

Amnesty and Transitional Justice (TJ) in Uganda

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Abstract

After a series of calls from religious, political and local leaders especially from the Lord's Resistance Army (LRA) affected Acholi Sub Region, an amnesty was declared in 2000 for all Ugandans engaged in acts of war or armed rebellion against the Government of Uganda since January 1986. The sole objective was to end hostilities in the affected areas. With the attainment of relative peace in most parts of the country, and in the wake of Government's attempts to pursue justice, accountability and reconciliation for victims and alleged perpetrators of violence, the relevance of amnesty was increasingly questioned. While the Amnesty debate soon gave way to a lapse of Part II of the Amnesty Act which granted unconditional amnesty or blanket amnesty on May 23rd 2012, it was soon reinstated hardly a year later on 24th May 2013 when the Act was extended. This paper presents the amnesty dilemma in Uganda while assessing whether amnesty can be pursued alongside other transitional justice processes.



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Introduction and background

Colonial and post-independence Uganda is one that has been characterized by turbulence manifested in power struggles, in the form of armed rebellion, repressive, dictatorial rule and civil strife. Eminent among these are the sporadic armed rebellions of the early and mid-1980's, 1990's and 2000 onwards in the Northern, Eastern, South Western and West Nile Sub Regions. For more than two decades, people in these regions were grossly affected through various atrocities. The plight of these people especially those in the north, attracted a lot of national and international attention, with various calls for cessation of hostilities in an effort to return to peace.

The situation brought into play the need for comprehensive solutions to the armed rebellions and as a result, a combination of efforts ranging from peace negotiations, military counter actions/offensive, legal action and the declaration of Amnesty were put in place by the Government of Uganda.

Uganda today enjoys relative peace and stability characterized by commendable economic growth, democracy, rule of law, administration of justice and good governance. However, the situation remains fragile, with the nation grappling with efforts to consolidate and maintain its achievements as set against its tainted history. These achievements are attributed to the people and the Government of Uganda.

The question of amnesty is among those issues contributing to this fragile situation. After a prolonged clamour from various sections of people in the country, especially religious, political and local leaders from the LRA affected Acholi sub region; an amnesty law was enacted in 2000. An amnesty/forgiveness was then declared for all Ugandans engaged in acts of war or armed rebellion against the Government of Uganda since January 1986 with the sole objective of ending hostilities in the affected areas. The law also established an Amnesty Commission with the mandate to resettle, demobilize, reinsert and reconcile the parties. According to the Amnesty Commission, over 26,000 ex combatants have received amnesty to date and about 6000 are being reintegrated into their communities.

As the country consolidates the peace it has attained over the years, the continued relevance of peace efforts like the amnesty law are put into question against the quest for justice and accountability for victims of gross atrocities, thus making the amnesty situation in Uganda a complex one.

While international jurisprudence has over the years outlawed amnesty for individuals suspected of committing gross international crimes², in the Ugandan situation, this issue is not resolved. A vivid conflict of laws emerged when the Rome Statute was domesticated in 2010 through the enactment of the International Criminal Court Act (ICC Act), to enable Uganda try crimes against humanity, genocide and war crimes. This has presented a legal paradox with the ICC Act existing alongside the Amnesty Act, which contains a blanket amnesty for war atrocities. A second challenge was presented in the pursuit of accountability, in the context of national prosecutions against a former LRA commander, Thomas Kwoyelo for alleged crimes including the grave breaches of the Geneva Conventions, murder, kidnap with intent to murder and aggravated robbery. The accused person allegedly applied for amnesty while his prosecution was ongoing. He obtained a Constitutional Court ruling³ in his favor, declaring that his prosecution and the refusal to grant him amnesty was discriminatory and as such, unconstitutional because he was not accorded the same treatment as other commanders who applied for and were granted amnesty. An appeal by the state against this ruling is yet to be determined by the Supreme Court.

