules of Procedure and Evidence with respect to all participants in proceedings, and *persons otherwise affected by the Court's activities*. Also relevant is Strategic Goal 3: to achieve the desired results with minimal resources and through streamlined structures and processes, within a common Court culture, while maintaining flexibility.

In furtherance of these overall strategic goals, the Court has produced several strategy papers which were drawn upon heavily in the present exercise. The "Report of the Court on the Strategy in relation to Victims"¹⁰ recognizes that outside actors play an important role in assisting victims in relation to their participation in Court proceedings and states that the

² Regulations of the TFV, Rule, 67, Court-ASP/4/Res: "The Trust Fund may decide to use intermediaries to facilitate the disbursement of reparations awards, as necessary, where to do so would provide greater access to the beneficiary group and would not create any conflict of interest. Intermediaries may include interested States, intergovernmental organizations, as well as national or international nongovernmental organizations working in close proximity with the beneficiary groups."

³ See for more detail: Cyril Laucci, "Comments on draft project to define policies governing relations between the Court and intermediaries" (shared with Working Group by email on 29/06/2010).

⁴ Appeals Chamber judgment, ICC-01/04-01/07-475 of 13 May 2008 in the *Katanga & Ngudjolo Chui* case

⁵ ICC-01/04-01/06-2582, § 50, fn 117

⁶ ICC-01/04-01/07-475 OA., §§ 1, 43-54

⁷ For example, the VWU will be responsible for the protection of intermediaries only where that protection falls within the scope of its mandate under articles 43(6) and 68 of the Rome Statute.

⁸ ICC-01/04-01/06-1557, § 29

⁹ ICC-01/04-01/06-2842

¹⁰ ICC-ASP/8/45, § 13

Court seeks a common approach with these actors¹¹. The Report also stresses that the Court is committed to ensuring adequate training and support, the sharing of good practices, and establishing clear and transparent relationships with intermediaries¹². The “Prosecutorial Strategy 2009-2012” contains an equal expression of the necessity to cooperate with a variety of outside actors¹³. The Prosecutorial Strategy particularly refers to protection and addresses the duty to protect witnesses, victims and third parties/intermediaries at risk on account of the Court’s activities¹⁴. Finally, the “Strategic Plan for Outreach of the International Criminal Court”¹⁵ provides further guidelines for outreach activities and notes both the positive benefit of co-operating with partners and intermediaries¹⁶ and the need to promulgate intermediary selection criteria to avoid potential risks. The Strategic Plan also promotes training and capacity-building activities to maintain the accuracy of public information about the Court. Taken together, the relevant internal documents and decisions of the Court point squarely to the need for intermediary guidelines.

Outside the Court, extensive consultations were held with stakeholders, including intermediaries. In these consultations, the policies and practices of other international organisations were examined while defining these Guidelines. Thorough reflection on internal and external constraints, duties and preferences revealed that five specific areas are important to address in the framework of a Guideline. These areas are dealt with, in turn, below.

Section 1 – Defining Intermediaries and their Functions

An intermediary is someone who comes between one person and another; who 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 reparations and/or affected communities more broadly on the other. Describing an individual or organisation as an intermediary does not necessarily imply that the organ or unit of the Court or Counsel has requested the individual or organisation to assist. An intermediary might be chosen by a victim or another person to assist them in making contact with an organ or unit of the Court or Counsel. He or she may also be self-appointed.

While it is important to have a general common understanding of the term intermediary, different organs or units of the Court and Counsel use different categories of intermediaries to perform different functions. Therefore, not all aspects concerning intermediaries discussed below equally apply on a Court-wide level. Whether the relationship between an intermediary and the Court is covered by the present Guidelines depends on the nature of the function of an intermediary. Organs and units of the Court and Counsel might interact

¹¹ Report of the Court on the Strategy in relation to Victims, Section I, §13

¹² *Idem*, Section II, Objective I, §23, Objective 3, §37 and Objective 4, §46

¹³ Prosecutorial Strategy 2009-2012, Summary point 6

¹⁴ Prosecutorial Strategy 2009-2012, Objective I, §30

¹⁵ ICC-ASP/5/12 3.1.2

¹⁶ Strategic Plan for Outreach of the International Criminal Court” Section 3.1, §§ 66-68

with intermediaries and allow them to perform the following functions with regard to each enumerated main purpose¹⁷:

- (a) Assist with outreach and public information activities in the field;
- (b) Assist a party or participant to conduct investigations by identifying evidentiary leads and/or witnesses and facilitating contact with potential witnesses;
- (c) Assist (potential) victims in relation to submission of an application, request for supplementary information and/or notification of decisions concerning representation, participation or reparations;
- (d) Communicate with a victim/witness in situations in which direct communication with the Court could endanger the safety of the victim/witness;
- (e) Liaise between Legal Representatives and victims for the purposes of victim participation/reparations¹⁸; and
- (f) Assist the TFV¹⁹ both in its mandate related to reparations ordered by the Court against a convicted person and in using other resources for the benefit of victims subject to the provisions of article 79 of the Rome Statute.

Not everyone who carries out these functions in cooperation with an organ or unit of the Court or Counsel will be considered intermediaries for the purposes of the Guidelines. The services provided by an intermediary are generally provided on a voluntary basis, and are distinguished from those provided through a contract between an organ or unit of the Court or Counsel and an individual or company. Entities whose relationship with the Court is based on cooperation agreements (such as MoUs and national implementing legislation) are not considered to be intermediaries under the Guidelines, either. This stipulation covers, among others, the United Nations, inter-governmental organisations, international non-governmental organizations based in the field, government bodies and national authorities.

