

TRANSITIONAL JUSTICE IN POST CONFLICT UGANDA: ASSESSING THE GAINS, IMPACT AND ARGUMENTS FOR THE RETAINMENT OF AMNESTY ACT 2000: A COMPARATIVE ANALYSIS*

Abstract

This paper considers the experience of post conflict Uganda in the wake of its struggle for transitional justice following the 20 years violent conflict that trailed massive civilian casualties within the northern region of the country. A brief background on the extent of Transitional Justice in Post Conflict Uganda is captured, an analysis of the Amnesty Act 2000 of Uganda is examined, the gains and Impact of Amnesty in Uganda is appraised. The work ends with an assessment of the arguments for the retainment of the Amnesty Act in the Northern region of Uganda following the successes recorded by the Act, a position which is vehemently opposed to by victims' rights groups who maintain that the Act favours ex-combatants more than victims, more so compromises the victims' rights to reparations, justice, and truth. These debates and accompanying strains are epitomized by the existing discrepancy about the suitable reaction to the Lord's Resistance Army's violent uprising in the North of Uganda amidst search for peace and healing within post conflict period. This work recommends that the amnesty law should afford victims with sufficient form of compensation or restitution to the victims, and also victims opinion should be central in determining the country's response in the Post Conflict restructuring process. In addition, Perpetrators should disclose the truths with regards to their involvement in the crisis through the inclusion of non-legal accountability measures such as the Truth Commission where they publicly confess and plead for forgiveness from the victims.

Keywords: Transitional Justice, Amnesty, Victims, Post Conflict

1. Introduction

The essence of this kind of research, in such a time as these, where the world is embroiled in armed hostilities is of great significance. Most armed conflicts have continued unabated for years, resulting in high rates of civilian casualties. It is a paradox that most war torn States in Africa are signatories to several International Humanitarian Laws as well as Human Rights treaties, which prescribes punishment to perpetrators for humanitarian violations. Yet, when confronted with dire and ravaging conflict situations, States sometimes resort to the use of amnesties, which is not expressly prohibited in International law as such.¹ However these States fail to consider nor balance such amnesties with the interest and dire needs of the affected victims of the conflicts which remains a worrisome and appalling trend. It is against this background that this paper intends to chronicle the transitional justice process in Post Conflict Uganda, so as to decipher the effectiveness or otherwise of the Amnesty Act 2000. The paper shall also inspect closely the arguments of key stakeholders canvassing for the retainment of the Amnesty Act 2000 vis-à-vis the stands of the Victims who seek for Justice, Truth and Reparation as a result of the brutality they suffered during the armed conflict.

2. A Brief History of the Amnesty Act of Uganda

The Act has played vital and central roles toward restoring peace to the war-torn conflict region of northern Uganda, ravaged by diverse rebel actions. The triumph of the Act is essentially the extension of immunity to rebels, safeguarding against possible trial, never minding their atrocity perpetuated within the 20 years conflict, as long as they lay down arms and give up as well. Historically, Uganda Since its attainment of independence has regularly employed amnesty laws in situations of political crisis with various degrees of success. For instance, in 1978 Amnesty was employed as a means of persuading expatriates in Diaspora to come home. Also following taking over of power in 1987, by the Museveni government, the administration offered amnesty to opposition rebel forces who surrendered, as well as financial or political supporters of combatants, and Individuals in the line of the fights, including workers from previous regimes in the security force, prisons, army and police.² However, acts of rape, murder, genocide and kidnapping, termed as heinous crimes were excluded under the statute.³ Initially the amnesty statute lasted for a period of 3 months and was further extended for an additional twelve week period after which it ended. The gains of the amnesty include laying down arms of the opposition rebel

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¹Art. 6(5) of Additional Protocol II. See. D. Cassel, Lessons from the Americas: Guidelines for International Response to Amnesties for Atrocities, (1996) 59 *Law and Contemporary Problems*, 197, 218.