Just as the tide seemed to be turning against accountability for mass atrocities in Uganda, the Minister of Internal Affairs in a positive development, declared a lapse of Part II of the Amnesty Act; with the implication that, no amnesty certificates would be issued until the whole Act expires in May 2013. The issue generated a lot of attention with some groups and individuals calling for some form of conditional amnesty to be considered for those still engaged in hostilities against the State. These developments heightened the Amnesty debate in Uganda in the background of its pursuit of transitional justice. The situation resulted into perceived fears among some circles that the fragile peace that may have been attained through the amnesty law might be threatened. Those fears were largely what eventually informed the reinstatement recently of Part II of the Amnesty Act, and in effect, the reinstatement of a blanket amnesty in Uganda.

² This was summed up by the Special court of Sierra Leone in *Prosecutor vs Morris Kallon and Brima Brazzy Kamara* decision: SCSL A Ch.13.3 2004 para.82. In 2005, the Argentine Supreme Court declared the amnesties relating to the 'Dirty War' in the 1970s and 1980s to be unconstitutional, in the *Simon Case*, Decision of 14 June 2005, case no.17.768. In the said case, the Supreme Court relying on international law made it clear that amnesty for war crimes was unlawful.

³ Constitutional Petition No.036/REFERENCE(Arising out of HCT -00 -ICD - Case No 02.10)

Amnesty and Transitional Justice (TJ) in Uganda

Although definitions of the term "transitional justice" vary, the term encompasses the search for justice in response to past episodes of widespread human rights violations, most often those associated with armed conflict, authoritarian regimes, and apartheid.⁴

Transitional justice demands that societies collectively design approaches to deal with legacies of past human right violations, abuses and atrocities they may have suffered. It also demands that the response be holistic, as one isolated approach alone may not suffice to address the array of complex demands of victims. However, Transitional Justice (TJ) is context specific and success in one context may present a challenge in another, there is "no one size fits all" prescription. Transitional Justice operates under formal and non-formal justice mechanisms; a combination of these mechanisms may be applied. Uganda is currently exploring the possibility of using a combination of these mechanisms in its Transitional Justice regime.

It is worth noting that, in the Transitional Justice context, terms like justice, accountability, peace and reconciliation may be mutually reinforcing in the sense that they present more synergies than differences.

Amnesty, which is a pardon or forgiveness for the commission or omissions of acts or crimes is a controversial component in many transitional justice regimes. Since the mid 1970s, at least 14 states on four continents have declared amnesty, or enacted amnesty laws immunising past regimes from accountability and liability.⁵ Until recently, immunity measures like amnesties were considered an acceptable part of promoting transitional justice in countries seeking to address past episodes of systematic violations of human rights.⁶ The politically sensitive need to broker peace between opposition forces often outweighed the moral imperative of seeking to punish those responsible for perpetrating human rights atrocities.⁷

This dilemma has characterised both the African and Latin American continents.

⁴ See Lous Bickford, *Transitional Justice*, in *ENCYCLOPEDIA OF GENOCIDE AND CRIMES AGAINST HUMANITY* 1045, 1045-46 (Dinah L. Shelton ed., 2005); Ruti Teitel, *Transitional Jurisprudence: The Role of Law in Political Transformation*, 106 *YALE L.J.* 2009, 2013 (1997) (noting the qualitative transition refers to a "bounded period, spanning two regimes)

⁵ Burke-White, W. (2001) 'Reframing Impunity: Applying Liberal International Law Theory to an Analysis of Amnesty Legislation' in *Harvard International Law Journal*, 42, p. 467.

⁶ Lisa J. Laplante, 'Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes', *VIRGINIA JOURNAL OF INTERNATIONAL LAW*: Volume 50 — Issue 1 — P 916

⁷ *Ibid*

Sierra Leone, Sudan, South Africa and Uganda are among the African countries that have been evidently affected by this dilemma. Uganda presents a unique situation considering that amnesty was provided in the context of no regime change as experienced in most jurisdictions where amnesty is often perceived as a "victors justice". World over, amnesties agreed upon during peace negotiations, or during or after conflict often pose a challenge for accountability and justice issues. As already argued above, providing amnesty for those alleged to have committed international crimes is increasingly prohibited by international law.

