The Victims Rights Working Group

The Victims Rights Working Group (VRWG) was established in December 1997 by organizations promoting the interests and needs of victims in criminal justice and human rights bodies. The group has raised awareness of victims' issues, and has ensured that the International Criminal (ICC) Court Statute and Rules of Procedure adequately provide for victims' rights. The Group, which is facilitated by REDRESS on an ad hoc basis, now endeavours to ensure that victims' rights and concerns are implemented by the ICC in practice. In particular, the Group seeks to ensure that the Court will render not only retributive, but also restorative justice, and that it will seek to prevent re-victimization, break cycles of violence and war, and to provide reparation and rehabilitation for victims.

The Working Group has issued numerous position and background papers on victims’ rights before the ICC, which are available on its website – [http://www.vrwg.org](http://www.vrwg.org). The Group continues to be represented at all key meetings with the ICC and continues to advocate for fair and effective structures and procedures at the Court to facilitate victims' full and active participation.

The Impetus for a Ugandan Victims Rights Meeting

The VRWG held a strategy meeting in London from 2-4 May 2006. NGO representatives participating in the meeting, included members from the three “situation countries” under investigation by the ICC Prosecutor, namely Sudan, Uganda and Democratic Republic of Congo. The particular context of the Court in these countries was discussed in depth during the three day meeting.

Ugandan participants explained the difficult position of organisations working with victims in Northern Uganda. The primary interest of victims is peace, and the on-going peace process is perceived to be directly threatened by the indictments issued by the ICC. There is significant ill-feeling amongst civil society in Northern Uganda against both the government and vicariously the ICC. Furthermore, the ICC is seen as foreign to local traditional justice mechanisms and as an instrument of President Museveni’s politics against the North. As a result it is difficult for NGOs to look upon the ICC positively, which impacts on the rights and interests of victims to justice and reparations generally.

In August 2006 it became clear that the rights and interests of victims were not being considered in the Juba peace talks. Ugandan members of the VRWG initiated the drafting of a Group statement on the need to include victims’ voices in the peace negotiations. Indeed, politicians picked up on the statement and brought two token victims to the next session of negotiations in Juba.¹ Empowered by this first success Ugandan members of the VRWG have expressed the need for a legitimate victims’ voice in the peace process and sought to initiate the creation of a Ugandan VRWG.

Meeting Objectives

¹ The VRWG Statement on the Ugandan Peace Talks can be found on the VRWG website: [http://www.vrwg.org/Publications/01/VRWG%20Statement%20Aug%202006%20final.pdf](http://www.vrwg.org/Publications/01/VRWG%20Statement%20Aug%202006%20final.pdf)
1. Bringing together organisations working directly with victims in the field and interested in the ICC
2. Provide a briefing on issues concerning victims participation at the ICC (Participation, Protection, Legal Representation, Reparations);
3. Discuss suggestions & recommendations for a Ugandan VRWG

1. Participating Organisations

Participating organisations included a number of Community Based Organisations (CBOs - ie grass root / self help organisations working in the camps) as well as Human Rights or Humanitarian NGOs. Specific focus was given to inviting organisations from Adjumani, Pader, Lira and Apach districts, which have generally been shadowed by Gulu district. Less emphasis was placed on involving the more established Human Rights and Humanitarian NGOs at this early stage. The coordinators of the Ugandan Coalition for the International Criminal Court (UCICC) identified a number of CBOs in these districts while undertaking sensitisation workshops in these districts during 2006. Organisations working directly with victims who attended these previous workshops and who had shown an interest in working on victims issues collectively were invited.

Fewer organisations travelled to Kampala to participate than anticipated (due to the rain, human rights week conflicting schedules, and communications), however the tight focus on organisations working directly with victims and interested in the ICC allowed for a clear voice from grass roots organisations working with victims.

In annex is a list of participating organisations, providing some indication of dedicated areas of work. The work of the CBOs include psychosocial support and training of psychosocial support workers in IDP camps, peace promotion and training of peace promoters within camps, income generation, start up capital programmes, agricultural projects and IDP integration.

2. Thematic Discussion of Victims Issues at ICC

Participation: expectations / procedure

A briefing was given regarding the innovative nature of the ICC’s procedures, which allow victims to participate in proceedings as interested parties in the case, separately from the prosecution. In some cases victims can participate in this way and also serve as prosecution or defence witnesses - the status of a victim and a witness are not mutually exclusive. Explanation was given on reasons why victims might want to participate, these include: desire to have their views heard and represented in the case, a desire to be able to influence proceedings in terms of relating what happened from their own perspective, a wish to apply for reparations (though this can be done separately and does not require participation throughout the trial). In this regard, particular mention was made of the need to manage expectations of victims interesting in participating, given the scope of participation.

