

UGANDA VICTIMS' RIGHTS WORKING GROUP

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STATEMENT ON THE ANNEXTURE TO THE JUBA AGREEMENT ON ACCOUNTABILITY AND RECONCILIATION

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The Uganda Victims' Rights Working Group (U-VRWG) is a loose coalition of human rights and civil society NGOs in Uganda working with victims and on victims' rights issues. The objectives of the working group 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.

The members of the U-VRWG, having met at Soroti, northern Uganda from 12-14 March 2008 to consider the Juba Agreement on Accountability and Reconciliation, resolve as follows:

RECALLING the 29th June 2007 agreement executed between the Government of Uganda and the Lords Resistance Army establishing the principles of accountability and reconciliation geared at resolving the northern Uganda conflict through peaceful means;

APPLAUDING the efforts of both the Government of Uganda and the LRA in concluding an annexure to the principal agreement on accountability and reconciliation providing for the procedural aspects of application of judicial trials in Uganda;

RECOGNISING the continued concerns and calls for a peaceful resolution to the conflict in northern Uganda and with a view to facilitating IDP's return to their own homes;

MINDFUL of the delicate nature of the achievements of the peace process in Juba and Uganda's international legal obligations to the International Criminal Court with respect to the LRA indicted persons;

DETERMINED to continue to promote the rights of victims of the most serious crimes especially regarding their fundamental rights to be informed, to be treated with respect for their dignity, to be protected, and to participate in and access justice for the crimes suffered;

THE U-VRWG CALLS UPON BOTH PARTIES, AND IN PARTICULAR THE GOVERNMENT OF UGANDA, AS TO THE IMPLEMENTATION OF THE ANNEXURE TO THE PRINCIPAL AGREEMENT OF 29TH JUNE 2007, NOTING THAT;

In respect of the inquiry into the past and related matters:

- 1) The body to be established in order to undertake the inquiry into the past has been restricted to the conflict in northern Uganda as opposed to investigations into other related conflicts from within the country;
- 2) No time frame has been prescribed within which the body must carry out its investigations and other activities.

In respect of the legal and institutional frame work:

- 1) The High Court of Uganda as it presently exists is dogged by among other things;
 - a) understaffing;
 - b) case back logs;
 - c) delays in concluding matters;
 - d) interferences by the executive arm of government;
 - e) ethical compromises by certain judicial officers of the court.
- 2) The High Court of Uganda has no experience or precedent of dealing with individuals suspected of committing serious crimes as prescribed in the principle agreement on accountability and reconciliation;
- 3) Victims of crimes are ordinarily marginalised in the criminal justice system as their interests are left to the prosecutors or the Department of Public Prosecutions who do not adequately address their concerns and interests;
- 4) Victims participating in court proceedings do not benefit from adequate protection mechanisms;
- 5) There is a general ignorance of victims' rights amongst the judiciary, prosecutors, police and other judicial actors.

In respect of investigations and prosecutions:

- 1) The Department of Public Prosecutions is not equipped with its own professional investigators but rather relies on the investigations conducted by the Ugandan Police Investigations Department;
- 2) The Ugandan Police Investigations Department is insufficiently funded and ill- equipped and therefore is characterised by delays in concluding investigations and recovering exhibits.

In respect of traditional justice:

- 1) Traditional justice practices in their present forms and applications are insensitive to human rights concerns and are gender biased;
- 2) Traditional justice practices are limited in their application.

THE U-VRWG THEREFORE RECOMMENDS:

1) Regarding the body to be established to inquire into the past (Truth and Reconciliation Commission)

A) Creation of the body:

The body appointed to look into the past should be established by law. It should have a clear mandate and timeframe, and should be required to produce a report on its findings with recommendations on reparations within a period of no more than three years from the time of commencement of investigations.

B) Mandate of the body:

- i) The mandate of the body should include investigations into human rights violations and related crimes committed from 1986, covering the entire territory of Uganda.
- ii) The body should have a mandate to consider, *inter alia*, gender and children based crimes that are not covered by the Special Division of the High Court.

