



UGANDA VICTIMS FOUNDATION
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**STATEMENT ON THE NEED FOR A COMPREHENSIVE GENDER SENSITIVE
NATIONAL TRANSITIONAL JUSTICE POLICY IN UGANDA**

29 January 2013

The Uganda Victims Foundation (UVF) is a coalition of human rights and civil society NGOs in Uganda working with victims and on victims' rights issues. The objectives of the UVF are to lobby and advocate for victims' rights especially with respect to the conflict in northern Uganda. The group was formed in 2006 following an International meeting of the Victims' Rights Working Group in London and a second in Kampala attended by participants and representatives of about seven NGOs working with victims who acknowledged the absence of an independent victims' rights advocacy group in the country. UVF is a registered charity in Uganda.

This Statement must be read in conjunction with other UVF position statements on victims' needs and rights all available at www.vrwg.org/uvf, including *Position Statement on the Relevance and Modalities of Amnesty Law in the Post-Conflict Situation in Uganda* (August, 2012), *Statement on the Need for Reparations and Guiding Principles for Victims of Crimes Perpetrated in Uganda* (6 May 2011), *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), *Statement on the National Reconciliation Bill of 2009* (4 November 2009), and *Statement on the International Crimes Bill of 2009* (4 November 2009).

The members of the UVF, having met in Gulu, Northern Uganda on 28-29 January 2013 to consider, discuss and analyse gender perspective to transitional justice past and future initiatives in Uganda resolve as follows:

RECALLING that gender is commonly defined as a term used to denote the social characteristics assigned to men and women and that applying a gender analysis requires looking at the impacts of certain measures or acts on women and men given the social constructions that underlie how women's and men's roles, functions and responsibilities are defined and understood;

Further REAFFIRMING that gender based violence refers to violence that targets individuals or groups on the basis of their gender including sexual violence;

CONVINCED that a comprehensive victim-centred and gender sensitive transitional justice process is imperative to achieve truth, justice, accountability and reconciliation for victims of the conflicts in Uganda and for the society as a whole;

STRESSING the importance of a transitional justice process that fully takes into account victims' rights, needs, priorities and interests;

REAFFIRMING the need to provide justice, accountability and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law committed by all State and non state actors, parties to the conflicts;

RECALLING that Uganda's Constitution provides that "women shall be accorded full and equal dignity of the person with men" (Article 33(1)), that "the state shall provide the facilities and opportunities necessary to enhance the welfare of the women to enable them to realise their full potential and advancement" (Article 33(2)), and that "laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution" (Article 33(6));

RECALLING that the Juba Annexure III states that "[i]n the implementation of this agreement, a gender sensitive approach shall be promoted and in particular, implementers of this agreement shall strive to prevent and eliminate any gender inequalities that may arise" and that the special needs of women and girls shall be recognised and addressed, that the experiences, views and concerns of women and girls should be recognised and taken into account and that their dignity, privacy and security should be protected;

RECALLING the principle of equality between men and women and the prohibition of discrimination on the basis of sex enshrined in a number of key international and regional human rights instruments applicable to Uganda;

MINDFUL of the fact that women and men, boys and girls experience international human rights and humanitarian law violations differently, and that each group may be disproportionately affected by such violations or may suffer specific types of abuses because they are women, men, boys or girls;

CONVINCED that in order to accurately reflect and incorporate the perspectives of victims and their advocates, the notion of "victim" must be broadly defined as highlighted in the *Nairobi Declaration on Women and Girls' Right to a Remedy and Reparation (2007)* and be in line with the definition under international standards, including the *UN Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*;

RECALLING that sexual and gender-based violence (SGBV) can constitute crimes under international law, including torture, war crime and crime against humanity;

RECALLING the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law and in particular the *Nairobi Declaration on Women and Girls' Right to a Remedy and Reparation (2007)* that states that “the particular circumstances in which women and girls are made victims of crimes and human rights violations in situations of conflict require approaches specially adapted to their needs, interests and priorities, as defined by them” and that “reparation must drive post-conflict transformation of socio-cultural injustices, and political and structural inequalities that shape the lives of women and girls”;

