

HUMAN RIGHTS CENTER

UC Berkeley School of Law



September 2014

FIRST RESPONDERS

An International Workshop on Collecting and
Analyzing Evidence of International Crimes

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The Human Rights Center at the University of California, Berkeley, School of Law conducts research on war crimes and other serious violations of international humanitarian law and human rights. Using evidence-based methods and innovative technologies, we support efforts to hold perpetrators accountable and to protect vulnerable populations. We also train students and advocates to document human rights violations and turn this information into effective action.

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I. INTRODUCTION

THIS REPORT PRESENTS major points of discussion and recommendations from *First Responders: An International Workshop on Collecting and Analyzing Evidence of International Crimes*, an international conference held on 8–11 September 2014 in Salzburg, Austria. Workshop participants discussed how local and international NGOs, journalists, forensic scientists, health professionals, and other “first responders” to war crimes and human rights violations can most effectively work with courts—and the International Criminal Court (ICC) in particular—in the collection of evidence of serious international crimes, such as genocide and crimes against humanity.

The Human Rights Center (HRC) at the UC Berkeley School of Law and the Open Society Justice Initiative (OSJI) hosted the workshop in collaboration with the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) and the Salzburg Global Seminars. The workshop was the fourth in a series organized by the Human Rights Center to improve war crimes investigations and to strengthen relationships among NGOs, technology experts, and ICC investigators. The workshop sought to promote an open exchange of ideas on cooperation between court investigators and first responders in conflict and post-conflict situations.

Workshop participants included documentation experts, human rights investigators, international legal scholars, and ICC prosecutors and investigators (see Appendix A for participant list). A summary of the conversation is presented below, followed by recommendations for next steps. The goals tackled by workshop participants included the following:

- **Cooperation:** *Clarifying whether there is a need for greater collaboration and cooperation between the OTP and first responders.*
- **Communication:** *Enhancing communication between the OTP and first responders, including clarifying the respective mandates of the OTP in relation to both domestic and international NGOs.*
- **Security:** *Addressing security concerns related to actual and perceived first responder-OTP interaction.*
- **Capacity:** *Discussing how to increase the capacity of first responders in a manner that helps both the responders and the OTP better fulfill their respective mandates.*
- **Guidelines:** *Vetting guidelines for the preservation and collection of evidence by NGOs and other first responders.*

II. BACKGROUND

IN 2012, THE ICC'S OFFICE OF THE PROSECUTOR decided to reconsider how it engages with NGOs and other non-Court actors in its investigations. Specifically, the OTP stated it “intends to, as part of lessons learned, evaluate the role that the NGO community has played in investigations, and to explore how new forms of cooperation would allow the office to directly access...evidence that has been identified by these first responders.”¹ Looking to the future, the OTP recognized that it needed to change its modus operandi from relying on requests for information to developing proactive initiatives and incentives that encourage NGOs to voluntarily furnish valuable information to the OTP. The Court, rather than *pushing* for information from first responders, sought to create a *pulling* effect that encouraged cooperation with local actors. In response to this challenge, several institutions—notably, the Open Society Justice Initiative and Human Rights Center—have initiated projects to improve the interaction between the OTP and first responders.

In June 2013, OSJI, in collaboration with Humanity United, convened a stocktaking meeting to explore the challenges faced by the OTP, and how to improve its performance and enhance its credibility, both before the ICC's judiciary and the general public. Addressing many crucial issues, this meeting explored ways of improving the interaction between the OTP and NGOs and civil society groups. Following the meeting, OSJI noted that “while NGOs have provided reams of information to the OTP...there has been relatively little concerted examination of the use to which such information has been put, and the particular value it has had for specific investigations and prosecutions.” OSJI also noted that “the OTP wants to multiply its current investigative capacities and generate new evidence by leveraging the capacity of...untapped NGOs to glean more lead information. But the vast majority of these organizations remain unfamiliar with the workings of the Court and are uninformed of what information would be of use to the OTP, how such data would be used, and how to collect, store, and transmit it more effectively to the Court.”² Several of the recommendations made at this meeting became part of the current Strategic Plan for the OTP. One such recommendation was for the OTP to reassess its relationship with NGOs in order to improve performance, increase its field presence in situation countries, and enhance its investigation methods.