²B. Afako, 'Reconciliation and Justice: 'Mato Oput' and the Amnesty Act' in Okello Lucima (ed), *Accord: Protracted Conflict, Elusive Peace: Initiatives to end the violence in northern Uganda 2002* Conciliation Resources, London, UK (2002)

³Amnesty Statute, No. 6 (1987).

forces⁴ that brought about the Reconciliation Pact Deal of 1988⁵ between The Uganda People's Democratic Army (UPDA) and the Government of Uganda.⁶

In 1999, after 10 years of failed negotiations and widespread atrocity, agitations were placed upon the State to pursue amicable settlement of prevailing humanitarian crisis within the region via the instrumentality of amnesties as well as peaceful, non violent means of negotiations as was canvassed by civil society groups in Uganda. Most notably, the Acholic action group⁷ composed and anchored mostly of top representatives, drawn from Christian orthodox representative, Muslim sheikh, catholic archbishops and bishops of the Anglican cathedral in northern Uganda, all of whom were outstandingly vocal in endorsing blanket amnesty for the rebel forces.⁸ The group commenced its movement on the 8th day of March, 1998 following a meeting with the head of State President Museveni where it made known its agenda contained in its action plan report captioned 'A Call for Peace and End to Bloodshed in Acholiland'. The report laid emphasis on compromise and forgiveness, thus making these two principles to be hallmark with respect to their movement, and demanding a path at resolving these atrocities. Within subsequent weeks, the group advanced upon its crusade intensely, calling for amnesty, principally emphasising that as opposed to earlier peace accords, these would grant unconditional, prosecution free protections to every class of violent associated atrocities. It is worthy to note that since the reconciliation law⁹ became operational within the country, Acholi Religious Leaders Peace Initiative (ARLPI) intensified more efforts towards its implementation and has advocated against the ongoing ICC investigations.¹⁰

Furthermore, the principal human rights body¹¹ in Uganda became an advocate on the issue of a new peace accord for the country, as such immensely aiding through initial stages of the draft process. The bodies' stands were fundamentally centred upon wide perception on diverse notions to include mode of criminal trials as well as realistic methods in seeking equilibrium between agitations for criminal trial which is a necessity in order to avoid imminent infraction, thus bringing about harmonious settlement of hostility. Likewise, opposition activist championing the course for amnesty within this region consists of the Acholi Parliamentary Association and an Acholi Diaspora Association known as 'Kacoke Madit'. In 1998, the Attorney General of Uganda commenced the drafting of an Amnesty Bill and held consultative talks with internally displaced persons, opinion leaders, religious heads and district councilors.¹² In September of 1998, whilst deliberating on the devastating situation in the North, the hallowed red chambers of the Senate, reached a unanimous agreement imploring rebels as well as government to suspend hostilities for a given period whilst creating a presidential commission as well as an amnesty law established to enhance the restoration of security and peace in all war-torn districts of the North. The government in October, 1998 nominated six top government officials who were to deliberate, more so engage regional as well as district heads throughout the country, in examining closely, the proffered amnesty law of 1998. These deliberations started about the ending of November, at which time tribal regional elders from Acholi tribe, senior state officials, women, opinion heads, youths and religious heads all of whom were stakeholders, implored on the government to establish blanket amnesty laws to be employed to LRA combatants who would be reintegrated into war-torn communities. The 13th day of September, 1999 witnessed the introduction of the proposed law into the upper legislative house in the country, this was done by minister for Internal Affairs, Rugumayo Edward.¹³ A proposed amendment to the bill was also initiated by the minister on 27th October, 1999 by further extending the geographical scope of the amnesty beyond some selective areas within the State, which include Kitgum, Kasese, Gulu, Arua, Kotido, as well as Koboko, to the entire nation. The result of this action was a success in the sense that, present Amnesty Act lacks territorial boundaries.