In order to apply, a form must be completed which is available on the Court’s website. A separate form must be filled out for each individual victim.

Explanations were given as to the scope of participation, namely explaining who is entitled to participate and why. Victims are able to apply to participate in the earliest phases of a case, as part of the investigation phase, before individuals have been identified for arrest. This allows victims to bring information to the Pre-Trial Chamber independently from the Prosecution. The other aspect of the scope of participation is the extent to which victims may participate. In this regard, explanations were given to the new jurisprudence of the Court on the modality of

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2 Standard Application Form to Participate in Proceedings before the ICC for Individual Victims and Persons on their Behalf: [http://www.icc-cpi.int/library/victims/Form-Participation-1_en.pdf](http://www.icc-cpi.int/library/victims/Form-Participation-1_en.pdf)
participation of victims in the Lubanga case. The modalities of participation have been limited because victims are participating anonymously. In order to respect the rights of the accused, who may be innocent, victims participating anonymously can not bring evidence of crimes that are not included in the indictment. The legal representatives of the victims were allowed to make opening and closing speeches during the hearing to confirm the hearings against Lubanga, and could only make other interventions at the discretion of the judges.

Protection: Three types of Protection

A briefing was given on the various types of protection, as described by the Victims and Witnesses Section of the Court. These are as follows:

1) Prevention. The first rule on protection is that protecting the identity of a victim or witness is the best form of security. Anonymity is second to none. Best practice procedures for handling victims must be adopted in order to protect the victim, but also those assisting the victim, namely intermediary NGOs who otherwise might be put at risk if they are seen to be liaising with the ICC;

2) Protective Measures provided by the Court. These are Court granted measures applicable to safeguarding the identity of victims and witnesses throughout the court process. Such protective measures granted by the Court include the use of pseudonyms, the capacity of victims to participate through legal representatives, etc. It is not foreseen that victims will be going to The Hague in person, however, if they did, measures are available to ensure sessions closed to the public, and other means of protecting the identity of the victim. It is not certain whether victims will be able to remain anonymous from the accused throughout the trial. There may come a time that the accused will be entitled to know who he is supposed to have harmed. However, victims’ identity could never be disclosed to the accused without their and their legal representatives’ consent. So far, all victims are participating anonymously from the accused and the public; only the prosecution and the judges are able to see their names and other details, which are otherwise ‘redacted’ out of all court documents by select Registry officials.

3) The Protection Programme of the Court. The Court operates a Witness Protection Programme and has indicated that if any participating victims are exposed and experience serious risks, these risks will be assessed on the same basis as for Prosecution or Defence witnesses testifying. If after assessment there is a serious security risk, measures are available to provide protection. Such measures include in extreme cases relocation to other regions or countries. For this purpose the Court has negotiated a number of relocation agreements with other countries.

Legal Representation and Legal Aid

A briefing was provided on the victims’ entitlement to legal assistance in accordance with the ICC’s Rules of Procedure and Evidence, as well as its Regulations. Victims can be represented by counsel of their choice, which may be funded by an NGO or the victims themselves. However, counsel must be on the approved list of counsel held by the Court. Any counsel of the victims’ choice can be put on the list if he or she satisfies minimum requirements put in place to ensure quality control. These requirements include at least ten years practice or relevant experience. In addition there exists a possibility that counsel with 5 years experience may be hired as an assistant counsel working along side the principle counsel. This may allow one counsel to be a national of the situation country based within reasonable proximity to his or her clients, and the other in The Hague.

The Court may also assign (and pay for) ‘common legal representatives’ namely persons representing a group of victims. The same format of principle and assistant counsels apply. Thus, if
a counsel wishes to represent a group of victims, and satisfies the requirements to be on the list of counsel or assistant counsel, legal fees could be covered by the Court. Such legal aid has already been granted in the case of one female Congolese lawyer representing a number of child victims. Also there exists an Office of Public Counsel for Victims (OPCV) which is mandated to assist, support and possibly represent victims directly if there are not issues of conflict of interest.

Minors under 18 are automatically considered to be indigent and eligible for legal aid. However, all other victims will need to satisfy an inquiry into their financial situation after having completed a form on legal assistance, which is now available from the Court’s Victims’ Participation and Reparation Section (VPRS).

Reparations and the Victims Trust Fund

A briefing was provided regarding some difficult issues surrounding reparations. By way of introduction it is was emphasised that victims are entitled to “reparations” under international law. Reparations are a wider concept than the widely used “compensation”. Reparations include Restitution, Rehabilitation, Compensation, Satisfaction, Guarantees of non-Repetition. Thus non-pecuniary measures may be granted as a means of reparation.