Rather, the present policy applies to intermediaries working under a contractual relationship with an organ or unit of the Court or Counsel. For those intermediaries acting outside such contractual relationship, a determination shall be made on a case-by-case basis whether they fall within the present Guidelines. An intermediary may assist an organ or unit of the Court or Counsel on a one-off basis or may cooperate with the Court or Counsel over an extended period of time and/or in relation to multiple communications. An intermediary may work with only one organ or unit of the Court or Counsel, or it may have contact with multiple organs and units of the Court or individual Counsel.

A copy of the “Code of Conduct for Intermediaries”²⁰ shall be delivered to all intermediaries at the earliest opportunity, and they shall be asked to sign a document acknowledging

¹⁷ See also Annex I

¹⁸ It should be noted that intermediaries are not considered to be part of the Legal Representatives’ team, and therefore do not benefit from legal professional privilege as concerns their communications with the victim or the Legal Representatives. This is factor which Legal Representatives will have to take into consideration when determining which information to entrust to intermediaries.

¹⁹ The relationship with implementing intermediaries for TFV activities related to both its reparations and assistance mandates is subject to the existing detailed legal regime to which these Guidelines are subordinate. Wherever applicable, however, the relationship between the TFV and its implementing intermediaries shall be guided by the spirit of these Guidelines.

receipt of the Code. Where it is not possible to provide a copy of the Code of Conduct to the intermediary (for example, due to security reasons), the intermediary shall be briefed in relation to their obligations under the Code, and they shall be requested to sign a *procès-verbal* acknowledging that they have been briefed and that they understand their obligations under the Code of Conduct.

Section 2 – Identifying and Selecting Intermediaries

To identify suitable intermediaries, the organs and units of the Court and Counsel shall carry out, as early as possible, an assessment of the capacity of a potential intermediary (individual/organisation) to carry out specified functions. To that end, the organ or unit of the Court or Counsel shall gather detailed information and develop a profile about the potential intermediary.

The following list of standardized selection criteria will be applied for assessing if a potential intermediary is suitable to undertake functions in coordination with an organ or unit of the Court or Counsel. While the underlying standards are uniform across the Court and Counsel, additional criteria for selecting intermediaries could be developed and adopted by each organ or unit of the Court or Counsel, according to the mandate and functions to be performed.

A distinction needs to be made between two situations:

- *Where the relevant organ or unit of the Court or Counsel is in a position to choose whether to work with a particular intermediary:* The underlying criteria are to be assessed prior to engaging with an intermediary by the organ or unit of the Court or Counsel concerned to determine whether a potential intermediary can carry out certain activities for them; or
- *Where the relevant organ or unit of the Court or Counsel is not in a position to choose whether to work with a particular intermediary, e.g. where the intermediary was self-selected, chosen by a possible victim or referred by another unit or organ:* The underlying criteria are to be assessed as early as possible by the organ or unit of the Court or Counsel concerned to determine whether an intermediary can continue to carry out certain activities for them or if there is a need for certain restrictions of the intermediary's activities.

2.1 Selection Criteria

When the organ or unit of the Court or Counsel decides to work with an intermediary, it first shall identify the tasks required to be carried out. It then shall identify and screen a potential person or organization based on the potential intermediary's ability to assist objectively in the fair administration of justice regarding that specific need.

²⁰ Annex 2.

For the purposes of the screening, the potential intermediary shall be required to disclose to the organ or unit of the Court or Counsel concerned all relevant information covering their mandate, memberships or affiliations, sources of funding, links to parties or participants in the proceedings, potential legal issues/criminal record(s) and motivation to cooperate with the Court or Counsel. The organ, unit or counsel may also collect additional information to conduct its assessment, and may evaluate a potential intermediary on the basis of simple but non-sensitive tasks.

Where it is important that the Court receive assistance from a specific intermediary, who fulfils the main selection criteria (A-C below) but might need increased knowledge or capacity to perform required tasks, the organ or unit of the Court or Counsel may provide training on subjects mentioned under Section 4.4 below. Such efforts should in particular be made when it concerns individuals or organisations with the ability to ensure gender-specific strategies in their work, or when this effort would lead to involving women to respond to, for example, the victimisation of women and girls.

Organs or units of the Court or Counsel, while screening a person or organization to become an intermediary, or, in the case of unselected intermediaries, to continue being an intermediary, shall consider the following criteria during their screening procedure:

A Adherence to confidentiality and respect for dignity

- Willingness and ability to respect the confidentiality of confidential information to which the intermediary might be exposed; and
- Willingness and ability to act with integrity and demonstrate respect for diversity and for the dignity, well-being and privacy of victims/witnesses/accused.

B Credibility and reliability

- Willingness and ability to adhere to the policies of and conduct practices in accordance with Court decisions and the applicable law;
- Willingness and ability to adhere to and conduct practices in accordance with the terms agreed as per the contract and with instructions from the relevant organ or unit of the Court or Counsel; and
- Lack of reason to believe that associating with the potential intermediary could have negative repercussions for the Court or its activities.

C Risk assessment resulting from interaction with the Court or Counsel

- Ability of both the organ or unit of the Court or Counsel and the intermediary to contact each other in accordance with and subject to the Court-wide standards and procedures for protection of persons at risk on account of the activities of the Court described in Section 5 of this document;
- Willingness and ability of the intermediary to perform the assigned function in a manner which prevents or minimizes risks to any persons, and especially to those with whom the intermediary interacts on behalf of an organ or unit of the Court or Counsel; and
- Balance between the benefit of using a particular intermediary and the need to protect that intermediary from risks resulting from his or her interaction with the Court.

