



## **UGANDA VICTIMS FOUNDATION**

### **STATEMENT ON**

### **PROTECTION NEEDS FOR VICTIMS AND WITNESSES LIKELY TO ENGAGE WITH THE WAR CRIMES DIVISION OF THE HIGH COURT OF UGANDA AND TRANSITIONAL JUSTICE MECHANISMS.**

**15 NOVEMBER 2010**

The Uganda Victims Foundation (UVF) is a membership organisation of Community Based Organisations, Non-governmental Organisations and other locally based developmental organisations in the country working on and with victims of serious human rights violations and crimes perpetrated. The foundation has over 30 member organisations hailing from the districts of Adjumani, Amuria, Gulu, Kaberamaido, Kampala, Lira, Moyo, Nebbi, Oyam, and Soroti.

The Uganda Victims Foundation, has a mandate to raise a voice for victims, create awareness about victims' rights, lobby and advocate for the rights and interests of victims undertaking a wide ranging number of activities including consultative, rights oriented, development related etc.

Protection, both physical and psychosocial, for victims, witnesses and other groups such as intermediaries is an important concern for the UVF knowing that the Republic of Uganda presently lacks a coherent legislation in relation to the protection of such groups in the context of justice and accountability mechanisms. Bearing this in mind, the UVF having undertaken consultations amongst its members in a workshop on protection for victims and witnesses to engage with the War Crimes Division (WCD) of the High Court of Uganda and other transitional justice processes publishes this statement to inform the policy makers and the general public about the needs for a policy and legislation on protection; with a view to enhancing the physical and psychosocial safety of victims, witnesses, intermediaries, and others at risk on account of their wish to engage with formal or transitional justice processes.

#### **STATEMENT:**

The Uganda Victims' Foundation;

**RECALLS** that the War Crimes Division was established within the spirit of the Juba Agreement on Accountability and Reconciliation (hereinafter 'the Agreement') to try individuals suspected of perpetrating the most serious crimes during the armed conflict in northern Uganda with a view to fighting impunity and abuse of power;

**RECOGNISES** that victims, witnesses and other groups such as intermediaries are a very integral part of any accountability processes formal or otherwise and that a successful accountability process is dependent on active participation of the victims and witnesses;

**REMINDED** by the provisions of the annex to the Agreement requiring that measures allowing for victim protection and participation be put in place to facilitate active involvement by victims and witnesses in the accountability process; And the high degree and potential for retraumatization of and retaliation against victims, witnesses and intermediaries (or their families and relatives) that participates in any accountability process against a suspected perpetrator being a state actor and or non state actor;

**INFORMED** of the impending trial of the first suspect before the War Crimes Division and of the fact that victims and witnesses may wish to engage in this formal justice process in accordance with the provisions of the annex to the agreement; And the lack of legislation on protection for victims and witnesses in Uganda;

**APPRECIATIVE** of the efforts already taken by the government, the War Crimes Division, and other stakeholders in working towards ensuring that the physical and psychosocial safety of victims, witnesses, and intermediaries is not put at risk by reason of their participation in formal or other transitional justice process;

## **RECOMMENDS AS FOLLOWS;**

### **1. Protection measures to be put in place at the investigation stage are;-**

- ❖ Requiring that the identities of investigators, intermediaries and potential witnesses are not divulged to the public.
- ❖ Ensure discrete contacts with potential victims and intermediaries so as not to expose them;
- ❖ Ensure one on one interviews, so that facts are not misplaced and/or lost.
- ❖ Develop mechanisms that ensure:
  - psychosocial pre-assessment of potential witnesses to ensure that they will be able to withstand interview and eventual examination in court;
  - prior and post investigation counselling for victims/witnesses in particular with regards to vulnerable victims such as children, victims of gender based violence, and victims with disabilities;
  - protection of the dignity and privacy of grossly victimised persons, requiring training of those involved in investigations;
  - victims have the opportunity to express choices about the interview process, including venue and other persons present including interpreters and the gender of the investigator;
  - that minors and other vulnerable persons are not subjected to unfair questioning, and are accompanied by adult relatives or individuals of their choice to meetings relating to their victimisation
  - Strategies that identify protect and respect victims' cultural rights and values during investigations.

- ❖ Ensure that the language used during investigation is well understood and well spoken by the victims and witnesses, taking care to avoid the use of jargons and other terminologies which are not known and can be misunderstood.
- ❖ Protect the interests of the respondents during investigations for example, in case of gender based violence, through ensuring the investigation team is comprised of women investigators who are in a position to interact with women and girl victims.
- ❖ Ensure professionalism by taking measures not to raise expectations and also demystify financial gains for witnesses during investigation and prosecution.
- ❖ Encourage confidence building during the investigation process and consult the victim/witness on the appropriateness and need for protection measures.
- ❖ Promote fairness through undertaking a comprehensive investigation of all allegations and violations perpetrated.

## **2. A body/unit in charge of protection should be created and constituted as follows;-**

- ❖ Ensure that the body is constitutionally mandated through an Act of Parliament and is independent and accountable to the Legislature.
- ❖ The body should have a minimum of seven members to allow various expertise to be represented.
- ❖ The body should be gender balanced.
- ❖ The body should be constituted by persons of high moral integrity in society having a geographical representation.
- ❖ Consider establishing regional protection units of the body to enable victims to have access to the Protection Body/Unit.
- ❖ Ensure members of the Protection Body are adequately trained on best practices related to protection

## **3. The Independent body/unit should be mandated to;-**

- ❖ Provide protection to victims, witnesses, their families, intermediaries and the accused (and his witnesses).
- ❖ Identify victims that need specific protection, such as vulnerable victims, those victims of gender based crimes, and children.
- ❖ Provide support to facilitate victims and witness participation in any accountability process, such as logistical support for court attendance as well as material and psychological support.
- ❖ Network with other bodies to provide protection during follow up of compensation and reparations/rehabilitation for victims.
- ❖ Implement mechanisms to sensitize victims, witnesses and intermediaries on their rights.