Reparations can be individual or collective. However, reparations must be applied for individually at the ICC, but can be awarded collectively in favour of a project, public service, monument or other initiative which may provide reparation to a group of victims. Again, the Court has devised a form for this purpose which can be obtained from VPRS, which has an office in Kampala.

There are broadly speaking three types of reparation that can be granted:

1) An award can be made against a convicted person in favour of a victim or collectively for a group of victims identified or otherwise in the final judgement. Assets belonging to the convicted person are to be forfeited for this purpose and transferred to the Trust Fund for Victims (VTF). If the convicted person has no funds, these can be supplemented from the Trust Fund, which can receive and solicit voluntary contributions. The Trust Fund has been open to receiving donations since 2005 and has so far received approximately €1.6 million.

2) If the court does not itself grant a reparations award to victims at the end of a case, or does not identify the beneficiaries, the Board of Directors of the Trust Fund for Victims may consult with victims, experts or others to determine the modalities of the disbursement of awards using its discretion.

3) Prior to the completion of a case, the Board of Directors may utilise funds for specific purposes, which are not strictly reparative, if it considers it “necessary to provide physical or psychological rehabilitation or material support for the benefit of victims or their families”. In order to undertake such activities, the VTF must first notify the Chamber of its conclusion, and the Chamber has not indicated that such activities would be contrary to fair trial or otherwise prejudicial.

Discussion of Thematic Areas by the Meeting Participants

Participants raised the issue of protection of intermediaries. For instance, it was related that in 2005 there were ambushes on the road. NGOs were supposed to take food to camps in Pader. Food was looted and IDPS thought that the looting was done by the NGOs in collusion with the LRA. The UPDF then threatened the NGOs. Victims can be susceptible of loose talk and contradictions. On the one hand they might say that they want peaceful solutions, but then they will want to go to court also. Participants felt that one needs to be careful who one works with. Those who have really suffered will be the least likely to be manipulative.
One participant raised the issue of child victims. She explained that their experience was specialised in child maintenance disputes and sensitisation work. She expressed that it would be very difficult that a child would be able to say anything in this kind of environment.

There was also discussion of the fact that crimes have also been committed by the UPDF, and that indeed the ICC is not just for the LRA, even though the Prosecutor has only made public indictments against the LRA. There have been incidents of massacres in the past allegedly committed by UPDF. For instance, the Koichiconga Camp Incident. This was an Ateso massacre in 1994 committed allegedly by UPDF soldiers who were Acholi. There is a mass grave there. Another example was the mass killing in Barilonyo. 372 people were killed, the entire village was burned down. There were no abductions, which to many indicate that it could not have been the LRA. In fact, it was apparently made clear that it was the UPDF that wished to scare civilians and warn them not to collaborate with the LRA.

Discussions regarding reparations were also interesting.

Participants discussed the need to categorise groups of victims according to age, needs, etc. For instance, different groups could include:

- Maimed
- Those who lost family members
- Children who were abducted
- Child headed families / Child mothers
- Elderly, particularly those with no support
- Those with HIV/AIDS as a result of forced marriages

In terms of categorising needs, participants claimed that psychosocial rehabilitation was very important. All participants stressed the need for psychosocial counselling. The case of a boy who killed his brother in the garden (cultivation plot) was presented. The boy had been abducted and had lived in the bush fighting for many years. He was reunited with his family and was put to work in the garden with his brother. He had a flashback while working in the garden and killed his brother. He brought his brother back in the bag instead of the vegetables they had gone to collect.

There was also discussion about the stigmatisation of returnees. The case of a girl who was made a wife of Kony was presented. She was a virgin at the time. In fact she had been taken captive at the age of two and a half. At thirteen she was raped. He stopped raping her when she became pregnant and she escaped to her home. When she hugged her mother, her mother died of a heart attack. Everybody blamed the girl and it was terrible for her. Finally she received some counselling and support from TESO, who also helped the community to come together to listen to the girls' story.

3. Suggestions & Recommendations for a Ugandan VRWG

Needs and Objectives for a Ugandan VRWG:

The meeting identified the needs and priority objectives for a Ugandan VRWG:

- Capacity building and mutual support (psychosocial, legal, etc.)
- Developing and strengthening victims’ rights and needs (Internal discussion of what victims need and want - need for regular meetings / networking)
- Advocacy to make victims’ views and concerns heard and taken into account

The Ugandan Group’s name:
There was some discussion of the term ‘victim’ as compared to the term ‘survivor’ with respect to the name of the group. Most of the CBO and humanitarian organisations prefer to use the more empowering term ‘survivor’. Human rights often use the term ‘victim’ and victim’s rights, which includes also the rights of descendents of victims who have not survived.