During 2013–2014, OSJI sponsored an ICC Visiting Professional, Richard Sollom, to work with the OTP to draft the *NGO Guide to the International Criminal Court—Best Practices for Evidence Collection*. The

¹ See Office of the Prosecutor, International Criminal Court, *Strategic Plan June 2012–2015*, 11 October 2013, available at: http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Documents/OTP%20Strategic%20Plan.pdf.

² *Investigative Best Practices to Document International Crimes, Safeguard Witnesses and Secure Court-Admissible Evidence: Results from a Global NGO Survey*, Richard Sollom, FXB Center for Health and Human Rights, Harvard University, September 2014.

guide, currently in draft form, is based on extensive research, including interviews and a survey of NGOs with an interest in international justice. The draft report, including results of the survey, was presented at the *First Responders* workshop.

In August 2013, OSJI, in collaboration with the International Refugee Rights Initiative (IRRI), convened a meeting of NGOs and first responders from various ICC situation countries to discuss the relationship between the OTP and NGOs, and to make recommendations on how to improve the relationship under new OTP leadership. Participants at the meeting also provided feedback to the draft of the *NGO Guide to the International Criminal Court—Best Practices for Evidence Collection*. The meeting, which was attended by OTP staff, identified the need for the OTP to engage more proactively with NGOs; the need to provide more regular feedback to NGOs on cases before the Court; the need to more effectively publicize the guidelines regulating the relationship between the Court and intermediaries; the need for a clearer structure defining how NGOs can contact the Court before, during, and after investigations; and the need to make the draft guidelines on evidence collection more accessible and user-friendly for NGOs.

The Human Rights Center, for its part, has hosted three international workshops to improve the OTP's capacity to collect, preserve, and analyze evidence of serious international crimes. The first workshop—*Beyond Reasonable Doubt: Using Scientific Evidence to Advance Prosecutions at the International Criminal Court*, held in The Hague in October 2012—led the OTP to establish a scientific advisory board to improve and upgrade the capacity of its Scientific Response Unit to conduct cyber investigations and process digital evidence. The second workshop—*Digital Fingerprints: Using Electronic Evidence to Advance Prosecutions at the International Criminal Court*, held in Salzburg in October 2013— included technology innovators, experts in the field of cyber investigations, national and international law enforcement specialists, foundation representatives, human rights leaders, and ICC prosecutors and investigators.

This second workshop helped spark the development of internal OTP protocols governing digital evidence, ICC investment in specialist training programs, and new formal and informal relationships among the OTP, tech companies, and NGOs.

The third workshop was a closed-door convening in San Francisco in March 2014, which brought together ICC investigators and prosecutors and representatives from the world's leading internet service providers and social media companies—including Yahoo!, Microsoft, Google, Facebook, Twitter, and Tumblr—to discuss their overlapping interest in addressing human rights abuses. The result was groundbreaking. Never before had tech industry leaders talked frankly with ICC investigators about the challenges and possibilities of using digital information in the prosecution of war criminals. The OTP now plans to increase its social media expertise and has initiated a series of professional exchanges meant to build the relationship between the tech sector and the ICC.

The success of the HRC workshops goes well beyond the convenings themselves. New and meaningful relationships have developed among workshop participants that have already yielded concrete gains. Participants learned about each other's missions and mandates and explored overlapping interests in protecting individuals' rights to privacy, freedom of expression, and freedom from bodily harm. The ICC gained a practical understanding of how to request information from tech companies and initiate critical partnerships with technology engineers to enhance its capacity to collect, manage, and present digital evidence.

Building on these previous workshops, *First Responders: An International Workshop on Collecting and Analyzing Evidence of International Crimes* drew on the expertise of a wide range of representatives from NGOs, forensic institutes, internet service providers, foundations, and the ICC and other international courts to advance concrete guidelines for NGOs and other non-Court actors in investigating and managing evidence of serious international crimes.

III. COOPERATION

PARTICIPANTS DEBATED the merits of cooperation between the ICC and NGOs in different environments.