On 7th of December, 1999 the Amnesty Act 2000 successfully passed through the upper legislative house without opposition, coming into force in January of 2000. The Act accords amnesty, which is accepted generally as a discharge or exemption, forgiveness, pardon from punitive legal trials, including various kinds of retribution

⁴ Uganda People's Democratic Army (UPDA)

⁵ Pece Peace Accord

⁶ Pece Peace Accord 1988, Art B.2. This agreement provided for inter alia the release of 'all the combatants and non-combatants arrested as a result of the hostilities'

⁷ Religious leaders peace initiative (ARLPI),

⁸ J. Owich, C. Makumbi, 'Acholi leaders welcome extension of amnesty, *The Daily Monitor* (May 28, 2013)

⁹ Uganda's *Amnesty Act of 2000*

¹⁰ M. Gilbert, 'The Role of the Acholi Religious Leaders Peace Initiative (ARLPI) in *Peace Building in North Uganda*' USAID (March 2001)

¹¹ Ugandan Human Rights Commission

¹² O. Bitek, 'Uganda; Acholi want to Forgive Kony' *The Monitor* (Gulu 29 October 1998).

¹³ Uganda; Rugumayo Tales Amnesty Bill' *New Vision* (Kampala 14 September 1999). Available at <https://allafrica.com/stories/199910270104.html>, Last accessed April, 11th 2020

which ought to have been carried out as a form of legal redress by the government legal department within the country. The persons to benefit from the foregoing are captured in the Act as follows:

Any Ugandan who has at any time since the 26th day of January, 1986 engaged in or is engaging in war or armed rebellion against the government of the Republic of Uganda by (a) actual participation in combat; (b) collaborating with the perpetrators of the war or armed rebellion; (c) committing any other crime in the furtherance of the war or armed rebellion; or (d) assisting or aiding the conduct or prosecution of the war or armed rebellion.¹⁴

Furthermore, the Law declares that persons who come within the limits of the amnesty shall not undergo trial or be put through any form of punishment for his or her involvement in the war or armed insurrection.¹⁵ Hence, there exist two basic sets of Ugandans qualified for amnesty and these includes abducted persons, porters, camp workers, non-combatants who were dependants, and other combatants who took up arms. To obtain amnesty under this legislation, violators would be expected to perform the following acts to wit: submitting oneself to a security institution or personnel within the country, give up any armaments in their custody, abandon and relinquish participation in the armed rebellion or hostilities.¹⁶ The Act in addition created the Amnesty Commission to perfect the terms of the Act.¹⁷ As at 2011, an approximate of 24,066 violators benefited from the peace accord scheme and were granted amnesty. Successive alterations to the Amnesty Act has been carried out, the most recent was in 2006, provided that certain persons, at the Foreign Minister's good judgment, would be excluded from the grant of amnesty.¹⁸ However, it is interesting to note that the Act of 2000, which the government introduced at the climax of the conflict as a result of intense agitations and movements by non-governmental groups, in a bid to find lasting peace to the conflict between the pro-government forces and the rebel groups, initially did not induce much condemnations from world powers and Institutions.

3. Transitional Justice in Post Conflict Uganda

The field of transitional justice has evolved over the last 30 years since its inception, as such attaining diverse perceptions. Some scholars perceive the subject to contend itself with how war torn societies prevail above a bequest of humanitarian abuses in search of Peace, Justice, healing and Reparation for victims, other Schools of thoughts claim that it is a field with an interdisciplinary discourse.¹⁹ Africa stands as a focal point in the International discourse on transitional justice. As war-torn States recover from conflicts, modalities necessary for the attainment of International Criminal Court's requirements of legal sanctions to persons allegedly accountable for his or her actions amounting to atrocities of war, genocide as well as humanitarian offences, provokes intense concerns amongst some peace-builders in the discipline of transitional justice. Faced with years of impunity that has resulted into armed conflicts, genocide, and tribal violence, the international community maintains that oppressors of such grievous and heinous actions should face the wrath of the law. The struggle for transitional justice in Uganda dates back to January of 1986 when Museveni Yoweri came into power under the auspices of the prevailing political party at that time, which has remained till date despite attempts by opposition to remove the party from power.²⁰ This was closely followed with the establishment of a Truth Commission, which sole purpose was to carry out inquires on cases of humanitarian violations, perpetuated from 1962 up to 1986.²¹ The Ugandan government, precisely in the year 2000, enacted the Amnesty Act in a desperate bid to put a stop on a two decade humanitarian crisis within the north region of the country, a conflict which has been depicted as 'the biggest forgotten, neglected humanitarian emergency in the world today.'²² A general overview on the law reveals that all persons, whom between February of 1986 and January 2000, who had participated in armed rebellion or war in opposition to the State, should obtain unconditional exemption from trials provided they lay down their arms. The goal or rationale behind these laws as contained in its prelude, was essentially to bring back together in unity and oneness, the diverse rival fractions to the conflicts in order that the attainment of harmony and truce be once again restored. To a large extent, there existed no provisions or limiting clause to exclude heinous