D Capacity, knowledge and experience

Appropriate capacity, knowledge and experience requirements are dependent on the activities to be carried out by the intermediary. As required, the following should be taken into consideration when selecting an intermediary:

- Competence and availability:
 - Necessary skills, competencies and psycho-social status to undertake the functions contemplated;
 - Competency to produce expected results; and
 - Potential for engagement for the required term.

- Cultural, social and linguistic proximity to affected communities:
 - Knowledge and understanding of regional, national or local socio-political context;
 - Network and associates within affected communities;
 - Knowledge of particular society members who may be selected or potential witnesses;
 - Knowledge of other potential sources of relevant information;
 - Geographic or social (via established trust) proximity to the affected population and/or specific groups;
 - Linguistic proximity to affected population and/or specific groups;
 - Capacity for ethical interaction with the affected population and/or specific groups; and
 - Ability to ensure gender-specific strategies.

- Access to/accessibility in (remote) affected geographical areas:
 - Access (direct or indirect) to, located in, or has operations in parts of the country where potential victims are located;
 - Accessible by potential victims/witnesses, including those in remote affected geographical areas;
 - Established relationships of trust and confidence with victims or potential witnesses to facilitate contact; and
 - Relevant partnerships, networks or links, within the country or internationally.

- Legal/judicial knowledge/experience:
 - Relevant legal knowledge/experience;
 - Ability to access legal assistance;
 - If an organisation, ability to draw upon lawyers from among its membership; and
 - Awareness of the Court and international legal standards.

- Experience in working with victims:
 - Experience in working respectfully with victims, including traumatised and other vulnerable individuals (women, children); and
 - Experience in applying gender-specific strategies.

- Resources (staff, financial, infrastructural, logistical, equipment):
 - Ability to appoint specific persons to the activities to be carried out, particularly in cases where confidentiality is important; and
 - Access to a private office and a secure place (lockable safe, office cabinet or room) in which to store confidential information.

Section 3 – Formalizing Intermediary Relationships

Intermediaries may cooperate with the Court either within or outside the framework of a contract.

For the purpose of the present Guidelines, the following categories shall be distinguished:

- Contracted intermediaries, to whom all provisions shall apply;
- Other intermediaries approved by the Court by way of affidavit, to whom the Guidelines shall apply unless otherwise specified; and
- Unapproved intermediaries (self-appointed intermediaries, one-off intermediaries), for which the application of the provisions of the present Guidelines is subject to determination on a case-by-case basis.

Before or upon initiating the relationship and depending on the nature of the functions to be performed, the organ or unit of the Court or Counsel must brief the intermediary about their relation with the Court or Counsel; the general mission of the Court and Counsel, including the rights of the accused and a fair and impartial trial; the duties agreed to be performed and the conditions for reimbursement of expenses. Furthermore, the intermediary must be briefed about the obligations of both the organ or unit of the Court or Counsel and the intermediary regarding the application of good practices on risk prevention, confidentiality of information, the possibility and reasons for the disclosure of their identity and their potential liability to be called into Court proceedings and to be cross-examined by opposing parties.

The organs and units of the Court and Counsel may appoint focal points for the communication with intermediaries. Both the focal point and the intermediary will be briefed about the Code of Conduct and the Guidelines on Good Practices on Risk Prevention and its application in the specific country and circumstances where the tasks will be performed, as well as any update. The intermediary will receive the Guidelines on Good Practices on Risk Prevention as a reference document, subject to the same principles which apply to the Code of Conduct.

During the briefing, the organ or unit of the Court or Counsel will explain to the intermediary the notion and different levels of confidentiality, and particularly about:

- a) Information that should not be disclosed to the public, but which the intermediary can disclose to other organs, witnesses, victims, participants or parties appearing before the Court;
- b) Information which the intermediary may not disclose to anyone other than the specific organ, unit, party or participants with whom he or she is cooperating; and

- c) Information which is subject to Court protective measures, and which can only be disclosed in a manner which is consistent with the protective measures in place.

The intermediary may consent to being interviewed by another party or participant in the proceedings subject to a), b) and c) above.

3.1 Contract/Agreement

Based on the risk assessment, intermediaries who have been selected by and tasked upon request of an organ or unit of the Court or Counsel for an on-going relationship may be asked to perform their tasks within the framework of an agreement. If the intermediary is an organisation, the agreement will identify the name(s) of the person(s) who will be performing the tasks described in the agreement.

The organs and units of the Court and Counsel will use the standard template agreement for this purpose. This agreement will stipulate at least the duties to be performed, the start and end date of the agreement, the obligations of confidentiality and the acceptance of the possibility of disclosure of the identity of the intermediary. The agreement will be done in either English or French. In exceptional cases, the agreement may be provided additionally in a language that the intermediary understands, the English or French version being authoritative.

Contracted intermediaries should be made aware that there is no expectation of contract renewal.

3.2 Accountability

Intermediaries shall obey the Code of Conduct for Intermediaries, which contains ethical provisions relevant to the functions they perform.

The organ or unit of the Court or Counsel shall appoint one (or more) of their (staff) members to supervise the work of the intermediary and to keep a record of their supervisory methods and actions. There will be a reciprocal responsibility on the appointed person(s) working with the intermediary to ensure that the tasks delegated to the intermediary are consistent with and conducted consistently with the Rome Statute; the Rules of Evidence and Procedure; the Regulations of the Court; when applicable, the Regulations of the Office of the Prosecutor and/or the Regulations of the Registry and all relevant policies of the Court, all relevant orders or decisions of Chambers and the above mentioned Code of Conduct for Intermediaries. Lastly, the appointed person(s) shall ensure that the tasks delegated to the intermediary, in both their delegation and their performance, in no way adversely impact on the fairness and impartiality of the proceedings.