NGO personnel often arrive at crime scenes long before court investigators, who may face diplomatic, legal, or pragmatic obstacles to reaching atrocity sites. As first responders, NGOs are often well-positioned to gather information about war crimes and other international crimes. Due to the wealth of their local contacts and knowledge, they are poised to contribute critical information to support preliminary investigations, help to establish reliable and secure in-country contacts, and provide political context to aid international courts.

The OTP does not have the resources to be on the ground in every conflict country that may one day become the focus of an ICC trial. By the time OTP investigators arrive to gather preliminary information for potential investigations and trials, relevant evidence may have been tampered with, removed from the scene of the crime, or destroyed; these factors increase the ICC's reliance on third parties. Having relationships with first responders who can document and preserve information about crimes soon after they occur can prove essential for gathering admissible evidence for successful prosecutions. Without NGO cooperation, the OTP may never discover or obtain the relevant evidence to ensure perpetrators are held responsible for their crimes.

However, there are two substantial barriers to NGO participation. First, many NGOs that engage in documentation and fact-finding do not want to work with the ICC or focus their efforts on gathering evidence for legal proceedings. Thus, there is a critical need for NGOs to consider whether, how, and to what extent to engage with legal institutions and processes. Second, most NGOs are not trained in evidence-gathering techniques and therefore may not capture information about crimes in ways that are court admissible. For example, first responders may be unaware of ways to collect evidence in a manner that allows for its authentication by the OTP. Thus, there is a need to develop trainings and disseminate guidelines on how to collect evidence of crimes in ways that will maximize its potential probative value in court.

Cooperation between organizations and courts with different mandates and missions can prove challenging, particularly in cases where legal obligations may prevent openness or require involuntary disclosures of sensitive information. Still, workshop participants agreed that in many cases such cooperation could be mutually beneficial and improve accountability for atrocity crimes. In this regard, the establishment of clear practices and protocols, particularly with regard to inter-organization communication and security, would aid in the development of cooperative relationships.

IV. COMMUNICATION

WORKSHOP PARTICIPANTS EMPHASIZED the need to improve channels of communication between the ICC's Office of the Prosecutor and NGOs to clarify roles, mandates, and capacities, and build trust.

Several NGO participants stressed the importance of fostering mutual respect and understanding with the OTP. Some criticized the OTP for failing to understand the risks taken by local actors who support ICC investigations. NGO representatives also commented on the need for an ongoing dialogue with the ICC, emphasizing that they should not only hear from the ICC when the ICC needs something from them.

Some NGO participants said they submitted information on alleged crimes to the ICC and received no response regarding whether anyone would follow up or whether their information was ever used. Communication around security was also described as insufficient: Some participants felt that the ICC had not done enough to communicate with local human rights defenders about security issues, potentially endangering those front-line workers (as discussed in greater detail below).

In response, an OTP representative stressed that the ICC is a relatively small organization with limited resources but with an extremely large mandate. This creates high expectations that the ICC often is unable to meet. Moreover, the ICC's lack of resources can hinder its activities on the ground, including limiting the ability to conduct investigations where atrocity crimes have occurred.

However, OTP representatives also announced that the ICC has formally reconsidered how it engages with NGOs and other first responders and acknowledged the important and multifaceted role that first responders play with respect to ICC investigations. The OTP emphasized its desire to gain the trust of NGOs so that more lead information will be shared going forward.

The OTP also noted a shift toward a more multilateral approach to issues of security and protection aimed at fostering better relationships with its external partners. To that end, OTP representatives said that "two-way sharing" would be beneficial to the ICC, as it would be helpful to hear about security assessments and current practices of both local and international NGOs. However, while OTP staff agreed to share basic principles of security in the field with intermediaries and first responders, the OTP said it would be reluctant to "share its insights on opponents' capabilities," for fear of "tipping its hand to the opponents."

Ultimately, it was mutually agreed that greater understanding and recognition of NGOs' and the OTP's financial, security, and mandate limitations would be critical to formalizing future interactions. Several NGO participants noted that their organizations were not mandated to gather evidence for the ICC, but that their mission may often overlap with the ICC in the context of accountability for atrocity crimes.