Various names were suggested, including options specifying Northern Uganda, as oppose to simply Uganda, and the use of ‘survivor’ instead of ‘victim’. There was also discussion as to whether the group should have the same name as the existing VRWG, and simply be a Ugandan sub-group, which could afford it some protection in its advocacy work, given that bigger NGOs are members of the VRWG, such as Amnesty International and Human Rights Watch. This option gained favour, and ultimately it was agreed that the group should be called the Uganda Victims Rights Working Group, with a sub-heading specifying Northern Uganda.

Constitutional Issues:

It was agreed that for now, the group did not need to be constituted legally. Just as the ‘international’ VRWG is merely a working group - a network - the Uganda VRWG would not need to be registered either. Member organisations would provide support and capacities. This would avoid fears of non-registration under current NGO Registration legislation in Uganda (an issue that was also discussed as it is raising increasing concerns for members).

National Seminar / Conference on Trauma:

The suggestion of holding a national seminar or conference on trauma was discussed. There was much enthusiasm for this initiative. It was suggested that international experts, such as Dr. Yael Danieli could be paired with national experts to discuss and raise awareness of issues concerning victims. There would be multiple positive spin-offs of such a conference, including providing a launching platform for the Uganda VRWG. A national conference on Trauma would allow the group to seek wider membership and support, bringing together the ‘international VRWG’ and the Uganda VRWG. It would allow the Uganda VRWG to be recognised for its role in relation to victims’ issues leaving to one side the ICC or political debates (which should come later).

Organisation of Working Group Meetings:

Participants expressed the need to encourage more organisations to join the group, “to sit down and be risk takers so that we can decide what is the right track. When too many people come to eat soup it will be diluted. But, if people come and add salt then all will be able to eat it”.

Experience from other networks was drawn upon, such as the Gender Based Violence Network, which also benefits from a wide membership to share out the burden and activities amongst its members. The GBV Network is supported by UNICEF.

Meetings should be held every month for the first three months in order to work out strategies. These meetings should be held in Lira or Gulu, which are closer to victim communities and those working with victims. Travel costs would also be reduced.

Capacity Building & a Resource Centre for materials on victim issues:

Participants stated that other organisations with specific expertise need to be identified and contacted. For instance TPO Uganda which has a specialised experience in psychosocial issues should be involved in capacity building. Specific materials and the use of appropriate media, such

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3 International Trauma Studies Program at Mailman School of Public Health, Columbia University the Transcultural Psychosocial Organization (TPO) of Uganda. Training courses are taking place in January and February 2007 in Arua: http://itspnyc.org/uganda_training.htm
as road dramas, could be used to empower those working with victims, also serving as a networking
tool for those with victims and victims themselves.

Immediate resolutions on 30 December 2006 Deadline for IDP return:

Of immediate concern was the government deadline that IDPs should leave the camps and return
home by 30 December 2006. There was considerable criticism of this policy, namely that the elders
who knew the demarcations of ancestral land have since died - their children were born in the
camps and would not know the locations or how to get to them. Also, the army has systematically
cut the trees and destroyed the environment and the grasses would be very high so it would not be
that obvious to recognise the places. It was suggested that community leaders should be brought to
their areas to have a look and to work out a plan for the return. Furthermore, child mothers,
orphans and the elderly would be unable to get there without transport and assistance.

The promise of metal roof sheets was only for those who would be able to erect walls (to their
huts), which would again discriminate against the most vulnerable and weak. The policy was being
taken advantage of primarily by city dwellers and the better off, who had the capacity and means
to go back to their ancestral land and claim it as well as the benefit of the metal roof sheeting.

The group wished to write a press statement about the situation with their recommendations, as
there was very little coverage of the victims’ voice in the media.

There was some concern as to capacities to draft a statement, as well as fear over consequences,
particularly if certain persons who were involved both from the NGO and government side were not
consulted first. It would be counterproductive to come across as misinformed. Indeed, before going
to the press, the group discussed other advocacy strategies such as writing a letter / open letter to
those responsible. Ultimately it was agreed that a press statement should be favoured due to
urgency.

Conclusions & Recommendations:

- The Uganda VRWG should represent the voices of victims of UPDF as well as victims of the
  LRA;
- The group should expand membership to ensure that all districts are covered;
- The group wishes to strengthen and share their knowledge and skills in working with victims,
  both in terms of victims’ legal rights but also their physical and psychosocial needs;
- Victims from each affected region should be empowered to join the group so that the group
  will include legitimate victims’ voices from each district;
- Meetings should be held in Lira or Gulu as this will ensure closer proximity to victims;
- Meetings should take place once a month for the first few months so that strategies can be
  worked out;
- A National Seminar or Conference on Trauma should be organised in 2007.
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* CBO = Community Based Organisation (Grass roots / self help)