While discussing amnesty in the context of transitional justice in Uganda, the following concepts will be examined; Peace, justice, accountability and reconciliation. It is anticipated that the discussions will generate feasible recommendations for a holistic or integrated approach to transitional justice in the Ugandan context.

National Framework on Amnesty

With the recent extension of the Amnesty Act of 2000, Part II of the Act, which grants blanket or unconditional amnesty, was reinstated. This means that yet again, there is an unconditional right for offenders to apply for and be granted amnesty by the Ugandan Government. Part III of the Act, establishes the Amnesty commission, a demobilization and resettlement team, and elaborates its functions among other provisions. Extension of Part III means that the Amnesty Commission shall continue discharging its duties of demobilization, reintegration, resettlement of reporters, and sensitization of the public on the Amnesty Law and promote appropriate reconciliation mechanisms to affected communities. The values of dialogue, reconciliation and resettlement are broad and effective if appropriately explored in the context of post conflict environment.

Part IV of the Act spells out its lifespan and prescribes regulations for the resettlement of persons and generally for better implementation of the provisions and principles of the Act.

The 1995 Constitution of the Republic of Uganda: Article 50 provides for redress for violation for human rights. During the enactment of the Amnesty Act, no reference was made to redress for persons whose rights had been violated in the process of armed rebellion.. Victim's justice needs were not catered for in the context of Amnesty. Therefore, in the interest of those violated, it is here argued that it is important for the state to address victims' rights.

The International Criminal Court Act 2010: This is a product of the domestication of the Rome Statue and obliges Uganda to prosecute international crimes like crimes against humanity, genocide and war crimes.

The Geneva Conventions Act 1964; Obliges Uganda to prosecute crimes under international humanitarian law.

The Juba Agreement on Accountability and reconciliation: An annexure to the Final Peace Agreement between the Government of Uganda and the Lord's Resistance Army: This is a product of the Peace negotiations between the Government of Uganda and the Lord's Resistance Army/Movement in Juba 2006-8. It yielded a significant opportunity to deal with the Amnesty question and was signed in Juba on 29 June 2007.

The Agreement requires that the Government of Uganda adopt appropriate alternative justice mechanisms to end impunity for serious crimes and to promote redress for the victims of armed conflict by means of pursuing a combination of formal justice processes, truth telling, traditional justice mechanisms and provision of reparations to victims.

The Agreement is guided by the objective principle III of the Constitution, which directs that there, shall be established and nurtured institutions and procedures for the resolution of conflicts fairly and peacefully; and further underscores the Constitutional duty of Uganda to promote reconciliation.

This Agreement is a landmark achievement in Uganda's pursuit to deal with past human rights violations, abuses and mass atrocities. It is against this background, that amnesty should be thought through taking of Uganda's national aspirations and commitments.

AMNESTY JUXTAPOSED

Amnesty for Peace – is amnesty solely responsible for peace in Uganda?

The quest for peace in exchange for amnesty is a widely debated subject, but one that continues the world over, perhaps because it is ultimately settled through political considerations. In this context, the continued relevance of the amnesty programme will be explored through the examination of whether amnesty promoted peace in Uganda.

During the search for peace, even before the enactment of the Amnesty Act, the Government of Uganda jointly pursued explored peace negotiations together with military action. Therefore the question is whether in the context of armed rebellion in Uganda the amnesty programme is solely responsible for the prevailing peace in the country? What is not in dispute however is that, over 26,000 ex combatants have benefited from the amnesty programme, of whom

majority were formerly abducted persons and about 6000 are being reintegrated into their communities.

