



## **Statement on the draft Rules of the International Crimes Division June 2015**

The Uganda Victims Foundation (UVF)<sup>1</sup> is an independent national not for profit organization, registered in April 2008 in Uganda. UVF is a coalition of human rights and civil society NGOs in Uganda working with victims and on victims' rights issues. Its members are based in Teso, Lango, Acholi, Madi/Lugwara, Central Uganda, and Western Uganda. The objectives of the UVF are to lobby and advocate for victims' rights especially with respect to the conflict in northern Uganda. UVF regularly raises issues of concern for victims in the transitional justice process in a bid to ensure that the process of eventual achievement of accountability, remedy and reparations is inspired and informed by the views of victims, their families and representatives.

The members of the UVF, having met in Lira, northern Uganda on 18 and 19 March 2015 to consider and discuss key elements to be included in the Rules of Procedure of the International Crimes Division (ICD) of the High Court in Uganda, having before it a draft dated December 2014 of the proposed Rules, wishes to bring to the attention of the Court the following views and recommendations for its consideration in the process leading to the finalisation of the Rules.

Recalling that the International Crimes Division was created in 2008 as the War Crimes Division by the Principal Judge exercising his administrative powers under article 141 of the Constitution,

Recalling that in 2011, it became the International Crimes Division by Legal Notice n.10, in exercise by the Chief Justice of his power under article 133 of the Constitution,

Recalling the Juba Peace agreement in which the government of Uganda committed itself to lobby for the funds necessary for reparation,

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<sup>1</sup> All documents and statements published by UVF can be found at the following link:  
<http://www.vrwg.org/about-vrwg/uvf>

Noting that the ICD is currently in the process of drafting and adopting its Rules of Procedure and Evidence, as provided for in the Legal Notice,

Noting that Uganda domesticated the Rome Statute under the ICC Act 2010, which mirrors some of the Rules of Procedure and evidence of the International Criminal Court,

Noting the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,

Noting 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 adopted by the General Assembly in 2005,

Aware that there are other government's projects aiming at implementing the Juba Peace Agreement currently under considerations or already implemented such as:

- A Draft Witness Protection Bill
- A Draft National policy on Transitional Justice
- Ongoing research with a view to draft a reparation policy
- Implementation of the PRDP
- Restocking programs.

Understanding that a constitutional review is also under consideration,

Understanding that the Uganda Law Commission is currently considering amendments to Uganda's criminal law,

### **UVF PROVIDES THE FOLLOWING VIEWS AND RECOMMENDATIONS:**

#### *❖ Definition of the term victim and who will qualify as a victim before the ICD*

UVF notes that the draft Rules refers to victims and also sets out that victims may participate at some stages of the proceedings. However the term 'victim' is not defined and the Draft Rules do not set out the criteria victims need to meet to qualify for participation in the proceedings. We thus recommend that:

- the definition of victims is clarified;
- the Court or Chambers, as appropriate, clarify the criteria that will be apply to identify who the victims allowed to participate in a case will be.

#### *❖ Information to victims*

UVF welcomes the mention that victims should be informed of some developments in the proceedings, such as closing hearings (Draft Rule 52) or the date for the issuance of the judgement (Draft Rule 54). We also welcome the indication that the Registry of the ICD shall take all reasonable steps to keep the community from where the case originates informed of the status of the trial (Draft Rule 58).

In our view, the provision by the ICD of information to victims and communities is essential to build confidence in the process, ensure the effectiveness of the proceedings, and to allow victims and communities' ownership of the process. It also prepares the effective participation of victims and witnesses in the proceedings, ensures transparency and fair trial.

However we feel that the Rules should contain an obligation for the ICD to clarify its mandate to *victims*, in addition to CSOs and other relevant communities. In doing so, the Court should indicate to victims what services it can provide, the rights victims have in the proceedings and how they can exercise them. The provision of information should also cover reasons behind delays in the proceedings<sup>2</sup>, and how the ICD relates to the ICC.

Finally, the ICD should, as appropriate, work with CSOs within the districts to provide information to victims. Such organisations who work closely with victims at the grassroots level can act as an interface between the Court and victims and communities.

❖ *Participation of victims in the proceedings*

The Draft Rules refer to victims' ability to participate in the proceedings. However, they do not clearly set out at which stage of the proceedings victims will be able to participate and such participation is only referred to in provisions relating to Judgement and Sentencing.

UVF welcomes the recognition that victims can play a role in the proceedings. In our view, victims should be able to participate at appropriate stages due to the particular grave nature of the crimes under the ICD's jurisdiction. We believe that this is essential to make the ICD relevant to victims. In addition, we submit that since Uganda has domesticated the Rome Statute, victims' rights as recognised in the Rome Statute should be reflected in domestic proceedings for similar crimes, to the extent possible.