C) Composition of the body:

- i) The body should be composed of at least nine (9) members with experience and expertise in divergent but relevant fields.
- ii) Members should be persons of high moral standing and integrity and may be either nationals or non-Ugandans who have experience in TRCs elsewhere in the world.
- iii) National members of the body should reflect the diversity of Uganda, with specific attention to ethnic and regional diversity. At least 1/3 of the members should be women.
- iv) Ugandan civil society should have representation on the body.
- v) To ensure the integrity of the body, there should be an open appointment process, in which civil society organisations and victims groups are encouraged to submit nominations. All appointments should be made on the recommendation and vetting of Parliament.

D) Transparency of the body:

- i) The body should be autonomous and accountable to the public through the Parliament of Uganda.
- ii) Information materials on the functions of the body should be made widely available in languages understood by victims' communities.
- iii) Civil society organisations should be provided full access to the body and its processes in order to enable them to monitor the establishment of the TRC, follow its implementation and proceedings.
- iv) The body should be required to report to Parliament at regular quarterly intervals and upon completion of each phase of its activity.

E) Victims' protection by the body:

- i) The Government of Uganda should take measures to guarantee the safety and security of victims to allow them to participate effectively.
- ii) Hearings of the body should be held in public subject to the protection and security needs of victims and witnesses.
- iii) The law establishing the body should provide for a victim/witness protection unit.
- iv) The body should ensure that special mechanisms are developed to protect groups with special needs and interests e.g. rape cases, child matters.
- v) The victim/witness protection unit should establish protocols and procedures to cooperate with non governmental organisations and other intermediaries.
- vi) The police or other institutions to be involved in the activities of the body should be trained and sensitized on protection issues related to victims and witnesses.
- vii) Victims participating in the proceedings of the body should be facilitated and provided with assistance.

F) Victims' participation before the body:

- i) To promote effective participation before the body, the staff of the body's Secretariat should include individuals mandated to facilitate victim participation. Victims themselves should be encouraged and facilitated to work with/at the Secretariat to foster participation.
- ii) The body should take deliberate efforts to mobilize and sensitize victims and victim communities to participate in the proceedings of investigating the past and violations committed.

iii) The body should hold hearings within victim communities to allow victims' participation effectively and efficiently. Special women's hearings or closed hearings should be organized in order not to exclude socially stigmatized or marginalised victims.

iv) Victims interested in appearing before the body should have the ability to appear directly before the body and to nominate a representative to raise collective concerns.

v) Deliberate measures should be undertaken to facilitate victims so that they can actively participate before the body.

G) Conceptualisation and implementation of reparations before the body:

i) A special unit in the body should be created to undertake a mapping of victims and victim communities. This body should conduct sensitisation and consultations with victims to ensure that their interests and concerns on reparations are specifically conveyed and taken into account.

ii) Reparations granted by the body should be appropriate and acceptable to victims of human rights violations during the period of investigations.

iii) All reparations granted by the body should endeavour to reflect the magnitude of the crimes suffered by victims.

iv) All reparations granted by the body should be geared at re-empowering and restoring the dignity and values of victims.

v) Reparative measures should at all times take into consideration gender and children related issues.

vi) All reparations should be independent of any existing government programmes.

vii) The body should establish structures and mechanisms to enable civil society organisations to take an active role in the monitoring and implementation of reparations.

viii) The Government has the responsibility to afford reparations and should take the lead in financing the reparations fund, which may be supplemented by voluntary contributions from other sources.

ix) Deliberate steps should be taken by the body to ensure the proper documentation of all reparations made as well as all evidence produced before the body to ensure good value for money.