Section 4 – Supporting Intermediary Duties

The terms and conditions under which Court-related activities should be carried out and the level of support that should be expected must be made clear to the intermediary at the

beginning of the contract to the extent possible. The relevant organs and units of the Court and Counsel should coordinate in providing material support and training where possible.

Where the organs or units of the Court or Counsel request intermediaries to provide assistance in carrying out certain tasks, the costs incurred in carrying out such tasks should be reimbursed in line with the prior agreement and as far as the financial resources of the Court allow. An intermediary may also receive remuneration as individual contractor. Conversely, it is not appropriate for the organs or units of the Court or Counsel to provide support or to reimburse expenses incurred for work carried out on a voluntary basis without an explicit request from the organ or unit of the Court or Counsel concerned, or without respecting the terms and conditions of the request. Any support provided to intermediaries should be agreed upon in advance and, where possible, in writing with the organ or unit of the Court or the Counsel. Remuneration, where applicable, only applies for contracted intermediaries and is subject to compliance with the terms of the contract, the Code of Conduct and the requirements of supervision of intermediaries referred to in section 3.2 of this document. Reimbursement of expenses, where applicable, is available to contracted intermediaries and, on an exceptional basis, to other intermediaries approved by the Court by way of affidavit. Unapproved intermediaries should not expect or receive any remuneration or reimbursement from any organs or units of the Court or Counsel. Additionally, the support given to intermediaries for Court- or Counsel-requested tasks, as well as the policies surrounding support, must be transparent.

4.1 Compensation for Time/Lost Earnings

An intermediary cooperating with an organ or unit of the Court or Counsel may be considered to provide services on a voluntary basis and not receive compensation for the tasks performed, or they may receive compensation for the time required to perform the requested tasks.

Intermediaries cooperating with an organ or unit of the Court within the framework of a contract as an “individual contractor” or as a “service provider” may receive compensation per the terms and conditions of the contract and subject to the requirements of supervision of intermediaries referred to in section 3.2 of this document.

Similarly, intermediaries who are tasked upon the request of Counsel may receive compensation if they are contracted as a “resource person” per regulation 139 of the Regulations of the Registry.

Except for contracts developed as a result of a tender process for contracting a service provider, the nature of the tasks, time required and foreseen length of the cooperation will be factors that determine whether and at what level an intermediary should be compensated.

4.2 Reimbursement of Expenses

The Court maintains a list with the types of costs eligible for reimbursement and the common rates for reimbursement of expenses for activities carried out upon request of the Court or Counsel. The standards are based on the actual cost or reasonable amount for

expenses actually incurred to carry out activities upon request of the Court or Counsel. Examples of reimbursable expenses may include transportation to participate in meetings or meet victims/witnesses; telephone air time to communicate with victims/witnesses and internet access in order to maintain contact with the organs or units of the Court or Counsel. Reimbursement rates will be applied consistently in all organs and units of the Court and Counsel. The standards will be country-specific and will be revised regularly to meet the criteria of reasonability, objectivity and impartiality, while being flexible enough to accommodate operational needs. The reimbursement rates are and shall remain transparent and public.

Expenses can only be reimbursed to intermediaries if agreed upon in advance and, where possible, in writing, with the unit or organ of the Court or the Counsel, and if the amounts to be reimbursed have been quantified or quantifiable. As an exception, reasonable expenses may be authorized post-facto only if denying the expenses would be disproportional to the reasons for not reaching agreement in writing in advance.

4.3 Provision of Materials

The organs and units of the Court or Counsel may provide material support to facilitate the work of intermediaries, for example to prevent risks for the security of information and persons. This may include providing, subject to availability of funds, equipment and materials that are essential for maintaining the confidentiality and security of information, such as safes, encrypted USB sticks, locks, etc. Before handing over the materials to the intermediary, a representative of the organ or unit of the Court or Counsel and the intermediary will sign the "Agreement for the receipt and use of ICC assets".

For outreach, PIDS and VPRS may provide written documents including informational materials and standard application forms, explanatory materials in most common languages spoken by victims, as well as audio-visual materials responding to the information needs and culture of target groups.

4.4 Capacity Building

Based on the outcome of the needs assessment, the initial risk assessment, the activities to be carried out in coordination with the organs or units of the Court or Counsel, the prior agreements and the duration of the relationship, intermediaries may receive training and technical assistance as appropriate to strengthen the expertise and capacity of the intermediaries in Court or Counsel-related activities. Training should be offered, where suitable, in cooperation with the relevant organs and units of the Court and Counsel. Topics of training may cover one or more of the following subjects, and may be provided, as necessary, on a regular basis:

Knowledge of international justice:

- The Court and the relationships between the organs and units and Counsel;
- Legal technicalities, judicial decisions and their implications;
- Requirements of a fair and impartial trial;

- Rights of the defence and potential for victims to be witnesses for defence/sources of exculpatory material;
- The role and rights of victims in Court proceedings;
- Accurate reporting on the Court (for journalists);
- Updates regarding the development of proceedings; and
- (Non-)disclosure of identities for victims, witnesses and persons who are at risk on account of giving testimony or on account of any other activity of the Court.

Protection and security:

- Guidelines on best practices on preventing and minimizing risks; and
- Keeping information confidential, including ethical considerations and confidential coding.