Between 2006 and 2008 the autonomous region of Southern Sudan brokered peace negotiations between the Government of Uganda and the LRA in Juba with the objective of cessation of hostilities by the LRA and finding comprehensive solutions to the over two decades old conflict. In August, 2009, Government of Uganda and the Allied Democratic Forces (ADF), an armed rebel group that started its rebel activities in South Western Uganda, but currently based in the Democratic Republic of Congo (DRC) continued peace negotiations, conducted under the auspices of the MONUC (United Nations Organization Mission in the Democratic Republic of Congo), in Kinshasa.

In 2000, the Uganda Peoples Defence Forces (UPDF) defeated the ADF in South Western Uganda. In March 2002, the UPDF launched the military offensive, "operation iron fist" against the LRA bases in southern Sudan and in December 2008, it led a joint military operation code named "operation lightning thunder" in concert with military forces from the DRC, South Sudan; Sudan People's Liberation Army (SPLA) and the Central African Republic (CAR) against the LRA in Garamba Forest.

All these actions were done with the Amnesty Law on the Statute books. Despite the existence of this law, LRA retaliated with violent attacks in which it allegedly committed atrocities, killing over 400 people in different incidents in the Congo in December 2008. The incidents later came to be referred to as the "Christmas massacres."

Other reports also indicate that despite the existence of the amnesty law, parts of Northern and Eastern Uganda witnessed some of the worst atrocities committed by the LRA. Examples include:

- The Muewini massacre in Kitgum District where on the 24 July 2002, fifty six (56) men, women and children were killed by the LRA.⁸
- The 2002 October 23rd Omot massacre in Pader District where 28 people were murdered, cut into pieces and then placed in cooking pots before dozens of witnesses.⁹

⁸ Justice and Reconciliation Project, Gulu District NGO Forum, Field Note 8, November 2008.

⁹ Justice and Reconciliation Project, As Long As You Live, You Will Survive: The Omot Massacre, Field Note XI February 2010

- In June 2003, the LRA for the first time infiltrated the Teso sub region through Obalanga Sub County in Amuria District where over 600 people were allegedly killed.¹⁰
- The 2004 19 May Lukodi – IDP camp Massacre in Gulu District where over 60 people were killed.¹¹
- The 21st February 2004, Barlonyo Massacre where the LRA allegedly killed over 300 people and abducted an unknown number in Barlonyo IDP camp in Lira District.¹²

While the contribution of the amnesty law in pacifying the country cannot be denied, attributing the total prevalence of peace in the country to the law may be an over statement. Amnesty provided an opportunity for the rebels to voluntarily cease rebellion and be pardoned. While a number of them seized the opportunity, the initiators of the rebellions in Northern and South Western Uganda did not make use of the privilege. It is also worth noting that majority of those who sought amnesty did so after they had been captured or during the prosecution stage.

As one person formerly abducted by the LRA said:

Joseph Kony as the leader of the LRA should be held accountable for the harms caused to the people in the north. This is because he does not want to honour and come out of the bush despite the amnesty law. If he came out, it would end the rebellion and the sufferings of the people.¹³

The foregoing analysis raises certain questions such as;

1. Whether in this context amnesty is relevant?
2. Whether amnesty is of any significance considering it has mainly attracted the abducted but not the abductors who masterminded the atrocities?

¹⁰ Justice and Reconciliation Project, Field note XIV, January 2012

¹¹ Justice and Reconciliation Project, The Lukodi Massacre 19th May 2004, Field Note XIII April 2011.

¹² Justice and Reconciliation Project, Gulu District NGO Forum, Kill Every Thing Living: Barlonyo Massacre, Field Note IX, February 2009.

¹³ UNOHCHR, Making Peace our own: Victims' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda; p.23

3. Whether amnesty is of any significance considering its largest beneficiaries are minors who cannot be said to have engaged in "rebellion" against the State?

In addition, victims of the LRA atrocities have often viewed the amnesty process as a reward to the ex-combatants, which has ignored their needs as victims.

Peace vs. Justice – victim's perceptions of amnesty.