¹⁴ Amnesty Act 2000, s 3(1)

¹⁵ Amnesty Act 2000, s 3(2)

¹⁶ *Ibid.* Art. 3.

¹⁷ *Ibid.* Arts. 6–7.

¹⁸ *Ibid.* at 8–9.

¹⁹ L. Grover, 'Transitional Justice, International Law and the United Nations' (2019)88 *Nordic Journal of International Law* Available at https://brill.com/view/journals/nord/88/3/article-p359_359.xml?language=en. Last Accessed March, 17th 2020

²⁰ National Resistance Movement (NRM) previously known as National Resistance Army (NRA).

²¹ In essence this was Uganda's second Truth Commission. Idi Amin had appointed 'The Commission of Inquiry into 'Disappearances' of People in Uganda Since the 25th of January, 1971' in 1974.

²² These were the words of former UN Undersecretary-General for Humanitarian Affairs and Emergency Relief Coordinator Jan Egeland (2003-2006) qtd in *Forced Migration Review*, (2008) vol.21

humanitarian rebels from benefiting from the peace accord package. The foremost rebel group²³ within the region, headed by war lord Joseph Kony, mostly notorious for the atrocities they perpetrated against their own people, particularly the Acholi tribe in Northern Uganda. The outcome of these atrocities are devastating and includes dislodgment of up to 1.8 million people, destabilisation of the region, the abduction of even more civilians, mainly children, for recruitment in the Lord's Resistance Army (LRA) forces, and the butchery and maiming of tens of thousands of civilians.²⁴

The Government of Uganda (GoU) in an attempt to further its transitional justice process, yielding to call by victims for justice, referred the armed conflict crises in the Northern Uganda in 2013 to the International Criminal Court (ICC), flowing from which, warrants of arrest were sent out in the year 2005 against five top Lord's Resistance Army (LRA) commanders. Some observers have argued that these indictments against the principal actors in LRA by the ICC would only obstruct the peaceful transition process thereby exposing the civilian population to risk of death, mainly as a result of the rebel groups' reluctance to lay down their arms, unless charges were dropped. Opposition groups maintain vehemently on preservation of primary principles as well as nation responsibilities as enshrined in humanitarian laws. These laws demand that offenders be made culpable for their violent acts, in which case, the rebels in the State of Uganda should be held accountable. The claim that the charges handed down by the court on the rebels contributed significantly to the relative stability enjoyed in the region but however question the sustainability of these, insisting that a lasting solution can only be readily achieved through legal redress. However the ICC has not been successful in its attempt to prosecute the alleged principal perpetrator Joseph Kony, who has consistently evaded arrest since his indictment.