Field-based training:

- Gender sensitivity and best practices for working with traumatised or particularly vulnerable victims;
- Awareness and prevention of secondary traumatisation;
- Information on reporting, monitoring and evaluation and research methods;
- How to communicate effectively with affected communities about the Court;
- Information and tips on assisting victims to formulate their applications completely and in a timely manner; and
- Information on working with victims/witnesses related to the Defence.

Other skills:

- Information and tips on increasing institutional capacity; and
- ICT skills for safe storage of documents and information.

4.5 Psycho-social Care and Support

To ensure support for intermediaries who experience trauma and related conditions as a consequence of their work for the organs or units of the Court or Counsel, the Court will provide, where appropriate, referrals to local organisations that provide psychological care and support.

Section 5 – Providing Security and Protection

The Court has a duty to prevent or manage security risks to intermediaries when those risks result from the intermediaries' interaction with the Court and the fulfilment of the intermediaries' functions on behalf of the Court.

As a general rule, the Court shall avoid placing intermediaries in a situation where protective measures may become necessary. In circumstances where, in spite of this general policy, a risk materializes for a specific intermediary, then appropriate protective measures shall be implemented.

The need for and level of protection will be determined on a case-by-case basis as a result of an individual risk assessment (IRA). The IRA shall be regularly updated based on relevant available information.

5.1 The duty of protection of organs and units of the Court and Counsel interacting with intermediaries

While a key role for the management of security risks to and protection of intermediaries is allocated to the specialized entities of the Court (VWU, SSS) and the Prosecution, each organ or unit of the Court or Counsel wishing to engage with intermediaries shall be accountable for the following responsibilities:

- a) Sharing any relevant information with the competent specialized entity prior to engaging with an intermediary so that an individual risk assessment (IRA) can be conducted by the specialized entity;
- b) Sharing any relevant information with the competent specialized entity concerning the performance of the intermediary or other related issues that could affect the security of persons contacted by the intermediary in the past, present or future. A risk assessment based, inter alia, on this information can inform the decision of another section or party to engage with this intermediary in the future. This responsibility does not mandate that the underlying information itself or the fact that an intermediary is already working or has worked with a section or party of the Court will be disclosed.
- c) Not engaging with an intermediary if, according to the IRA, no adequate protection tools are available to treat an identified risk;
- d) Attempting to seek alternative intermediaries if, according to the IRA, the cooperation of a particular person with the Court bears considerable risks to that person or to others which can be managed only by employing measures either that are highly intrusive to the life of a person or his/her family, or that have considerable budgetary implications;
- e) Employing best practices when interacting with intermediaries as specified below, in order to prevent and limit risks, and to follow any additional guidelines on interaction with intermediaries provided by the specialized entity as part of the IRA;
- f) Providing the intermediary with information on best practices, including information regarding the security of persons and information;
- g) Providing the intermediary with the contact details of the focal point to contact immediately when he/she feels at risk; and
- h) Disengaging from an intermediary if he or she does not comply with the relevant guidelines and good practices that are intended to prevent or limit his/her own risk and the transfer of risk to others, particularly to those with whom the intermediary has come into contact.

5.2 Risk Assessment

Before any organ or unit of the Court or Counsel engages or contacts an intermediary, an individual risk assessment (IRA) must be conducted by the relevant specialized entity (VWU and/or SSS) or the Prosecution. As part of the IRA, the specialized entities shall indicate any

conditions which must be employed by an organ or unit of the Court or Counsel to assist in preventing or managing an identified risk. The IRA shall be based on the relevant Security Risk and Threat Assessment (SRTA) and the related protection strategies and protection mechanism and shall consider individual specific information or conditions.

The organs or units of the Court or Counsel should ensure that intermediaries are informed about the risks and implications of their relationship. They will keep a record of the information provided to the intermediary. The organ or unit of the Court or Counsel shall also keep record of all security and threat related information provided by the intermediary and forward such information to the specialised unit responsible for the IRA.

Monitoring of risks should continue throughout the entire period of the relationship with the intermediary to ascertain whether changes have taken place, particularly with regard to potential risks.

5.3 Prevention and Limitation of Risk

Court staff and Counsel must always employ best practices when interacting with intermediaries, victims or witnesses, or when handling confidential documents and information in order to avoid or minimise unnecessary exposure to risk. Intermediaries equally shall be required to employ best practices.

Depending on the activities the intermediary will perform, the organs and units of the Court and Counsel shall explain to intermediaries their responsibility toward the safety of persons with whom they interact and the need to take measures to prevent or limit any risk to themselves and to any person with whom intermediaries interact on behalf of an organ or unit of the Court or Counsel.

The organs or units of the Court or Counsel shall make available to intermediaries a document on Good Practices on Risk Prevention and Management. The document includes a set of consolidated good practice guidelines that will facilitate intermediaries conducting their activities in a manner that limits their own risk and avoids or limits a transfer of the risk to victims, witnesses and others with whom they come into contact. The Good Practices document will be disseminated and regularly updated and, if necessary, versions specific to a situation may be prepared. The organs or units of the Court or Counsel may also provide training on these good practices.

Risks to intermediaries may be prevented or minimized by preventing or limiting public knowledge of intermediaries' cooperation with the Court and/or publication of their identities. Nonetheless, intermediaries shall be informed that their cooperation with the Court and their identities may be disclosed to the parties and participants in the proceedings. Intermediaries shall be asked to sign a document to acknowledge that they are aware of this fact. Where it is not possible to sign such document, (for example, due to security reasons), they shall be requested to sign a *procès-verbal* acknowledging that they are aware of this fact. Where an intermediary does not agree to cooperate under these conditions, the organ or unit of the Court or Counsel should disengage from him/her or not proceed in establishing a relationship. The organ or unit should also disengage or not proceed if an intermediary fails

to observe and comply with best/good practices while engaged with the Court with the result that the intermediary falls outside of the framework of security measures for intermediaries.