Desperate pursuit of peace in the context of armed conflict and civil strife has unconsciously led to the peace vs. justice dilemma across continents. In this process amnesties are negotiated by the parties in exchange for peace. In Uganda, the dire need for peace culminated in the enactment of an Amnesty law which was then viewed as the best peace option, as reiterated by an Acholi relative of a murder victim in Kitgum district; *"We should not take these rebels to court; otherwise those who are still in the bush will never come out. The best thing is to offer them amnesty as is being done."*¹⁴

However, other regions like Lengo, Teso and Adjumani and tribes affected other than the Acholi had varied opinions of the amnesty process. It has been argued, many victims actually desired more than the amnesty provisions. At the time of enactment of the Act, it was presumed that all those affected by the conflict had a natural affinity for amnesty and therefore would readily accept those that had perpetrated violence against them. It was perhaps never anticipated that the population's expectation of justice needed to be met. This partly explains why victims and other members of the community continue to express the need for accountability for serious crimes by the senior commanders of the armed rebellion

The peace vs. justice dilemma in Uganda, was first demonstrated during the 2006 -2008 Peace Negotiations between the Government of Uganda and the LRA. The Negotiations commenced in 2006 against the backdrop of the Government's referral of the case of Joseph Kony to the ICC as well as the ICC's decision in 2005 to indict Joseph Kony and four of his commanders. During the negotiations, it was argued that the ICC arrest warrants would frustrate the peace process, however the finality of the negotiations demonstrated that the LRA was actually not committed to the peace negotiations as its representatives did not show up at the signing of the final Peace Agreement in April and follow up negotiations in November 2008.

14 Ibid

A second dilemma relates to the prosecution of Col. Thomas Kwoyelo, a former LRA commander. He is alleged to have applied for amnesty while charged before the International Crimes Division for alleged commission of crimes under the Geneva Conventions Act, 1964 and the Penal Code Act Cap 120. His prosecution led to a constitutional challenge based on his amnesty application and his right to amnesty, a matter that is yet to be determined as it is on appeal at the Supreme Court. The Trial of the former LRA commander, brought into perspective, the complexities of amnesty and the need for accountability. This situation promoted anxiety among the populace and vividly brought into perspective the notion of victim vs community justice.

As much as Kwoyelo's defence lawyers argued successfully for his amnesty, thus obtaining a ruling in his favor, it is here argued that the Court and defence counsel were not aware of some other important dynamics of the ruling. In November 2011, Justice and Reconciliation Project, a Non – Governmental Organisation based in Northern Uganda sought to find out the community perspectives in light of the Court's ruling, in the event that Kwoyelo returned to the community once he was granted amnesty. The analysis¹⁵ revealed that the situation on the ground, and more specifically in Kwoyelo's home area of Pabo, was highly volatile and unpredictable, and opinions regarding his reintegration into the community widely varied.

One respondent reportedly stated:

*"If he is to come back here, then the entire community will live in fear from just hearing his name."*¹⁶

Another said:

*"If the government cannot keep him in jail, for him to come live with us in the community is nearly impossible. If they can't keep him in jail, it is fine. But they should do us a favour and not bring him back to the same community in which he committed atrocities"*¹⁷

15 Justice and Reconciliation Project; *Moving Forward: Thomas Kwoyelo and the Quest for Justice A Rapid Situational Analysis on Perceptions and Opinions for the Way Forward*, November 15 2011.

16 Ibid, 39-year-old male respondent during a focus group discussion in Abera village, Obiangic parish, 3 November 2011

17 Ibid

The same analysis however revealed that, residents of Pabbo who were not directly affected by Kwoyelo's crimes or the atrocities of the LRA took a more neutral point of view and tended to advocate for his reintegration into the community. Although there was a mutual agreement, *"that forgiveness takes time."*¹⁸

The peace-justice dilemma therefore puts into perspective the need for accountability regardless of the existence of amnesty. It emphasizes the fact that as much as amnesty in Uganda was pursued in the interest of peace it did not put into context the needs of the victims and this feeling existed then and is still evident today.