V. SECURITY

WORKSHOP PARTICIPANTS from international and local NGOs raised concerns that their cooperation with Court’s prosecutors and investigators could endanger staff members. Concerns particularly focused on the safety of human rights advocates who interacted with, or were perceived to have interacted with, the ICC in situation countries.

Several NGO representatives expressed dissatisfaction with past OTP conduct that was perceived as endangering non-Court actors on the ground, especially around the issuance of arrest warrants. For example, the ICC’s failure to seal the arrest warrant for Omar Hassan al-Bashir or provide any warning preceding its announcement was considered dangerous to partners on the ground in Sudan, who had to flee the country. Another example was Côte d’Ivoire, where local human rights defenders were reportedly endangered because of their assumed involvement in an ICC investigation.

OTP representatives explained their obligation to provide protection to a designated “intermediary” as soon as they engage with that entity. OTP engagement can take place in two ways: (1) when the OTP reaches out to a first responder; or (2) when the OTP decides to use the information provided by a first responder. Once such a formal relationship is established, the OTP takes protection very seriously and draws on the same protocols used in witness protection. In such cases, the OTP assesses the risks faced by the NGO or individual and pursues the relationship only if the ICC determines it can manage those risks. However, OTP representatives stressed that the Court does not enjoy the financial resources or the legal framework to ensure protection of first responders who collect evidence of crimes *before* being approached by the ICC or before the ICC accepts their help.

NGO representatives suggested that the ICC make a formal assessment of first responders and protection mechanisms before going into a country. If no protection mechanisms exist, the ICC should work with external organizations available to help provide protection and/or training on best security practices to first responders who may need such assistance. This proactive approach could help safeguard local actors who don’t qualify for ICC protection, but who are still at risk due to ICC engagement in the region. NGO representatives also suggested that short of establishing a comprehensive security plan in a situation country, the ICC should put known human rights defenders on alert when aware of potential dangers.

NGO representatives concluded that if the OTP seeks greater interaction with NGOs during investigations, the ICC will need to evaluate and improve its security protocols, both in outlining specific security mechanisms and in defining who will be protected. Both the OTP and NGO representatives affirmed that confidentiality is a key starting point for all security interactions, and that once engagement between a first responder and OTP has commenced—regardless of *how* that relationship begins—a plan for security must be considered, either by the ICC or the NGO, with support from consulting third parties if needed.

VI. CAPACITY BUILDING

THE SALZBURG WORKSHOP clarified three capacity-related needs that, if addressed, would enhance cooperation and collaboration between the OTP and first responders.

First, there is a need for information to be shared with first responders that will help increase the probative value of any information they collect. First responders may not be trained in evidentiary requirements. If first responders hope information they have gathered will eventually be used in court, they need some basic information about admissibility. This includes information regarding chain of custody, the categories of evidence that are usually most helpful to ICC investigators (for example, whether the priority should be to collect lead or linkage evidence, as opposed to crime-based evidence, or vice versa), and technical tips regarding how to videotape or otherwise document crime scenes in a manner that ensures admissibility and maximizes probative value. Several workshop participants explained that they are working on discrete projects to address various aspects of this need.

Second, there is a need to ensure that first responders understand the ramifications of submitting information to the Court. To this end, the OTP described engagement with the ICC as stepping onto a “conveyor belt.” Once a relationship with the Court or its investigators is set in motion, it is almost impossible to reverse course. Because the ICC is a judicial organization with legal obligations toward disclosing particular kinds of information, NGOs may unwittingly endanger themselves or others by forwarding such information. Thus, it would be helpful to have a set of materials that clearly and concisely sets out the legal, ethical, and security ramifications of information sharing, so that first responders can make informed decisions about when to submit information to the Court. One possible solution would be creating or designating an intermediary entity to which NGOs could submit information. This entity could act as an “anonymizer” of any data forwarded to the ICC. It could also educate first responders about the potential ramifications of information sharing.

Finally, NGO representatives requested more information on the technical aspects of submitting information to the OTP. An informal discussion immediately following the workshop sessions helped to clarify the OTP’s intake process; however, that process needs to be documented, especially for first responders that are positioned to provide the ICC with high-quality information related to particular cases.

