The Victims’ Rights Working Group (VRWG) was established in December 1997 by organisations that have promoted the interests and needs of victims in criminal justice and human rights bodies. Its main objective has been to raise the awareness of governments and others (e.g., the press, other NGOs and the public), in all relevant fora, about victims’ issues, to ensure that the Statute and the Rules of Procedure and Evidence adequately provided for victims’ rights to be protected and respected, and their needs and concerns to be met throughout the judicial process of the ICC. Particular attention has been paid to the need to ensure that the Court will render not only retributive, but also reparative justice, with the aim, inter alia, of preventing re-victimization, breaking cycles of violence and war, and providing reparations and rehabilitation for victims.

Member organisations of the Working Group issued numerous position and background papers, participated in all meetings, and proposed texts for [re]drafting the Statute and the Rules. The VRWG continues to be represented at meetings of the Assembly of States Parties, is actively promoting the development of sound operational structures for victims at the Court and will continue to advocate for the rights of victims to be respected by participants in proceedings before the Court.
I. Purpose of this Report

This Report is prepared by the Victims Rights Working Group to make preliminary proposals relating to the preparation of the 2005 Budget. It suggests some of the most basic budgeting requirements to fulfill the unprecedented procedural protections and programmes for victims that are set out in the Rome Statute and Rules of Procedure and Evidence, in particular, providing adequate support and protection to victims and witnesses, facilitating victims' participation in proceedings and their claims for reparations.

We look forward to fuller discussion and collaboration with the Court on the development of this and future budgets, and would in future welcome more timely dialogue in this process. We note that many of the obligations of the Court regarding victims are innovative and that it therefore may be difficult for the Court to determine with precision the exact projections of the financial requirements needed to implement these obligations. We would welcome the opportunity to share the benefit of the experience and expertise of our members and their extensive networks of national and international contacts and counterparts. We believe that this may assist the Court in developing realistic projections. In this respect, we note the comments made by the Committee on Budget and Finance in its 2004 report requesting further information on the Court's plans for victims' participation and reparations. Greater input from national and international experts may help to explain and concretize further some of the cost implications and to allay some of the Committee's concerns regarding proposed expenditure in this area.

II. General Comments and Core Assumptions

It is expected that the Court will be fully operational in 2005 if not earlier. The Prosecutor has himself referred publicly to two situations that are under investigation, and to several others that are at various stages of pre-investigation.

Against these realities, we note with urgency that the units with the primary responsibility to ensure that the Court's victims' mandate is fulfilled are far from ready to assume their administrative, logistical, legal and support obligations under the Statute and the Rules of Procedure and Evidence. Many of the core personnel are not yet in place and much of the policy to shape and guide these units' work has yet to be completed. Much preparatory work has to be done before detailed procedures can be put in place, tried, tested and implemented. This has major implications for the 2005 budget; not only will significant resources need to be applied to bring these units up to speed and to accomplish the extensive policy and planning work that remains, but resources are also needed to enable the full operationalisation of these units. There needs to be a shift from a state of planning to one of preparedness.

We also note that the first situations that are likely to come before the Court have major implications for the fulfilment of the Court's victims' mandate. For example, in both Uganda and the Democratic Republic of Congo, hundreds of thousands of individuals have been affected by actions constituting crimes within the jurisdiction of the Court. Most of those affected come from rural areas with only limited access to national information sources, only limited knowledge of the official languages of the Court and very poor understanding of justice processes. The Court will not succeed in reaching and assisting these victims as its mandate requires it to do, unless it makes a concerted effort to target its victims' programmes to these specific victims communities.

III. Core Tasks

The Core tasks of the Court relating to victims can be categorized as follows:

(i) Developing and implementing structures and procedures for the receipt of information from, and dissemination, to victims and their legal representatives;
(ii) Preparing, disseminating and enforcing guidelines for all communications with victims, in particular, investigators of the Office of the Prosecutor, staff members of the Victims and
Witnesses Unit and Victims Participation and Reparations Unit of the Registry; staff of the Secretariat of the Trust Fund for Victims;

(iii) Facilitating victims’ participation in different phases of the proceedings (e.g., adequate outreach and notification to victims and their legal representatives; assisting them in obtaining legal advice and organizing legal representation; administering applications for participation and for reparations);

(iv) Providing structures and support to legal representatives for victims, including developing and implementing guidelines and procedures for the appointment and payment of legal representatives for victims and common legal representatives; developing and implementing workable structures to ensure compliance with code(s) of conduct and other practice guidelines; providing logistical and other administrative assistance to legal representatives;

(v) Providing protection, security and support (including medical, psychological and other appropriate assistance) to victims and witnesses. This includes logistical and other support to victims and witnesses called to testify before the Court and preparation for the modalities to implement Court ordered protective measures;

(vi) Developing and implementing training for the Court and parties in issues of trauma, sexual violence, security and confidentiality; and

(vii) Providing support for the activities of the Board of Directors of the Trust Fund for Victims.

IV. Key budgeting priorities

The following are some recommendations for key budgeting priorities. These should not be taken as an exhaustive set of recommendations for budgeting on victims’ programmes, but reflect our primary concerns only. Once we have had opportunity to review the Court’s draft budget, we would be in a position to provide a more exhaustive list of recommendations for budgeting on victims’ programmes. Indeed, we would welcome this opportunity.

A. The Judiciary: the Presidency and Chambers

- It is recommended that at least one senior legal advisor be appointed within the Judiciary to assist the Presidency and the Chambers in the formulation of its policies regarding protective measures for victims and witnesses, victim participation in proceedings and reparations.