RECOGNISING efforts made by the Government of Uganda in leading and developing a Transitional Justice Policy;

STRESSING that consultation with civil society and victims groups is essential to achieve truth, reconciliation, justice and reparations that address victims' rights and needs;

CONVINCED that for any transitional justice processes in Uganda to be fully transformative, they shall provide truth, justice and reparation for victims as well as address the socio-economic, religious, cultural and political injustices and inequalities affecting women and girls in Uganda prior to the conflicts;

UVF observes that:

Crimes which may amount to war crimes, crimes against humanity or torture were committed against men, women, boys and girls in the context of the conflicts in Uganda where victims were targeted because of their gender or assumed role in society. Crimes in the conflict included sexual crimes as well as other crimes with a gender element including sexual violence (rape, including forced incest, deliberate transmissions of STDs including HIV-AIDS, defilement, sodomy, forced sexual intercourse with elderly, female genital mutilation), sexual slavery (forced cohabitation, forced marriages and 'illegitimate' marriages in the bush, forced inheritance of widows), forced delivery, mutilation (including castration, and cutting of body parts), abduction of boys to be trained and used in hostilities and the killing of older boys, abduction of girls for purposes including sexual slavery, forced marriages, and forced pregnancies.

These crimes have led to a wide range of direct and indirect harms to victims, their relatives and their communities with far reaching consequences including, physical and mental injury, emotional suffering and economic loss. In particular, in addition to loss of life, victims of gender based crimes committed during the conflicts in Uganda, still suffer from trauma, hopelessness, and loss of self esteem. Furthermore, they are often stigmatised and rejected by their spouses, relatives, and communities. Other consequences include gynaecological problems, deformation, STDs, STIs (including HIV/AIDS), and reproductive health complications, dispossession of land and other property, increased poverty, loss of productivity, loss of mean of production/income, unwanted pregnancies, loss of identity and cultural values, loss of education and missed opportunities, increased vulnerability of returnees whereby some returning women have turned to prostitution and some children born in captivity have turned to the streets.

A comprehensive gender approach to transitional justice in Uganda requires at least the following mutually reinforcing components:

- these crimes, harm, and consequences and their gender dimensions must be considered and addressed to ensure that the full scope of victimisation is represented and that the harm is fully repaired, and
- Transitional justice mechanisms ought to identify the particular challenges faced by victims of gender based crimes including by establishing gender sensitive procedures and processes.

Acknowledging that discussions about the development of a transitional justice National Policy are currently taking place in Uganda, and stressing the fundamental complementarity of all transitional justice processes and mechanisms, UVF recommends:

On truth-telling

- The need to establish a comprehensive truth telling process as a way to disclose and ascertain the truth on the harms suffered and atrocities committed in Uganda, in order for the perpetrators to accept responsibility for crimes committed and seek forgiveness to achieve sustainable reconciliation;
- The establishment of a truth commission through an act of parliament defining a gender sensitive mandate, scope, composition, procedures and powers for such institution;
- That commissioners appointed as members of the truth commission, through a transparent and consultative process, be impartial persons of high integrity;
- That the truth commission include civil society organisations representatives, victims representatives, cultural and religious leaders, as well as individuals with specific expertise in gender and children related issues;
- The establishment of a gender unit within the truth commission;
- That commissioners and staff of a truth commission include representatives from all the regions of Uganda and be gender balanced;
- That the truth commission be allocated with adequate resources, notably appropriate funding, to conduct its gender related work;
- That the truth commission be mandated to investigate all crimes including gender-based crimes and have the explicitly stated powers to make recommendations including specific recommendations on how to address SGBV and related harms and consequences suffered in the conflict;
- That the truth commission adopt and set up gender friendly environment and procedures to ensure the participation of victims of SGBV, including women and girls, taking into account their specific needs and harms as well as the related challenges they face; in particular such victims should be provided with support and assistance to enable their participation;
- That the truth commission adapt the existing JLOS outreach strategy or amend this strategy for the purpose of its work;
- That the truth commission have the power to summon alleged perpetrators of crimes to appear before it;
- That the participation by victims or witnesses into the truth commission, including those who suffered SGBV, should be on a voluntary basis;

- That the truth commission have access to all relevant information for carrying out its mandate;
- That the truth commission have the power to monitor the implementation of its recommendations and the mandate to order the establishment of a special fund for reparations, including gender-sensitive reparations;
- That the report of the truth commission be published and accompanied with an outreach strategy to avoid repeating mistakes from the past.