#### **4. Protection Measures should be implemented Before and After trial to include:**

- ❖ Providing security around the community and the court.
- ❖ Providing assurances for security after the trial both in the community, family and individually through taking measures to mitigate the potential for risk.
- ❖ Consider providing reparations including compensation, rehabilitation for victims and the affected community as a measure of bringing the victims closer to their position before victimisation as a means of reducing vulnerability.
- ❖ Develop mechanisms to follow up with the witnesses/victims' condition after the trial i.e. assessment and provision of post trial counselling.
- ❖ Promote confidentiality by taking measures to ensure that all documents and other exhibits are kept in safe custody.
- ❖ Develop strategies relevant to the need to resettle victims as appropriate and at the same time provide assessments for continuous counselling.
- ❖ Adopt mechanisms for the use of electronic devices within the witness/ victims' home/work places to alert the police and other relevant authorities and professionals in the event of an emergency.
- ❖ Encourage the use of measures which promote peace and reconciliation of victims and perpetrators.
- ❖ Recognise witness/victim intimidation as a crime.

#### **5. The following protection needs for victims and witnesses during the trial should be addressed:-**

##### **Principles**

##### **Rules of evidence in relation to sexual violence**

- ❖ Develop specific rules of evidence with regard to evidence in relation to cases of sexual violence
- ❖ Empower courts where it becomes necessary to issue court orders for non disclosure of a witness and victim's identity.
- ❖ Establish and ensure dissemination of standards to ensure information given or obtained from victims and witnesses remain confidential and stored safely.
- ❖ Avoid having the trial venue located where the crimes were committed.
- ❖ Interpretation and translation services should be made available and provided to participating victims, witnesses and intermediaries.
- ❖ Ensure that the court is independent and judges are neutral and where relevant consider contracting judges from foreign jurisdictions to promote neutrality.

### **Legal representation etc**

- ❖ Legal representation (lawyer of one's choice) should be provided where it is imperative for the victim to participate in proceedings of the court

### **Preparation for trial**

- ❖ Intermediaries Develop strategies for collaboration with intermediaries where it is risky to have direct contact with the victims.
- ❖ Consider developing mechanisms to relocate (in country) victims and witness whose life is at risk by reason of their participation in the accountability processes where appropriate

### **Psychosocial assessment**

- ❖ Develop measures aimed at ensuring that timely assessments are made to inform decisions regarding the provision of counselling during the trial to avoid re-traumatisation of victims and witnesses.

### **Familiarisation**

- ❖ Undertake familiarization of witnesses/victim with the court environment before testimony and provide victim-friendly waiting rooms

### **Support person**

- ❖ Enable the presence of a support person such as a psychologist, relatives or friends in the courtroom in accordance with the victims' preference when attending the trial, in particular where children and vulnerable victims are concerned.
- ❖ In situations where a victim/witness has to leave the family in order to participate in the accountability processes over a period of time, develop standards to provide for the basic needs of victims and/or witness families during that period (such as compensation for loss of earnings, childcare, ...).

### **Court room measures**

#### **In camera hearings,**

- ❖ Consider adapting the setup of the courtroom to address the needs of vulnerable witnesses, through for example the use of a screen or curtain to shield the witness from the accused and/or public.

#### **Use of pseudonyms,**

- ❖ Ensure that names of the victims and witnesses should not be exposed unnecessarily except as sanctioned by the court through the use of pseudonyms, redactions of names in public documents and in camera sessions;

#### **Remote testimony by video link for vulnerable victims (i.e. they are in a normal room and testimony is transmitted to court)**

- ❖ Consider and adopt (where convenient and where the rights of an accused to a fair trial are not compromised) the use video link testimony in situations where the participation of a victim/witness puts him/her at risk.

- ❖ Adopt new technologies, such as the use of video link, to allow for the taking of witness testimonies remotely where having the victim/witness in personal attendance at the seat of the court would be impractical or put his physical and psychosocial well-being at excessive risk

**Respect for dignity of victim /banning of lines of questioning that inquire after evidence that is inadmissible**

- ❖ Ensure that the questioning of witnesses respects their dignity and avoids retraumatization (e.g. Questions that are embarrassing, confrontational, or unnecessarily intrusive).

**6. The following practical measures may also be adopted in traditional justice processes:**

Develop principles of traditional justice that;

- ❖ Integrate cultural, religious, opinion leader, clan leader, and family member of high proven integrity
- ❖ Balance offenders' and victims' concerns.
- ❖ Promote and provide psycho-social support (counselling guidance) to the victim.
- ❖ Address the concerns of the victims through reparation, compensation, reinstatement and rehabilitation.
- ❖ Facilitate documentation of the crimes/atrocities committed by the perpetrators in a safe manner without putting the physical and psychosocial well being of the victim at risk.
- ❖ Ensure creative, ethical collaboration with the religious leaders and other stake holders
- ❖ Ensure truth telling and honesty.
- ❖ Provide safe, secure and conducive environment for both parties.
- ❖ Promote confidentiality.
- ❖ Provide the section for local agreement signed to prevent repetition of the committed crimes.

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