It is pertinent to note that twelve years of relative peace has long passed since the end of the twenty years violent conflict in Northern Ugandan yet the victims of these horrific abuses still await compensation, truth and justice.²⁵ If post-conflict reconstruction schemes and justice mechanisms are not properly implemented, the possibilities of full recovery and integration within the Ugandan State will be minimal. Presently, there is what many consider as 'negative peace' which is merely the silence of guns and absence of violence. Thus in order to attain reconciliation, lasting peace, and most significantly healing for the victims, justice must be duly dispensed. On this point, the Human Rights Watch emphasized thus, 'We have seen time and again that turning a blind eye to justice only undercuts durable peace.'²⁶ If the residents of Uganda's northern region do not properly recover and continue to have feeling of disenfranchisement, the possibilities of re-occurrence of the vicious and violent conflict is most likely because the people of the region still endure physical, psychological, social, economic hardship as compared to the southern region of Uganda. Hence, the populace within the war-torn region, need to bury their past, through proper compensation and justice which at the moment is greatly absent. As noted by Lyandro Komakech, a researcher with the Refugee Law Project, 'Uganda's transitional justice process is now at a crossroads. It has the potential to either transform the country or plunge it back into conflict.'²⁷ Following the end of the conflict in the northern region of Uganda, there have been heated debates over the Amnesty Act of 2000 and the pursuit of victims' rights to justice. This query on how to pursue justice became much more puzzling following Uganda's involvement of an International court to look into the devastating situation within its territory. However, former rebels under Uganda's Amnesty Act are shield against criminal trials which has led to the grant of amnesty to over 13,000 LRA combatants following the commencement of the peace accord initiative. The nature as well as form of the amnesty granted under the law is blanket amnesty which means anyone who comes out of the bushes claiming to be a rebel of the LRA is automatically considered and granted blanket amnesty. There exists no requirement for the confession of sins by the perpetrators as a means of exchange and basis for securing amnesty within the divided Ugandan territory.²⁸ More so, general populace in the northern region welcomes the Amnesty Act, considering it as being favourable to them as most former rebels consisting of child soldiers and abducted children desire to return home from the bushes and captivity. Although the Ugandan government has made substantial efforts at ensuring that criminal trials, which is a necessary ingredient of transitional justice is

²³ Lord's Resistance Army

²⁴ Norwegian Refugee Council/Internal Displacement Monitoring Centre (NRC/IDMC), *Uganda: Returns Outpace Recovery Planning*, 19 August 2009

²⁵ Peace Insight, Uganda: Conflict Timeline. Available at <https://www.peaceinsight.org/conflicts/uganda/conflict-profile/conflict-timeline/> last Accessed on May 15th, 2020

²⁶ D. Lanz. 'The ICC's Intervention in Northern Uganda: Beyond the Simplicity of Peace vs. Justice.' *The Fletcher School of Law and Diplomacy*. (May 2007) 15

²⁷ L. Komakech. 'Traditional Justice as a Form of Adjudication in Uganda.' *Where Law Meets Reality: Forging African Transitional Justice*. Cape Town: Pambazuka, (2012) 64-80.

²⁸ Making Peace Our Own: Victims' Perceptions of Accountability, Reconciliation, Transitional Justice in Northern Uganda. Rep. Office of the United Nation High Commission for Human Rights, 2007. 38

maintained, the attainment of a balanced approach meeting the dire needs of the persons responsible for the atrocities and also securing rights of victims' are yet to be achieved.

4. Assessing the gains of Amnesty in Uganda

The Amnesty Act of 2000 has contributed undeniably towards ending the 20 years long insurgency within the Ugandan region by means of exemption from criminal trial as well as conviction of violators presumed guilty of heinous offences since January 26, 1986. At the beginning, it was endorsed for a period of six months to promote an end to the crisis; however, the Act has endured series of prolongations and remains in effect till date. Since its creation, the database as indicated by the Amnesty Commission shows that as at August of 2014, 52,520 ex- rebel who showed up, were presented a certificate of amnesty dating from the inception of the Amnesty Act. About 48% of these reported persons were former rebel members of the LRA.²⁹ The Commission also stated that 70 insurgents from Central African Republic (CAR) as well as Democratic Republic of Congo (DRC) have also indicated interest in the grant of amnesty, and another 350 persons who went back to their villages in Uganda were granted amnesty during this period. The LRA rebels who return from their forest hideouts in a desperate bid to benefit from the peace accord also have obtained some resettlement parcels shared by the Amnesty Commission. These parcels consist of seeds, mattresses, blankets, and bulk cash sum of 263,000 Uganda shillings.