B. The Office of the Prosecutor (OTP)

- During the Reporting period, the Victims Unit of the Investigations Division of the Office of the Prosecutor will need to become fully functional. In addition to a policy section within the OTP’s Hague-based Investigations Division, it is recommended that this Victims Unit be fully integrated into the OTP’s field presences. In particular, each OTP field presence should include Victims Unit personnel, including at least one senior advisor with expertise in dealing with victims who have suffered extreme trauma, such as child victims and victims of sexual violence and other vulnerable groups.

C. The Registry

I. The Victims and Witnesses Unit

- It is essential that the Victims and Witnesses Unit has the means and personnel to perform witness risk assessments and provide concrete assistance to victims and witnesses within its mandate where victims are located. The Victims and Witnesses Unit has a mandate, inter alia, to organize support services on the territory where victims are located. It would be impossible for it to do so without having experienced international and national personnel in
these locations. It is therefore crucial that the Victims and Witnesses Unit be fully integrated into any field presence that is established by the Court.

- In order to fulfil its obligations under the Statute, the Victims and Witnesses Unit will need, at the earliest opportunity, to be staffed with persons with the expertise set out in Rule 19 of the Rules of Procedure and Evidence.

- Sufficient contingency resources (both financial and personnel) must be available to the Victims and Witnesses Unit to meet the emergency needs of victims and witnesses within its mandate.

- Sufficient emergency resources must be available to deal with situations where the national authorities are unable or unwilling to provide security for persons who are at risk as a result of coming into contact with the Court or even because the ICC is conducting an investigation.

II. The Victims Participation and Reparations Unit (VPRU)

- It is recommended that the personnel resources in this unit be sufficiently expanded to take into account the strong likelihood that it will have to process hundreds of thousands of communications from victims. It is recommended that sufficient resources be set aside to ensure that the Unit is capable to regularly respond to queries from victims, and for data entry and analysis. The more efficient and professional this unit becomes, the lower will the burden be on the judiciary in processing individual claims for participation and reparations. In the long-term, it will be extremely cost-effective for the Court as a whole to strengthen the capacity of this Unit.

- The nature of the first cases likely to come before the Court requires that the VPRU have at least a minimum representation in the Court’s field presences. The context of these first situations makes it unimaginable for the Unit to be capable of organising victims legal representation, particularly common legal representatives, from The Hague. The sensitivities and potential conflicts that may arise may not be sufficiently appreciated by staff in The Hague. Similarly, it is not feasible or practicable for the VPRU to undertake its significant responsibilities to notify and communicate with victims, among others, from The Hague.

- The workload involved in dealing with expectations of and requests for participation and reparation, both in The Hague and where victims are located, should not be underestimated. Sufficient resources must be allocated for core staff in both locations, with contingency resources to add additional staff for each additional situation.

- Legal Representation For Victims
  Adequate resources should be set aside to fund legal representation for victims.

The Victims Rights Working Group is deeply concerned by the information recently communicated by the Registry on 11-12 May, about the absence of dedicated funds to support legal representatives for victims and by the decision to substitute such funding with the creation of an Office of Public Counsel for Victims. According to the information we received, this Office will be comprised of two teams of 3 persons each, one based in the Hague and the second based in the country of the 'situation.' We fear that this system will marginalize the views of victims and inhibit their participation in proceedings before the Court, as victims are entitled to do. We strongly recommend that this policy be revisited, and that sufficient funds be set aside to ensure the involvement of competent legal representatives.
What is currently proposed for 'legal representation for victims' will render the Statute's important provisions regarding victims' participation in proceedings virtually meaningless, and especially rule 90 of the Rules of Procedure and Evidence. Practical ways and means to include local legal representation is vital if victims' interests are truly to be represented, under strict measures of protection. One would imagine that it would be virtually impossible for common legal representatives based in The Hague to fully understand the complexity of victims' views and perspectives. This is a new challenge that is very different to the experience with defence counsel, who normally represent persons in custody and therefore more easily accessible. One would also imagine that one common legal representative will be unable to represent all victims of a situation, and, even less, the victims of more than one situation, particularly if funding for travel to meet with clients and other costs are equally curtailed.

It is vital that contingency funds must allow for resources for legal representation to increase with each additional situation being dealt with by the Court.

III. The Trust Fund Unit

- At least until the resources of the Trust Fund are significant, the administration of the Trust Fund Secretariat (currently within the Registry) and the work of the Board of Directors should be specifically provided for in the budget of the Court.

- Sufficient resources are required to make operational the Trust Fund for victims. In particular, the Trust Fund Unit should be comprised at a minimum with a staff person of significant seniority and expertise to maintain regular correspondence with the Board and to present options to the Board on all aspects of the work, to be supplemented by additional staff to fulfil the tasks of fundraising, correspondence and liaison with victims groups and others with relevant expertise, administration, project management and evaluation.

- Funds should be set aside in the Trust Fund Unit for travel to facilitate communications with victims groups in affected communities.

IV. Information Technology (IT)

- Dedicated systems analysts are required to build and maintain the specialised programmes for the processing of applications from victims to participate in proceedings and victims' claims for reparations. Such analysts are also required to develop electronic means to track contributions to and awards from the Trust Fund for Victims.

- Expert IT support is equally required to build the Victims and Witnesses Unit systems to ensure adequate protection and support at all phases of proceedings.

- Adequate provision for capital expenditure relating to the abovementioned IT systems should be especially provided for in the budget.