Workshop participants concluded that the creation of a set or sets of guidelines would be helpful for addressing the capacity-related needs that were identified.

VII. GUIDELINES

WORKSHOP PARTICIPANTS DISCUSSED the need for general guidelines for first responders on information gathering and best security practices when interfacing with the OTP. NGO representatives expressed concern that no existing legal document defines their responsibilities with regard to international investigations or trials, or articulates the responsibilities of the ICC during working partnerships. While the Rome Statute provides limited guidance, it may be too restrictive, as it only envisages a scenario where a prosecutor reaches out to an NGO. It does not contemplate more complex situations in which NGOs cooperate with the OTP due to shared mandates or common interests. One NGO representative noted that new guidelines could imply an evolutionary step in NGO/ICC relations, and if so, the scope of the Rome Statute might also need to be revisited.

Three major concerns arose in discussions on the development of NGO guidelines:

- *NGOs sought to preserve their autonomy*—NGOs and other first responders have their own motivations and mandates that may or may not intersect with those of the ICC. Therefore, it was deemed essential that the guidelines are written in such a way that NGOs don't feel pressured to engage with the ICC. One delegate commented that NGOs do not want to feel "indentured" to the ICC, which could be the case if the guidelines are too prescriptive.

Workshop participants noted that many local and international NGOs already share the ICC's mandate to improve accountability for international crimes. Guidelines produced in a cooperative manner with the OTP need not force a change in organizational mission or mandate to meet the needs of the Court, but could actually help both entities meet their overlapping objectives more efficiently and effectively.

- *Workshop participants sought clarification on the OTP's legal obligations*—Participants emphasized that guidelines for first responders must provide clear language regarding disclosure obligations. They stressed that the ICC and other courts, as judicial organizations, have certain legal obligations that must be made transparent to NGO partners. The OTP agreed to elucidate for NGOs the wider legal framework within which it operates and to make disclosure obligations clearer so that first responders know the consequences of providing information and can make informed decisions on how to proceed.
- *Workshop participants debated the audience for the NGO guidelines*—The audience for the guidelines should be clarified because NGOs can be vastly different in their orientations,

mandates, and relationship with the ICC. Participants noted that it may not be possible to develop one set of guidelines that meets the various needs of the different users.

Some NGO mandates involve collecting and preserving evidence or engaging with human rights investigations, and they may already operate under standard procedures. Some participants argued that any evidentiary standards in the guidelines should be generic and not specific to the ICC. Guidelines written from multiple perspectives could insulate against prescriptive directives, assuage NGO concerns of co-optation, and help engage civil society. Divorcing the guidelines from the ICC would also serve a protective function: first responders would be less likely to be endangered by using and/or being found with the guidelines, as the guidelines would not give away their involvement with the ICC.

However, others cautioned that using a more generic legal framework could undermine the objective of collecting evidence appropriate for use in ICC trials (i.e. the guidelines might not meet specific evidentiary standards required by the ICC). Generic guidelines might also undermine efforts to properly explain ICC procedures, minimum standards, and the consequences of engaging with the Court.

OTP representatives stressed that any guidelines should emphasize minimum standards and not best practices: establishing best practices as to evidence collection could mean that judges will begin holding investigators and prosecutors to an impossible-to-meet standard, especially when collecting evidence in less than ideal contexts, such as areas hit hard by war.

Ultimately, some said, it may not be necessary to worry about these variables if the guidelines are flexible and disseminated broadly through multiple avenues for different audiences.

However, workshop participants found common ground in a number of areas:

- *Guidelines should embrace the principle of “do no harm”*—The “do no harm” principle means that human rights advocates, journalists, medical personnel, or others who come in contact with evidence of human rights violations or international crimes would know how to treat evidence in order for it to potentially be court admissible at a later time. Participants agreed that any NGO guidelines should explicitly begin with the principle of “do no harm” so that first responders know what to do or *what not to do* when they encounter information that could help the OTP in its investigations.
- *Guidelines must be flexible*—OTP representatives said that they did not want the guidelines to be dogmatic or to co-opt NGOs into working for the ICC. One representative said that the “ICC and first responders have a common denominator—a small overlap” and that the guidelines should be “aimed at enhancing synergies, not outsourcing OTP investigations.” In order to achieve these goals, guidelines must be sufficiently adaptive to allow for a wide range of NGOs to incorporate their content.
- *Guidelines should establish minimum standards*—Because first responders arrive first at a crime or incident—often well before the ICC—they may have initial access to relevant documents and witnesses. Guidelines should be “minimum rules” that ensure that evidence is not jeopardized in these first contacts. Fulfilling a minimum standard might mean documenting the chain of custody of physical evidence (i.e. documenting who handled it and when) or ensuring that witnesses give informed consent before agreeing to be interviewed. Even more basically, it could mean writing down contact information for a potential witness (and *not* taking a statement from the witness), thus enabling the OTP to respond at a later time. Using the concept of “minimum standards” as a baseline for the NGO

guidelines would distinguish the guidelines from other ICC documents—such as the Standards for International Crimes Investigations (SICI) for judicial bodies collecting high-quality evidence.

Workshop participants suggested some substantive content for NGO guidelines and recommendations for their dissemination.

- *Include background information on the ICC*—A concise description of the ICC and OTP in the guidelines could help the Court disseminate information about its changing internal culture (in light of its new Strategic Plan) and its move toward greater openness in working with NGOs. This summary could benefit organizations that may be familiar with the ICC and the Rome Statute, yet want details of how the ICC interacts with intermediaries (regarding security and compensation, for example) as well as those that are completely unfamiliar with the role of the ICC. The summary should also set out the Court's disclosure obligations to ensure that NGOs and other first responders understand the legal consequences of submitting evidence.
- *Explain how to submit evidence*—The guidelines should offer guidance on how to collect and provide the OTP with both incriminating and exculpatory evidence, including whether evidence should be presented in a thematic or chronological manner. Participants also suggested a flow chart to reflect the spectrum of ways first responders may be collecting evidence and the processes by which it could be submitted to the Court.
- *Preservation and authentication*—Guidelines should include minimum standards for collecting and preserving evidence in a manner that will help ensure its admissibility in court. Such standards should include detailed preservation and authentication procedures for different types of evidence (witness statements, documents, physical evidence, and digital information). Explicit guidelines should also be developed for digital evidence, to increase the probative value of videos or photographs, including context markers and scales and metadata (e.g. time/date stamp, or a GPS location). Finally, guidelines should include an explanation of the types of evidence the OTP may be looking for and the essential need for linkage evidence. This should be as explicit as possible, going into detail about how to identify such evidence and opportunities for gathering it. In so doing, the guidelines may help mitigate the need for witness testimony.
- *Security*—Guidelines should include information about protection measures—for example, what protection first responders might expect from the ICC, and basic considerations for mitigating risks in the field. Security guidelines should include guidance on keeping information secure (for example, in some situations it may be best to operate manually and not transmit digital links inside a country).
- *Dissemination of guidelines*—The rollout of the guidelines should take into account and make allowances for the various levels of resources and technological capacities of NGOs and other first responders. The presentation of the guidelines will need to be as user-friendly as possible. Participants suggested using diagrams, flow charts, and pictures to highlight examples and make the guidelines accessible. The guidelines should use clear, plain language that avoids unnecessary jargon, and be translated into multiple languages. The designers of the guidelines may want to mirror the design of topical guidelines, such as those developed by WITNESS on the collection of video evidence. For example, the WITNESS training manual is modifiable so that specific sections can be removed and used for smaller training modules, and sections can be added over time, or adapted to disparate platforms.

VIII. CONCLUSION AND RECOMMENDATIONS

THE SALZBURG WORKSHOP provided a forum for first responders and OTP representatives to discuss difficult questions and establish formal and informal relationships to maximize the quality of information that first responders share with OTP investigators. Based on discussions at the workshop, the Human Rights Center and Open Society Justice Initiative recommend the following:

- NGOs should invest in technical training for first responders to improve their ability to collect high-quality information related to international crimes;
- The OTP should build its internal capacity to identify first responders with shared agendas and communicate effectively with them; and
- First responders should work with NGOs to “anonymize” information provided to the OTP when needed, to reduce risks to especially vulnerable witnesses and frontline actors.