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5. Impact of blanket Amnesty on victims' rights in Northern Uganda

Uganda's Amnesty Act as it stands interferes with the right to effective remedy for the victims. The Act provides that punishment cannot be meted out by the State against reporters; this has been interpreted to mean that victims cannot take up legal actions in order to address the unwholesome abuses meted out upon them. In essence, the present position does not only violates the International Covenant on Civil and Political Rights (*ICCPR*) but extends further to diminish the efficacy of an effective remedy as enshrined and contained in Ugandan Constitution.³¹ The case is much more severe when considering the plight of formally captured women, subjected to matrimony against their earnest wishes, most often leaving them with offsprings whilst under custody as hostages to the rebels. Upon returning home, these young women encounter grave challenges and are sometimes despised by their communities or compelled to return to their rebel husbands. The Amnesty Act by all standards favours past perpetrators as opposed to the actual victims, because comfortable welfare packages are offered to the violators, and the victims are left to languish in turmoil and pains not minding the fact that acknowledging past abuses and bringing closure to victims requires some emblematic mode of harmonious compromise. Victims directly affected by the conflict, including non-abducted persons and formerly-abducted persons both agree that the Uganda Amnesty Commission³² needs to broaden its purview and not only provide assistance for former rebels but also reparation for persons who suffered from the conflicts. Thus far, the Commission focuses on aiding and rehabilitating ex-combatants while no attention is given to victims who experienced trauma due to the violence perpetuated by the LRA. This disparity generates diverse issues within the war-torn communities. Several victims view ex-rebels as persons who are now receiving support from the State and enjoying a better life as a result of amnesty whereas the victims languish in pains and despair when the reverse should be the case. Does it mean that it pays to be a rebel? Not oblivious of the fact that Amnesty could be a way of rehabilitating ex-combatants, victims are to be considered more since the heinous crimes was melted on them without their consent. In the same vein, the Amnesty Act further compromised victims' rights to truth as specified within the United Nations Updated Set of Principles³³ because the Act failed to stipulate prerequisite modalities towards violators to make detailed confessions of individual roles while the hostilities lasted. Applications were basically restrictive in nature, as it involved an ex-combatant giving an extensive revelation as to which rebel forces he is associated with and the nature of activities he or she was engaged in (collaboration, direct combat, etc). Victims and communities in Northern Uganda demand detailed as well as honest rendering from perpetrators, disclosing crimes committed, thereby learning the sincere truths about the event which transpired. They stress the need for the Ugandan government to ensure that truth telling mechanisms is part of the Uganda transitional justice process for its effective development. A great number of persons who suffered under the gruesome regime of the rebel believe that an opportunity should be given to them to partake during all stages of the reconciliation and rebuilding phase, the singular goal being to hear firsthand, from their oppressors, what informed their decision or rationale to ocastrate such cruelty towards them in the first instance. In addition, this would serve as a formidable platform

²⁹ ICRS Database Available at <http://reliefweb.int/sites/reliefweb.int/files/resources/DB6D36C252A6579C4925767100235728>. last accessed on March, 12th 2020

³⁰ B. Afako, 'Uganda: Forgiveness as an instrument of peace.' *IRIN*, Kitgum, (June 9, 2005)

³¹ Constitution of the Republic of Uganda, 1995.

³² Amnesty Commission was established to facilitate the implementation of the *Amnesty Act* of 2000.