Studies have shown that even among the communities where the granting of amnesty was popularised, feelings of discontent were expressed. For example it was revealed in 2007 that; *many Acholi respondents expressed discontent with the current amnesty process, especially its failure to deliver compensation to victims, to reconcile the perpetrators or amnestied persons with the victims and the fact that reintegration packages were offered to returned combatants, who, in many cases, were also respondents' relatives.*¹⁹

Today, the same feeling of discontent is expressed and in a more worisome manner, suggesting that if victims' concerns are not addressed, the country risks a relapse into insecurity.

18 Ibid. Interview with male respondent in Pabo Trading Centre, 4 November 2011

19 UNOHCHR, *Making Peace our own; Victims' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda*; p.23

According to one respondent:

*"What I hate most about this Amnesty Commission is that they forgive the perpetrators, but they don't look at the survivors. It makes people to think that you first have to join the rebel group, then you come out to gain from government."*²⁰ *"This unequal treatment creates a lot of problems within the communities. Some victims look at their former perpetrator as someone who is now enjoying life and receiving support whereas nothing is given to him or her. Once you start supporting victims it creates an avenue for them to forget."*²¹

Another respondent lends support by affirming that:

*"Rehabilitating only ex-combatants is a very wrong approach. It is doing more harm than good... If this is not looked into critically, it can lead to another conflict because the victims have nothing to rely on."*²²

The peace vs. justice dilemma refocuses attention to the notion of transitional justice, which advocates for a holistic approach to justice mechanisms and recognizes the fact that not one justice mechanism may be sufficient in addressing past atrocities.

In South Africa, the granting of amnesty was combined with a truth telling process but the victims still felt cheated because the perpetrators simply confessed their crimes, but no special consideration was given to their concerns as victims. Justice is therefore personal. Which ever way it is achieved, victims need to be accorded considerable support in recognition of their plight.

It is therefore recommended that peace and justice be mutually pursued.

20 Justice and Reconciliation Project: *Who forgives whom?* Policy Brief June 2012; Male respondent, FGD in Tubur sub-county, Soroti district, Teso sub-region, 24 March 2012. Accessed at <http://justiceandreconciliation.com/2012/06/who-forgives-whom-northernugandas-grassroots-views-on-the-amnesty-act/>

21 Justice and Reconciliation Project, *To Pardon or to Punish? Current Perceptions and Opinions on Uganda's Amnesty in Acholi-land, situational Analysis, December 15 2011* -

22 *ibid*

Amnesty vs. Forgiveness

The enactment of the Amnesty Law was motivated by the notion of forgiveness. Communities were alleged to have forgiven and were ready to forgive those who had perpetrated crimes against them. There was immense stakeholder emphasis on the inherently forgiving and reconciliatory nature of the population, especially the Acholi. Amnesty was therefore declared in Uganda to mean: "a pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the State"²³

The motivation behind the perceived forgiveness of LRA rebels vary among the regions affected by conflict and forgiveness in the context of the over two decade conflict in northern Uganda is quite complex because such forgiveness was and is still largely conditional.

Forgiveness was based on religious beliefs, the traditional values of confession and reconciliation, national aspirations for peace, and communal responsibility.

What has never been analysed perhaps is whether the forgiveness was genuine. There seems to be a distinct version of the notion of forgiveness by the victims who suffered violence at the hands of the LRA or other groups, relative to the perception of "communal forgiveness". Unfortunately, the notion of communal responsibility has been widely popularized at the expense of those individuals who still feel their grievances need to be addressed. This may explain the lack of satisfaction that persists among those that were affected by the conflict.

It should therefore be examined whether in the context of the LRA rebellion, amnesty promoted peace, and whether it is possible to experience reconciliation without forgiveness.