5.4 Confidentiality Measures/Non-Disclosure of Identity

For those intermediaries who have a formal contractual arrangement with the Court, the above duties shall be stipulated in the contract. All other intermediaries shall, where possible, be asked to sign a confidentiality agreement. Such agreements should set out in detail what kind of information is confidential, the restrictions of its use and the manner in which confidential information is to be stored and safeguarded and should clearly state the obligations and responsibilities of each party.

Communication and correspondence between the organs and units of the Court and Counsel on the one hand, and intermediaries on the other, shall be done with due regard to the requirements of confidentiality and security. Documents and materials, in whatever form, acquired, produced or delivered by intermediaries as part of the contractual relationship with the Court must be kept strictly confidential, excluding what is publicly known.

Those intermediaries whose functions do not imply the handling of confidential information are not subject to the present sub-section. Similarly, the prohibition of disclosure of intermediaries' identity does not apply when, because of the circumstances or because of the nature of the particular intermediary's functions, such prohibition bears no relevance with respect to that intermediary.

5.5 Protective Measures and Security Arrangements

In the event that the performance of the functions of an intermediary creates security risks to the intermediary, the Court must take measures to manage those risks. Any organ or unit of the Court or Counsel is required to share any information related to such security risks with the relevant specialized entities (VWU or SSS) or OTP, as applicable. That/Those entities will then assess the information, advise on the most appropriate course of action in order to maximise the safety of the intermediary and take measures where appropriate.

Protective measures shall not be prejudicial to or inconsistent with the rights of the accused or a fair and impartial trial. In addition, protective measures shall be proportional to an identified risk and the least intrusive option with regard to the lives of intermediaries and/or of other persons.

In discharging its duty of protection, the specialised units of the Court (VWU or SSS) may cooperate with a trustworthy security network of national and/or international actors. In cases of emergency, members of this trusted network could respond to security risks or recommend other actors that could take steps to aid in the Court's protective measures.

Section 6 – Monitoring these Guidelines

6.1 Monitoring of the Present Guidelines

Each organ and unit of the Court and Counsel shall be responsible for the proper application of the provisions of the Guidelines in relation to intermediaries that cooperate with their organ or unit or Counsel.

As the Guidelines contain innovations, its effectiveness to reach the three aims set out in the introduction will be monitored. The monitoring mechanism will assess the level of implementation, measure the progress and identify obstacles and necessary revisions, including those required or suggested by jurisprudence of the Court. The monitoring mechanism will recognize the features existing in the different organs and units of the Court and Counsel and in different geographical areas. Any monitoring mechanism shall not affect the independence of the Prosecution.

During the first two years, monitoring of the Guidelines will be conducted by six-monthly meetings of the Working Group on Intermediaries, and by a permanent observation mechanism for receiving recommendations and the exchange of experience and information.

A detailed review will take place eighteen months after the adoption of the Guidelines. This review will assess implementation and overall effectiveness at the policy and practice level, across the different organs and units of the Court and Counsel and with selected intermediaries and other participants in the process. ICC Staff members, Counsels, staff from intermediary organizations, individual intermediaries, victims and witnesses will participate in the comprehensive monitoring process where methods such as staff and stakeholders' surveys, semi-structured interviews with key informants, case studies, desk top review of policies and procedures and a permanent observation mechanism can be used. The review will apply geographic and gender-specific strategies and a child-friendly approach, and context will be acknowledged as an important factor in the interpretation of the data.

Based on the outcome of the review, the Guidelines will be updated and, where required, will integrate lessons learned and suitable measures contributing to the aims of the Guidelines.

6.2 Final Provisions

The present Guidelines shall enter into force on 17 March 2014.

ANNEX I

Summary of the main tasks conducted by intermediaries (by function and by unit/organ)

Function	Organ/Unit	Activities carried out
a. Assist with <u>outreach and public information activities</u> in the field.	PIDS	<ul style="list-style-type: none"> • Raise awareness of the affected communities in “situation” countries about the Court and its work and conduct outreach activities; • Raise public awareness about the Court and provide information relating to the Court; and • Organise capacity building workshops for or with local actors (including officials, media, legal profession, community leaders, NGOs).
b. Assist a party or participant to conduct investigations by <u>identifying evidentiary leads and/or</u> witnesses and facilitating contact with <u>(potential)</u> witnesses.	Counsel OPCV OTP	<ul style="list-style-type: none"> • Monitor the situations and document international crimes; • Assist in the preservation of evidence; • Assist the OTP to locate and contact witnesses and other investigative leads, and/or to maintain contacts between the OTP and witnesses (for both investigation and protection purposes), particularly where it is adjudged to be too insecure for OTP staff to do so directly; • Assist Defence Counsel to contact potential witnesses and collect evidence for a particular submission; and • Assist legal representatives of victims to contact potential witnesses and collect evidence for a particular submission.
c. <u>Assist (potential) victims in relation to submission of an application, request for supplementary information and/or notification of decisions concerning representation, participation or reparations.</u>	Counsel OPCV VPRS	<ul style="list-style-type: none"> • Identify victims in affected communities; • Inform victims in affected areas about their rights; • Assist victims to get in touch with the Court; • Assist Court staff to meet with victims; • Assist victims in completing applications for representations, participation or reparation; • Provide support and assistance to victims linked to their participation, e.g. psycho-social services, security, legal services etc.; • Facilitate the information flow between the Court and the victim applicants, e.g. to obtain missing information or implement other orders of the Chambers; and • Assist victims to understand relevant judicial decisions of the Court, e.g. regarding common legal representation or criteria for acceptance as a victim.
d. <u>Communicate with a victim/witness in situations in which direct communication with the Court could endanger the safety of the victim/witness.</u>	Counsel OPCV OTP VPRS	<ul style="list-style-type: none"> • Assist OTP to communicate with victims/witnesses; • Facilitate the flow of information between the Court and the victim applicants; • Assist the OPCV or VPRS to communicate with victims; • Act as the first contact point, receiving security concerns and providing victims and witnesses with advice; • Monitor the physical and psychological well-being of victims and witnesses; • Locate and/or provide medical assistance, psychological support and other services for victims and witnesses; and • Assist witnesses to appear before the Court.
e. <u>Liaise between Legal Representatives and victims for the purposes of victim participation/reparations.</u>	Counsel OPCV	<ul style="list-style-type: none"> • Facilitate contact between victims and their legal representatives to convey information to clients, collect evidence for a particular submission and determine victims’ views and concerns and/or obtain instructions.
f. Assist the TFV in preparing for reparations ordered by the Court against a convicted person.	TFV	<ul style="list-style-type: none"> • Assist in the awareness raising, advocacy and other outreach-related activities; and • Assist in collecting data on victims’ needs and attitudes.