³³ *Updated Set of principles* for the protection and promotion of human rights through action to combat impunity. Available at <http://www.derechos.org/nizkor/impu/principles.html>. Last Accessed March, 10th 2020

for the violators to make known their remorse for their ungodly acts, more so pledging not to revisit the similar acts in the future upon the indigenes of the affected communities. The victims believe that conditions such as these ought to be met long before recourse is had to amnesty in order to make for worthwhile and genuine reconstruction phase in the community. Victims, who lost their beloved ones, insist that the Act interferes with their right to seek justice as justice should be served upon perpetrators' who took the lives of close family members and relatives. In strict sense, the victims perceive the amnesty within the region to be some form of a reward scheme to their oppressors. The victims desire more than ever, to see them experience untold hardship and pains as a form of retaliation for their crimes.

6. Arguments for the Retainment of the Amnesty Act in Northern Uganda

The amnesty debate is in the "eye of the storm" in Uganda's transitional justice process. The debate has often been presented as a confrontation between the societies of the Acholi people whose desire is to resuscitate their means and source of livelihood including homes and villages through the instrumentality of amnesty, and on the other side the victims' rights groups led by the ICC who call for justice through the trial of perpetrators for humanitarian crimes as well as war offences or grave breaches. This argument is the central issue surrounding these subject of transitional justice as to whether amnesties can ever be perceived as being acceptable. The Acholi people are said to feel that the battle in defiance of any form of exemption from criminal trial via ICC's apprehension directives would gravely hinder securing truce, what ordinarily would have been achieved using negotiations as well as a peace accord. The ICC was been criticized for not giving the peace process a chance. As stated by Barney Afako, the Acholi people, campaigners of amnesty were of the view that 'any threats of prosecution, even by a minority of combatants, would pose an obstacle to peaceful resolution of the conflict.'³⁴ After series of consultations carried out by the government with stakeholders and community leaders which disclosed a large scale support for the Act, the Amnesty Act was enacted in January of 2000. Victims' rights groups contend that amnesty is an obvious means of trading peace as the government since assumption and taking over of political office, focused on an agenda involving the use of diverse modes of inducement including incentives to get war insurgents from their hideout, thus ending the violence. However, this tradition and pattern of negotiation leaves the victims in a somewhat awkward position as the government which ought to protect their own interest as victims through criminal trials rather engage in granting the perpetrators soft-landing through the instrumentality of amnesty. The Human Rights Watch in its reports further asserts that, 'We have seen time and again that turning a blind eye to justice only undercuts durable peace.'³⁵ Should the people of the war affected region in Uganda, fail both physically, emotionally and psychologically to recoup from the war, and still have a feeling of disenfranchisement? The possibilities of a relapse of hostilities are most conceivable.

On the subject of criminal accountability, a lot of argument has been proffered that legal redress through the instrumentality of the court's system, as well as the engagement of prosecutors in charge of justice dispensation, would to a great extent restore the lost sanity in the society, hence relieving it of heinous offenders. More so these acts of trial would be received by the families of the victims as a form of relief for the loss of their loved ones and as a moral standard in the eyes of the members of the community. Once perpetrators are duly brought to book, the citizenry and populace within a violent community would learn from such an experience. As a result, acts which are likely to compromise peace and security as well as stability within the region would be gravely avoided. Yielding to pressure from victim rights groups, and world leaders as well as global peace institutions, all clamoring for total eradication of the LRA's vicious existence in the northern region of Uganda, and to hold perpetrators accountable, the Head of State Museveni Yoweri in 2003 referred the plight of the northern region to the ICC prosecutors as provided for within the ambit of the law.³⁶ In a desperate attempt to bring the top LRA commanders to book, warrants were issued to 5 top commanders as at 2005. Issuance of these warrants was symbolic as they were the first to be handed down by the Court since its contentious establishment in 1998. As a result of these, criminal actions were instituted against Lukwiya Raska as well as other top commanders³⁷ for offences of compulsory conscription of children, brutal dealing with civilians, looting, and induced rape and crimes against humanity (rape, sexual enslavement, and murder). Whilst Joseph Kony remains at large, Ongwen was captured in 2014, and his trial before the ICC raises more questions than answers. In August 2006, Lukwiya Raska was killed during an armed combat with Ugandan troops. Strangely, Otti came in contact with death in 2007 based upon the commands of Kony, reportedly for inducing Kony to endorse a peace deal, a position kony considered as a betrayal. It is thought that the death of Odhiambo was as a result of injuries he sustained when the rebels confronted the government forces in 2013. Additionally, Achellam Caesar the oldest member of the rebel group

³⁴ B Afako, Note 2.