However, UVF respectfully submits that participation should begin from the committal stage and continue throughout all the proceedings. This should include

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<sup>2</sup> For example, victims were not clear as to the reasons behind delays in the *Kwoyelo* case.

the possibility for victims to present evidence, ask for protection and challenge decisions not to prosecute or confirm the charges. Victims should also be able to influence the scope of the case.

In addition, we recommend that:

- The Rules provide for the Trial Panel to be able to consider the modalities of victims' participation at the beginning of a trial as part of Rule 34;
- Rule 37, which currently provides that the Trial Panel takes into account the "interests of the victim" when considering agreements as to evidence between the Prosecution and the Defence, be amended to recognise victims' ability to make submissions on this issue with a view to establish such 'interest of victims';
- In order to ensure counsel can consult victims on their views and present them to the Court, a provision be added setting out that sufficient notice will be given to counsel and that they are informed at least 14 days before they are expected to make substantive submissions on behalf of victims.

❖ Representation of participating victims

The draft currently provides that when participating in proceedings, victims should be represented by a counsel. However there is no mention of the qualification such counsel will need to meet nor of who will cover the cost of such representation in the case victims are unable to do so.

UVF calls on the Court to clarify that counsel for victims will be remunerated through a legal aid system funded by the State when the victim is indigent. We also recommend that a provision be added to require that lawyers who are appointed to represent victims should possess minimum qualifications to ensure that victims receive adequate representation. We recommend that they be required to have practiced criminal law for 10 years. Representing victims also requires specific qualities that counsel should possess and UVF recommends that specific criteria are set out such as gender expertise and experience working with victims.

❖ Reparation

The Draft Rules contains a provision on 'Reparation and compensation' which sets out that the Court can order compensation and/or reparation to 'persons' who have suffered material loss or personal injury in consequence of the offence committed. (Draft Rule 56)

UVF welcomes the recognition that compensation and reparation can be ordered by the Trial Panel. We also welcome the recognition that the views of victims should be

taken into account in that regard (Draft Rule 56(3)) and the provision of an appeal against a reparation decision (Draft Rule 56(5)).

However, in our view the current formulation of the Rule is too vague. We recommend that the term 'victim' be used and that a definition of what that term covers be provided. In doing so, the Court could consider the definition provided in the UN Basic Principles or the ICC Rules of Procedure and Evidence while keeping flexibility so that the specific circumstances of a case can be considered, such as when a perpetrator is also a victim. UVF also calls for a more comprehensive definition of what reparation before the ICD can entail.

In addition, the current Draft Rules only set out that reparation 'may' be ordered, at the judges' discretion. UVF calls on the ICD to clarify that, unless in clear circumstances (to be defined), reparation *must* be awarded to victims of crimes for which a person has been convicted.

We also note that the current Draft Rules do not set out the process through which victims can seek reparation nor the principles the Court will use to determine the forms and modalities of reparation to be awarded. We recommend that the ICD:

- Adopt internal principles or guidelines on reparation to include: the procedure victims need to follow to apply for reparation; the procedure the Court will follow to assess their requests; how injuries and harm will be assessed etc. In our view it is essential that victims and CSOs working with victims are consulted in the design of such guidelines;
- Create a trust Fund to provide reparations when the convicted person is not able to do so. Such a Fund should be financed by a combination of government and external funding;
- Ensure victims are consulted on how reparations are to be implemented. In particular, while it may be appropriate for court ordered reparation to be implemented through organisations, victims should first be consulted on whether it is appropriate in the particular case as well as which organisations should be part of the implementation.

Reparation proceedings should be publicised adequately to allow victims to access them.

#### ❖ Protection

UVF welcomes the recognition in the Draft Rules that victims and witnesses should be protected through the adoption of protective measures by the Judges (Draft Rules

38-41). As we have stressed in a previous statement<sup>3</sup>, the protection of victims and witnesses is essential to enable justice for international crimes.

UVF recommends that the ICD consider setting up a specific body/organ in charge of implementing and monitoring protection measures for victims and witnesses. Partnerships with civil society could also be explored with a view to provide comprehensive psychosocial support to victims and witnesses. UVF also believes that second degree victims (such as relatives) should benefit from protection, as appropriate.

We also call on the Rules to include a strong provision with a view to ensure those intimidating victims and witnesses are punished.

❖ *Final considerations*

UVF notes that the judicial rotation system currently implemented in Uganda can affect the capacity of the ICD to retain relevant expertise in house, despite significant efforts having been spent on building such expertise. In light of the ICD's specific mandate and the particular nature of the crimes it will adjudicate, UVF suggests that high level officials (such as the Registrar) and Judges be required to serve for a minimum of five years.

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<sup>3</sup> See UVF 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, 2010, at [http://www.vrwg.org/UVF/2010\\_UVF\\_Statement\\_on\\_Protection.pdf](http://www.vrwg.org/UVF/2010_UVF_Statement_on_Protection.pdf).