The following table defines the tasks intermediaries might carry out when interacting with an organ or unit of the Court or Counsel.

Organ/ Unit/Counsel	Functions	Functions intermediaries could assist with	Description of Tasks intermediaries can perform
OTP	<ul style="list-style-type: none"> • Receive referrals and any substantiated information on crimes within the jurisdiction of the Court; • Examine referrals and information; and • Conduct investigations, collect evidence, interview witnesses, identify the perpetrators, select cases for prosecution, and prosecute cases before the Court. 	<p>Assist in <u>identifying evidentiary leads and/or witnesses</u> and facilitating contact with <u>(potential) witnesses</u>.</p>	<ul style="list-style-type: none"> • Facilitate contact between the Prosecution and witnesses or any other source of information.
		<p><u>Communicate with a victim/witness in situations in which direct communication with the Court could endanger the safety of the victim/witness.</u></p>	<ul style="list-style-type: none"> • Facilitate contact between the Prosecution and victims or witnesses
OPCV	<ul style="list-style-type: none"> • Provide support and assistance to the Legal Representative for victims and to victims, including, where appropriate: <ul style="list-style-type: none"> ○ Providing legal research and advice; and ○ Appearing before a Chamber in respect of specific issues. 	<p>Assist a party or participant to conduct investigations by <u>identifying evidentiary leads and/or witnesses</u> and facilitating contact with <u>(potential) witnesses</u>.</p>	<ul style="list-style-type: none"> • Assist in the preservation of evidence; and • Assist legal representatives of victims to contact potential witnesses and collect evidence for a particular submission.

Organ/ Unit/Counsel	Functions	Functions intermediaries could assist with	Description of Tasks intermediaries can perform
		<p><u>Assist (potential) victims in relation to submission of an application, request for supplementary information and/or notification of decisions concerning representation, participation or reparations.</u></p>	<ul style="list-style-type: none"> • Identify victims in affected communities; • Inform victims in affected areas about their rights; • Assist victims to get in touch with the Court; • Assist Court staff to meet with victims; • Assist victims in completing applications for representation, participation or reparation; • Provide victims with support and assistance linked to their participation, e.g. psycho-social services, security, legal services etc.; • Facilitate the information flow between the Court and the victim applicants, e.g. to obtain missing information or to implement other orders of the Chambers; and • Assist victims to understand judicial decisions of the Court relevant to them, e.g. regarding common legal representation or criteria for acceptance as a victim.

Organ/ Unit/Counsel	Functions	Functions intermediaries could assist with	Description of Tasks intermediaries can perform
		<p><u>Communicate with a victim/witness in situations in which direct communication with the Court could endanger the safety of the victim/witness.</u></p>	<ul style="list-style-type: none"> • Facilitate the flow of information between the Court and the victim applicants; • Assist the OPCV to communicate with victims; • Act as the first contact point, receiving security concerns and providing victims and witnesses with advice; • Monitor the physical and psychological well-being of victims and witnesses; and • Locate and/or provide medical assistance, psychological support and other services for victims and witnesses.
		<p><u>Liaise between Legal Representatives and victims for the purposes of <u>victim participation/reparations.</u></u></p>	<ul style="list-style-type: none"> • Facilitate contact between victims and their legal representatives to convey information to clients, to collect evidence for a particular submission and to determine victims' views and concerns and/or to obtain instructions.

Organ/ Unit/Counsel	Functions	Functions intermediaries could assist with	Description of Tasks intermediaries can perform
VPRS	<ul style="list-style-type: none"> • Ensure that victims are informed of the Court’s scheme relating to participation and reparations and provide them with all necessary information with regard to proceedings, including giving adequate publicity to the proceedings when appropriate in accordance with rules 92.8 and 96.1 of the Rules of Procedure and Evidence; • Develop the standard application forms contemplated in rules 89 and 94 of the Rules of Procedure and Evidence for approval by the Presidency and organise the dissemination of such forms in accordance with regulations 86.1 and 88.1 of the Regulations of the Court, including making them available to intergovernmental and non-governmental organisations that may assist in their dissemination; • Receive applications for participation and reparations from victims, seek additional information as appropriate, enter all relevant information relating to the applications in a database and present all applications received to the relevant Chamber, together with a report thereon, in accordance with regulations 86 and 88 of the Regulations of the Court; • Assist victims in obtaining legal assistance and in organising their legal representation in accordance with rule 90 of the 	<p><u>Assist (potential) victims in relation to submission of an application, request for supplementary information and/or notification of decisions concerning representation, participation or reparations.</u></p>	<ul style="list-style-type: none"> • Identify victims in affected communities; • Inform victims in affected areas about their rights; • Assist victims to get in touch with the Court; • Assist Court staff to meet with victims; • Assist victims in completing applications for representation, participation or reparation; • Provide victims with support and assistance linked to their participation, e.g. psycho-social services, security, legal services etc.; • Facilitate the flow of information between the Court and the victim applicants, e.g. to obtain missing information or to implement other orders of the Chambers; and • Assist victims to understand judicial decisions of the Court relevant to them, e.g. regarding common legal representation or criteria for acceptance as a victim.