On traditional justice mechanisms

- Traditional justice be included either as a component of a truth telling institution or as a complementary, yet distinct, mechanism within a transitional justice framework as it constitutes a useful tool to redress past crimes, enhance reintegration within communities, provide forms of compensation as well as an opportunity for the truth about crimes to come out and for forgiveness;
- Due to the highly male dominated nature of traditional justice mechanisms keeping women in a subordinate position, the cultural obstacles for women and girls to access them, and the preconceptions around gender related issues limiting the possibility to consider gender-based crimes, such mechanisms should be carefully addressed;
- The physical and psychological protection of victims engaging in traditional justice mechanisms should be guaranteed and measures should be put in place to ensure victims of SGBV are comfortable taking part in them and telling their story. This could include specific closed forum to discuss SGBV crimes where the identity, safety and dignity of victims are protected and those present include persons with relevant expertise to ensure adequate psychological support to victims and to avoid re-victimisation and trauma.
- Adequate sensitisation should be undertaken to transform the mindset in relation to acceptable practices and raise awareness in the communities. In that regard community and women's dialogues, experience sharing, radio programmes and debates within communities could play an important role.
- Such mechanisms should remain voluntary and be used complementarily to other mechanisms.

On prosecution and amnesty

- That, in relation to the previous amnesty act and related processes that failed to take into account the specific needs of women, girls, boys and men, bodies set up to deal with amnesty related issues should include staff with relevant gender expertise;
- That in the discussions relating to the possible reinstatement of an amnesty act in Uganda, a gender analysis should be undertaken to assess the potential consequences of the measures envisaged on women, men, boys and girls;
- Crimes giving rise to amnesty should be clearly defined and the various roles played by women and girls recognised in order to ensure a harmonised and gender inclusive approach;
- Adequate outreach should be undertaken to ensure all those concerned are informed about amnesty processes and in particular that vulnerable groups, including girls and victims of gender based violence have equal access to them;

- Having in mind the discriminatory effect of linking reintegration packages to the amnesty seeking process in the past and the failure to take into account the role played by women and girls in armed forces, that reintegration packages should not be linked to the amnesty seeking process in the future;
- The International Crimes Division (ICD) should ensure gender balance of its judicial staff and include staff with gender expertise;
- Having in mind the reluctance of victims of SGBV, including male victims, to appear before the ICD or engage with it for fear of stigma and retraumatisation, that specific measures be put in place to ensure the safety and security (physical and psychological) as well as the dignity and protection of privacy of victims of gender based crimes appearing before it and engaged in proceedings;
- Evidentiary standards as well as rules governing questioning in relation to gender crimes should be carefully considered to ensure they do not re-traumatise victims of SGBV.

On reparations

- Adequate gender representation is ensured in the bodies in charge of designing, implementing, monitoring and taking decisions in relation to reparation. In addition victims and in particular women and girls shall be involved in the design, implementation, monitoring and decision making of the reparation processes in Uganda.
- Assessment of harm is comprehensive and gender sensitive to ensure that reparation addresses the totality of the harm suffered;
- Reparations should be fully transformative and should not restore women and girls to situations that are inherently discriminatory and/or that perpetuate inequalities that enable gender based violence;
- All forms of reparation are considered, at the individual and community levels. With regards to reparation provided to remedy SGBV, specific consideration is required to ensure that reparation provided to women and girls are not appropriated by relatives (husbands or parents for example). The particular challenges faced by women and girls in accessing reparation should be identified and addressed.
- Sensitisation is carried out as a way to uplift standards to avoid repetition of old crimes;
- A detailed gender impact assessment take place prior to implementing a reparation program;
- The implementation of reparations consider prioritising victims of SGBV without prejudicing the right to reparation of victims of other crimes;
- While reparation should be differentiated from developments programs, assistance to victims and in particular victims of SGBV should be undertaken without delay.