Among the Acholi, the motivation behind the perceived forgiveness, was the plight of the abducted children. The victims' own children were their tormentors, but the question that lingered was whether they had the choice to make them account for crimes they committed against their will or to forgive them. It seems clear however that despite that fact that the Acholi "have forgiven" those children that were formerly abducted, they are not ready to forgive high level perpetrators. A 2007 study²⁴ revealed that respondents were more at ease with the application of amnesty (timo-kica lumuku - an acholi term for

23 Amnesty Act, Cap 294, Section 1(a)

24 United Nations Office of the Higher Commissioner for Human Rights(UNOHCHR), Making peace our own, Victims' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda.

forgiveness) to low-level perpetrators. Many respondents stated that they found it problematic that the Amnesty Act would also benefit individuals accused of serious offences. A respondent from Pader district in Acholiland described his reaction to a returned LRA commander:

*"Kenneth Banya came here and confessed publicly in [location withheld]. He confessed that he abducted many children, youth, even women and even ambushed vehicles...As a person who has been harmed by these people, I cried so much as he talked about those atrocities because I lost my daughter in one of the killings...For me I felt like going to fight him but despite our cruel reactions toward him, we have to forgive them, not willingly, but because we want the best for our future and for our children."*²⁵

It has also been argued that forgiveness has been favoured due to the presence of the amnesty law A UNOHCHR report revealed that in Teso, a grassroots leader from Amuria District said:

*"Banya was a person who came back and confessed his deeds – murder and maiming of people in Teso and other areas. We felt grieved but people have to forgive him since he was a beneficiary of amnesty."*²⁶

It was also noted in the study that forgiveness for major perpetrators seemed to be motivated by adherence to notions of group responsibility, tribal ties and a desire to maintain social cohesion. As explained by one Langi wife of a UPDF soldier from Oyam district:

*Vincent Oti is another terrible one and he is equally accountable as Kony. But any human being is fallible... These two should just accept to come out and return home and stay peacefully. We are ready to forgive them so that we return to our normal way of life and rebuild ourselves. But the Acholi people are also responsible because Kony is their son and they blessed him and also have the responsibility to discipline him as a child of their household."*²⁷

25 Ibid, P.30

26 Ibid

27 Ibid

Impact of amnesty.

There are varied views on the impact of the amnesty programme. As much as there is a general understanding that the Amnesty regime is responsible to some extent for the prevailing peace in northern Uganda, the instigators of conflict, who should have been the greatest benefactors of this amnesty have continuously ignored it.

However, this should not be the measure of whether amnesty served its legitimate purpose. Strict interpretation of the law and tangible results of the Amnesty Commission regarding the numbers of those granted amnesty i.e 26,000 are quite impressive, although the integration of only 6,000 of the 26,000 who were granted amnesty were integrated, which leaves a lot of questions unanswered and has been criticized as minimal.

Nevertheless, a critical analysis of the sequential effects of the conflict amidst the search for sustainable solutions to conflict, need to be considered

Amnesty vs. Accountability

The existence of an amnesty offer is increasingly being viewed as an impunity tool for crimes committed in times of conflict. Today, varied accountability measures are being pursued in the context of transitional justice to ensure that those responsible for the commission of crime are made to account. The measures for such accountability may be explored through the formal justice system, the truth telling and seeking mechanisms and the traditional justice mechanism.

In some jurisdictions like South Africa, amnesty was granted on the basis of accountability. The South African amnesty process sought to hold individual perpetrators²⁸ accountable through a public process in which they were required to make full disclosures of their criminal actions.²⁹ This was facilitated through a Truth and reconciliation process.

In the Ugandan context, an amnesty was granted without consideration for individual accountability through disclosure of one's criminal actions. In this case, amnesty is viewed by some sections of the community as promoting impunity. This is because the perpetrators have not publicly declared their

28 Therese Abrahamsen & Hugo van der Merwe, Reconciliation through Amnesty? Amnesty Applicants' Views of the South African Truth and Reconciliation Commission, Centre for the Study of Violence and Reconciliation 2005.

29 Ibid

acts and the reasoning behind them, thus denying the public an opportunity to participate in the accountability and reconciliation process.