Organ/ Unit/Counsel	Functions	Functions intermediaries could assist with	Description of Tasks intermediaries can perform
	<p>Rules of Procedure and Evidence, including providing financial assistance as appropriate;</p> <ul style="list-style-type: none"> • Provide assistance, when appropriate, within the Registry on questions relating to participation and reparations, in particular to the Victims and Witnesses Unit, and to the Court Management Section in relation to notifications under rule 92 of the Rules of Procedure and Evidence; and • Provide, as and when appropriate, expert input to the Chambers, the judges and the Court as a whole regarding victim participation and reparations. 	<p>Communicate with a victim/witness in situations in which direct communication with the Court could endanger the safety of the victim/witness.</p>	<ul style="list-style-type: none"> • Facilitate the flow of information between the Court and the victim applicants; • Assist the VPRS to communicate with victims; • Act as the first contact point, receiving security concerns and providing victims and witnesses with advice; • Monitor the physical and psychological well-being of victims; and • Locate and/or provide medical assistance, psychological support and other services for victims.
Counsel		<p>Assist a party or participant to conduct investigations by <u>identifying evidentiary leads and/or witnesses</u> and facilitating contact with (<u>potential</u>) witnesses.</p>	<ul style="list-style-type: none"> • Assist in the preservation of evidence; • Assist Defence Counsel to contact potential witnesses and collect evidence for a particular submission; and • Assist legal representatives of victims to contact potential witnesses and collect evidence for a particular submission.

Organ/ Unit/Counsel	Functions	Functions intermediaries could assist with	Description of Tasks intermediaries can perform
		<p><u>Assist (potential) victims in relation to submission of an application, request for supplementary information and/or notification of decisions concerning representation, participation or reparations.</u></p>	<ul style="list-style-type: none"> • Inform victims in affected areas about their rights; • Assist victims to get in touch with the Court; • Provide support and assistance to victims linked to their participation, e.g. psycho-social services, security, legal services etc.; • Facilitate the flow of information between the Court and the victim applicants, e.g. to obtain missing information or to implement other orders of the Chambers; and • Assist victims to understand relevant judicial decisions of the Court, e.g. regarding common legal representation or criteria for acceptance as a victim.
		<p><u>Communicate with a victim/witness, in situations in which direct communication with the Court could endanger the safety of the victim/witness.</u></p>	<ul style="list-style-type: none"> • Facilitate the flow of information between the Court and the victim applicants; • Act as the first contact point, receiving security concerns and providing victims and witnesses with advice; • Monitor the physical and psychological well-being of victims and witnesses; • Locate and/or provide medical assistance, psychological support and other services for victims and witnesses; and • Assist witnesses to appear before the Court.

Organ/ Unit/Counsel	Functions	Functions intermediaries could assist with	Description of Tasks intermediaries can perform
		<p><u>Liaise between Legal Representatives and victims for the purposes of victim participation/reparations.</u></p>	<ul style="list-style-type: none"> • Facilitate contact between victims and their Legal Representatives to convey information to clients, to collect evidence for a particular submission, and to determine victims' views and concerns and/or to obtain instructions.
<p>PIDS</p>	<ul style="list-style-type: none"> • Deliver accurate and timely information about the principles, objectives and activities of the Court to the <u>public at large and to target audiences</u>, through different channels of communication, including media, presentations, and a web site; and • Establish sustainable, two-way communication between the Court and <u>communities affected by situations that are the subject of investigations or proceedings</u>, with an aim to provide information, promote understanding and garner support for the Court's work, and to provide access to judicial proceedings. 	<p><u>Assist with outreach and public information activities in the field.</u></p>	<ul style="list-style-type: none"> • Assist to raise awareness within affected communities in "situation" countries about the Court and its work and to conduct outreach activities; • Assist to raise public awareness about the Court and to provide information relating to the Court; and • Organise capacity building workshops for or with local actors, including officials, media, legal professionals, community leaders and NGOs.
<p>TFV</p>	<ul style="list-style-type: none"> • Implement Court-ordered <u>reparations</u> awards against a convicted person when directed by the Court to do so; and • Use voluntary contributions from donors to provide victims and their families in situations where the Court is active with physical rehabilitation, material support, and/or psychological rehabilitation. 	<p>Assist the TFV in its mandate related to reparations ordered by the Court against a convicted person.</p> <p>Assist the TFV in using other resources for the benefit of victims subject to the provisions of article 79 of the Rome Statute.</p>	<ul style="list-style-type: none"> • Assist the TFV in the preparation and implementation of reparations ordered by the Court against a convicted person as instructed by the Chamber and the TFV. • Carry out, on behalf of the TFV, programmes and projects aimed at assisting and benefitting victims subject to the provisions of article 79 of the Rome Statute.