2. Regarding the use of traditional justice mechanisms for crimes not covered by the Special Division of the High Court

A. General measures

i) The Government should establish a national framework law relating for the use of traditional justice mechanisms. The framework law should cover the types of crimes that may be subject to such mechanisms, minimum standards and procedures applicable to such mechanisms in compliance with human rights principles, the relationship between such measures and the formal legal system, as well as measures to protect the dignity, safety and security of victims within such mechanisms.

ii) The national framework law should also reflect principles of good practices from the various traditional justice mechanisms in operation throughout Uganda.

iii) The jurisdiction of the traditional justice system should be limited to ‘non-serious crimes’. All ‘serious crimes’ should be referred to the formal justice system.

iv) Representation for women and youth in traditional justice committees should be ensured and should reach at least 1/3 representation.

v) Measures should be taken by the Government to build the capacity of elders and committees to administer traditional justice in compliance with human rights standards and international and national law.

vi) Criteria to identify elders of high integrity should be established. Cooperation with other institutions such as the police, judiciary and human rights groups should be enhanced.

vii) Guidelines should be developed to ensure that the rulings and remedies afforded by the traditional justice mechanisms are commensurate with the crimes suffered.

viii) There should be deliberate measures to ensure proper documentation of positive traditional systems/mechanisms.

B. Dealing with gender and vulnerable groups in traditional justice systems

i) All traditional justice mechanisms should ensure equal respect of all categories of people in the community while conducting their proceedings and in respect of the remedies to be afforded.

ii) Measures must be put in place to ensure equal protection.

iii) Principles of natural justice including equal and effective participation should be recognised and provided for.

iv) The traditional justice committees should be guided by principles of equality and confidentiality for the victims and witnesses appearing before the committees.

v) Participation in the proceedings of the traditional justice committees should be voluntary and measures to promote this must be put in place.

3. Regarding the Special Division of the High Court:

A. General Measures

i) The Government must enact legislation in compliance with the Rome Statute in order to enable the Special Division of the High Court to try the most serious crimes under international law. Domestic implementing legislation must include definitions of the crimes set out in the Rome Statute and related international treaties which are in compliance with such treaties. It must also contain provisions relating to the general principles of criminal law, such as the irrelevance of official capacity and the responsibility of commanders and superiors; must contain provisions relating to the participation of victims, set out specific measures to ensure safety, security and dignity of victims and witnesses and enable cooperation with the International Criminal Court.

ii) Given the lack of domestic experience in the investigation and prosecution of such crimes, the Government should ensure, through training, mentoring and facilitation that the capacity of investigating officers, specialized registry officers and judicial officials is built to facilitate the effective handling of serious crime cases.

iii) The registry of the special division should undertake outreach programmes with victims and the general public to ensure awareness of the division's work and to foster collaboration and participation.

iv) The special division should be guided by principles of justice and the fair and impartial conduct of hearings as provided in international legal instruments and the Ugandan Constitution.

v) The registry should develop mechanisms to protect victims/witnesses from intimidation, stigmatisation, reprisals, and re-victimisation during investigations, the trial and afterwards, and especially victims of gender based violence and children.

vi) Punishments for serious crimes as provided for in Article 77 of the Rome Statute should be adopted in the law and procedural regulations to be applied by the Court.

vii) A special trust fund should be created in the manner of Article 79 of the Rome Statute whose source of funds shall be fines and forfeitures from convicted persons as well as the State and other contributors.

viii) The special division should be guided by provisions relating to victims' rights in the Rome Statute.

ix) The special division should be mandated to order adequate and effective reparations and enforce the orders made.

B. With regard to victims' participation before the special division

- i) The registry of the special division should be specifically mandated to mobilise and sensitise victims about their rights.
- ii) Proximity of the venue to victims should be ensured to facilitate easy participation.
- iii) Mechanisms to improve access to justice including facilitation victims' participation in proceedings, free legal aid representation for victims, the availability of translation services to local languages understood by victims, protection of victims from intimidation and non interference by the State during legal proceedings should be ensured.

C. With regard to protection of victims

- i) The registry should establish a protection unit for victims and witnesses participating before the special division.
- ii) All hearings should be held in public, unless concerns for victims' safety and security require otherwise.
- iii) The special division should be guided by the principle of confidentiality of victims generally and more so for victims participating before the court.
- iv) Programmes to familiarize participants about the workings of the Court should be undertaken to build confidence and respect for the Court.
- v) Judicial officers should be encouraged to guard against abusive, provocative and unnecessary cross examination of victims.