Investing in First Responders

Develop guidelines for evidence collection.

NGOs that work at the intersection of international criminal law and evidence collection should support the development of guidelines that provide basic information about the types of information that tend to be most helpful to courts (lead and linkage evidence), and basic concepts and implementation practices—such as maintaining chain of custody and employing collection techniques that can make different types of evidence particularly helpful to courts. Any guidelines that are produced should be reviewed by members of the OTP and other experts in international criminal law to ensure that recommendations are in line with courts’ needs and expectations.

In addition, several workshop participants are working on more specific guidelines that dive more deeply into particular kinds of evidence, such as photographs, videos, interviews, etc. These efforts should both be encouraged and designed to complement the development of more general guidelines. Any and all guidelines should be adapted to various formats—for example, produced as a document, app, and/or interactive website—to encourage the broadest possible access and use by first responders.

Develop documents for information sharing.

First responders expressed the need to better understand potential avenues for sharing information with the OTP, while the OTP expressed the need for first responders to better understand the legal, ethical, and security ramifications of providing information to the Court before doing so. To address these needs,

documents should be created that clearly articulate available options for providing potential evidentiary information to the Court and chart the potential consequences of such engagement.

Develop security consultancies.

Many first responders, especially those who reside in conflict zones, face heightened security needs when ICC or other international criminal investigations commence. Even if they are not collecting information for the ICC, such first responders may be perceived as doing so. An NGO or set of NGOs that have expertise in security may be well-positioned to evaluate the risk to various first responders in the field, and to consult with both the ICC and first responders to help ensure that their security practices are as comprehensive as possible.

Provide funding for first responders.

The human rights funder community also has an important role to play with first responders based in conflict zones under ICC investigation. Such responders face heightened security needs and often require a rapid influx of financial resources to increase their security capacity and practices. In addition, they need funding to address the increased workload that comes with gathering information to support ICC investigations, even when information-gathering falls within their original mandate.

Investing in the Court

Invest in outreach.

First responders need clear and concise descriptions of the kinds of information that the OTP finds most helpful; the appropriate processes through which to provide potentially-relevant information; and the legal, ethical, and security ramifications of engaging with the OTP. The OTP should partner with NGOs to ensure that this information is documented and distributed to the first responder community, either through the OTP or an intermediary organization.

Invest in security.

While the ICC does not have a legal obligation or a pragmatic ability to provide security for every first responder who reaches out to the court, more time and attention could be given to thinking through the security ramifications of their engagement for local actors. Additional resources should be provided to the ICC so that they can extend the reach of security protection as far as possible, and as far as may be appropriate.

Expand early engagement with first responders.

The OTP should continue to develop its roster of trusted first responders—both large, international NGOs and local actors—and engage them at early stages of investigation. This will help ensure that OTP investigations are as thorough as possible, by maximizing the types of evidence available to support prosecutions and enhancing the OTP's ability to triangulate evidence. Early engagement would also provide first responders with greater lead-time to consider and develop solutions to address any financial and security concerns affiliated with their engagement.

Research the need for amendments to the Rome Statute.

While the OTP asserted that the legal framework for interaction with first responders is sufficient, many NGOs felt differently. More research is needed.

Anonymize Information Sharing

Clarify the need for an intermediary.

The OTP and first responders should work together to analyze the need to establish a “bridge” between the two communities. Such an intermediary organization could perform the function of an “anonymizer” when needed to lessen the security and legal risks that accrue when first responders provide potential evidentiary information to the Court. Such an intermediary should not become the sole means of interacting with the Court, but could provide much-needed flexibility in contexts where potential dangers affiliated with the risk of disclosure are especially acute. Such an organization could also play an important screening function, helping to reduce the quantity and maximize the quality of information that flows to the OTP by educating the first responder community about the types of information that are most helpful to court investigators. Such an organization could also play a role in housing and disseminating any first responder guidelines, and/or training first responders as to their use. Identifying an existing organization to play this role could prove expeditious.

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APPENDIX: WORKSHOP PARTICIPANTS

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