Fostering Dialogue on Victims Issues
Discussion Note
January 2006

Many civil society organisations engaged with the International Criminal Court (ICC) are looking to it as a forum capable of providing a veritable justice to victims. For this to occur, the ICC’s vital mandate towards victims as set out in the Rome statute must be fully reflected in the Court’s policies and practices, both at the seat of the Court in The Hague and in field outposts and in the Court’s external communications programmes. Victims’ issues are essential to the overall orientation of the Court and cannot solely be considered to be the distinct responsibilities of its individual organs, units or programmes.

This discussion note has been prepared with a view to stimulating dialogue with the Court on a range of issues impacting upon victims’ experiences, in order that the modalities for enhanced dialogue can be established in order to ensure that the perspectives and views of civil society groups can adequately be taken into account. It is comprised of a running list of priority issues. We hope that the upcoming NGO Coordination meetings at the Court will be helpful in putting in place structures in which this enhanced dialogue may be fostered.

I. General

Vision: We would welcome the opportunity to discuss the vision of the Court on inter-organ cooperation and coordination on victims’ issues and ‘mainstreaming’ of victims’ concerns throughout the Court. It is important that the Court as a whole is, and is seen to be reflective and responsive to victims’ needs and perspectives, not just particular units or organs. A lack of unified approach may lead to both overlap and gaps, both of which will be unhelpful to victims’ access and experiences with the Court as a whole.

II. Outreach

We welcome the Omnibus Resolution adopted at the 3rd session of the Assembly of States Parties which recognises ‘the importance for the Court to engage communities in situations under investigation in a process of constructive interaction with the Court, designed to promote understanding and support for its mandate, to manage expectations and to enable those communities to follow and understand the international criminal justice process’ and encourages the Court to intensify its outreach activities.

We remain concerned by the dearth of outreach from the Court, in particular towards victims. Outreach is a prerequisite for the effective exercise of rights by victims: it is an elemental principle
that victims must be informed about their rights in order to effectively exercise them. We would welcome further dialogue with the relevant organs of the Court on how to reinforce outreach to victims.

### III. Victim Protection and Support

**Physical protection:** Whilst recognising the challenges for the Court to ensure effective measures of protection for victims and witnesses, particularly in relation to areas of continued conflict, we remain concerned about the adequacy of the Court’s protection measures and the sufficiency of its budget allocations for these key tasks. An example of this is the low level of budgeting for field personnel for the Victims and Witnesses Unit in the field. The CBF’s recommendation to merge certain VWU and VPRS posts in the field appeared to go unchallenged by the Court.

In addition to staffing considerations on protection issues in the field, we would welcome the opportunity to have enhanced dialogue on external or complementary methods of protection, including the role of UN or other peacekeeping forces, civil society protection structures and the challenges of reliance on national governmental structures. We also consider that it is vital to consider the protection of intermediaries that are facilitating the work of the Court on the ground.

**Psychological Protection and Support:** The Court’s mandate to provide counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who at risk on account of testimony given by such witnesses is clearly enshrined in Article 43(6) of the Statute. We are concerned by the apparent lack of progress in the development of effective structures and modalities to ensure counselling and other appropriate assistance, particularly in the field, and would welcome further dialogue on how such measures can adequately be achieved now and in the future.

**Protection’s Plans in Situations Investigated by the Court:** While we note with appreciation the initial practise of the ICC which deals with the proper planning of effective protection measures from the very start, in compliance with the strict criteria of article 68 of the Rome Statute, (cf. decision of 8 July 2005 of Pre-Trial Chamber II, which included the sealing of the first 5 ICC arrest warrants), we wish to understand further the methodology applied by the Court’s organs in putting together and implementing plans for protection. In particular, we would like to understand the interplay between the measures adopted by the Court’s organs and the indispensable cooperation that the territorial State is called to put in place and implement.

### IV. Effective Participation of Victims and Relationship with Intermediaries in the Field

We recognise that the establishment of effective procedures to enable victim participation is a new challenge for international criminal justice mechanisms and support the ongoing efforts of the Court to make this work. We have made extensive comments on the forms for participation and reparation and remain concerned about their complexity and user-friendliness. We would welcome the opportunity to maintain a dialogue on the efficacy of these forms, as real data on their usability by victims in the field is collected.

Furthermore, we remain concerned by the lack of specific provision in the budget for the expenses and other costs of intermediaries the VPRS intends to work with in fulfilling its mandate. It appears
that there is an unwritten assumption that such intermediaries will have the resources and wherewithal to assist the VPRS through their existing resources, yet we are not aware that this is the case. It would seem important to continue to liaise on questions relating to the role of intermediaries more broadly, including the security and other risks they incur as a result of their support of the Court.

V. Legal Representation

We remain concerned and confused by the lack of clarity with respect to the functions of the Office of Public Counsel for Victims (OPCV) and particularly, whether and to what extent it will represent victims in proceedings before the Court. The proposed programme budget indicated as part of its set of assumptions for the OPCV that “at least one of the victims or victim groups is represented in relation to each case,” though it is not clear that the OPCV has the mandate to represent victims or groups of victims. Regulation 81 of the Regulations of the Court suggests that staff of the office will undertake subsidiary functions and will not act as legal representatives for victims per se, yet Regulation 80(2) of these same regulations provide that “the Chamber may appoint counsel from the office of public counsel for victims”. We would welcome further dialogue on the role of the OPCV and the impact this will have on the appointment and funding of external legal representatives for victims. We are concerned that the lack of clarity leads to unclear budget assumptions. These concerns had already been raised by the Legal Representation and Budget teams of the CICC during the ASP.

The Victims’ Rights Working Group (VRWG) supported the inclusion of provisions on participation and legal representation of victims since the proposal on paragraph 3 of article 68 of the ICC Statute was tabled in August 1997, at the Preparatory Committee for the Establishment of the ICC. After the adoption of the Statute and the consequent implementation of its provisions in the Rules of Procedure and Evidence, the VRWG noted with appreciation that legal scholars and commentators generally welcomed the innovative provisions of article 68 (3) in the Rome Statute and stressed the importance of genuine legal representation of victims or groups of victims to give effect to the appropriateness criteria of victims’ participation contained in article 68 (3). We would therefore invite more discussion on the potential for OPCV representation, to appropriately express the views and concerns of victims or groups of victims, in accordance with the letter of article 68(3) and relevant Rules, as well as the mandate of the OPCV more broadly.

VI. The Trust Fund for Victims

Now that the Regulations of the Trust Fund for Victims have been adopted, we consider that it is an opportune moment to discuss their implementation and the role for civil society groups at the national and international level, in facilitating the work of the Fund. This would include strategies for fundraising, and assisting the Board in the identification of priorities and implementation of projects.