In the event that Uganda still needs another form of amnesty programme, it needs to be examined whether accountability can be promoted within the context of such a blanket amnesty, and in that regard, which categories of people should be held to account. There is also need to examine which category of crimes can be subjected to amnesty. Sexual and gender based crimes as well as direct attack on civilians during conflict should not be subjects of amnesty. Special regard should also be had to UN Security Council resolutions 1325 (2000) and 1820 (2008), which in effect warrant that sexual violence be excluded from amnesty provisions.

Even while the Amnesty Act prevails, the affected communities are concerned about the need for accountability for those crimes committed during the insurgency in Northern Uganda. Majority of the affected communities agreed that those that perpetuated acts of gross violence and atrocities should be held accountable and also tended to hold those they considered most responsible more liable.

In one report, a member of a community-based organisation in Amuria District, stated:

*"Kony should be held most accountable because he entered the bush and abducted children, killed and maimed people, looted people's property, brought poverty and famine and confined people in camps."*³⁰

Additionally, the communities put into context past efforts to bring the conflict to an end and in that regard, they feel that the LRA leader should be held accountable due to his disregard for the peace process.

As another member of a community-based organisation in Pader District stated:

*"For me, the thing that makes Kony more accountable than others is his resistance to the peace talks and reconciliation despite the efforts by different people and institutions."*³¹

30 Office of the United Nations High Commissioner for Human Rights, Making Peace our own, Victims' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda, 2007, p.39

31 Ibid

There seems to be a clear understanding therefore, that regardless of the existence of an amnesty offer, there is need for accountability. What is crucial is how this accountability will be achieved within the context of the amnesty process.

In the context of Uganda, formal and traditional justice mechanisms have been explored and have facilitated the process of accountability. Truth seeking is also being explored.

Amnesty vs. Reconciliation

Reconciliation may be defined as the process that yields restoration of broken relationships through acknowledgement, repentance and forgiveness by parties to a conflict.

Section 8(c) &(d) of the Amnesty Act as amended spells out the functions of the Amnesty Commission. They include, among others, the mandate of the Commission to consider and promote appropriate reconciliation mechanisms in the affected areas and to promote dialogue and reconciliation within the spirit of this Act.

In the context of the LRA insurgency, it is debatable whether amnesty has promoted reconciliation. What seems to be evident is the reunion of those formerly abducted with their families. However, from the perpetrators and victims perspective, it is not so clear as the perpetrators have not publicly detailed their crimes and against whom they were committed, so that genuine forgiveness and reconciliation can be achieved.

In Acholiland, those who have made public disclosures have been mainly high profile individuals such as Kenneth Banya, Sam Kolo and Onen Kamdulu who were former commanders of the LRA.³² However, these public disclosures have been viewed as unsatisfactory and even demeaning to the victims. An Acholi woman from Amuru district who was a victim of physical violence expressed deep dissatisfaction with such statements as:

32 Office of the United Nations High Commissioner for Human Rights, Making Peace our own, Victims' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda, 2007, p.27

*"I only hear people who come back from the bush and they confess from the radio station that is Mega FM, but they do not say the crimes they committed, but they only say they are sorry to the community, and beg those in the bush to come back."*³³

Further, according to the Report most Acholi respondents who witnessed high profile perpetrators publicly acknowledge their crimes expressed similar dissatisfaction and said they believed these statements were intended only to win favour from the Government and to appease victims, rather than expressing genuine remorse.

This therefore presents the question whether reconciliation is possible in the context of an amnesty programme as well as whether it is possible without accountability?

Conclusion

The granting of amnesty is often a political decision and does not provide for guaranteed rights but opportunities for alleged perpetrators to abandon rebellion in the interest of peace and common good. In this regard, the amnesty programme in Uganda may have played a role in facilitating the return of many formerly abducted child combatants to their communities. Knowing that they will not be apprehended for the atrocities they committed on return from the bush. In Uganda, those that instigated these conflicts did not take advantage of the offer when it was available. Post Conflict Uganda is now challenged by the need to pursue justice and accountability contemporaneously in the overall interest of victims of atrocities.

33 *ibid*