³⁵ D. Lanz, Note 26.

³⁶ Art. 14 of the Rome Statute

³⁷ Joseph Kony, Vincent Otti, Okot Odhiambo, and Dominic Ongwen

and a high-commanding officer was apprehended in Central African Republic by the Ugandan military on 12th May, 2012.³⁸ However, most of Uganda's Warlords have died but Kony remains at large and Ongwen is currently under trial at the ICC in Hague.

While organizations such as Amnesty International³⁹ hailed the referral as 'a first step towards bringing justice to tens of thousands of victims,' local Acholi leaders did not exhibit such a positive reaction towards the arrest warrants. For many, the interference of the ICC was a direct attack on those values the Acholi had worked so hard to advocate for in the Amnesty Act, and local leaders dreaded that the ICC's activities would compromise attempts to bring LRA fighters home. For example, Archbishop Odama of the Gulu Catholic Archdioceses asked: 'How can we tell the LRA soldiers to come out of the bush and receive amnesty, when at the same time the threat of arrest by the ICC hangs over their heads?'⁴⁰ John Baptist Odoma, an Archbishop from the war torn region perceived these resolutions of International trial of the violators to be 'the last nail in the coffin'⁴¹ Erstwhile Chief negotiator between the rebels and the government, Bigombe Betty reacted to the news of the arrest warrants in August 2005 by stating thus, 'There is now no hope of getting them to surrender, I have told the court that they have rushed too much.'⁴² Justice Onega asserted that the ICC's actions could bring about more violence as the LRA commanders could act as 'desperately as a wounded buffalo.' The Ugandan populace has generally supported the Amnesty Act, since its passage into law and considered it as a vital tool for promoting harmonization and bring to end the violence. The Act has repeatedly been extended by the Ugandan parliament following its expiration period.⁴³ Ultimately, the ICC's decision turned out as an obstruction towards Juba peace talks.⁴⁴ The arguments and tensions with respect to amnesty has generated grave issues as opposed to solutions for attaining reconciliation, as well accountability, but despite all odds, the populace within the devastated region of the country praised Amnesty Act for existing clemency and perceive this to be a stepping stone for a conflict free region.⁴⁵ In March of 2013, the religious leaders from Northern Uganda who were instrumental to the enactment of the Act once more implored on the legislative arm of the country to reintroduce special sections within the Act, as well as authorize renewed amnesty for rebels desirous of returning home. Furthermore, the Senate committee with respect to defence, proposed reinstatement of provisions pertaining to amnesty just so that the Act's intent and purposes be gainfully fulfilled.⁴⁶ Conceivably, as a result of the ICC's unsuccessful attempt to try Joseph Kony who remains at large, the Ugandan government acceded to the demands of the Northern spiritual forerunners by opening up access to the amnesty programme which lasted for additional 48 months. The amnesty clause under the Act previously set aside, was reinstated in May of 2013 for two years, and further extended for two more years.⁴⁷ The Ugandan government's indecisiveness possibly demonstrates the countries resolves in making amnesty available for secondary perpetrators within the rebel group, in an attempt to avert further bloodshed in the war torn region.

Furthermore, traditional and religious leaders vehemently maintain that blanket amnesty is the best resort for the attainment of reconciliation and peace in the LRA affected region. They argue that denial of amnesty hinders prospects of child soldiers in denouncing insurgence and returning to their locality and kindred. They wish for ex-rebels to go back to their houses devoid of uncertainties of criminal prosecution and to partake in customary justice alternatives with the intention of promoting and bringing together of the citizenry.⁴⁸ They believe that blanket amnesty is well thought-out as the lasting solution for stability and regional peace for the LRA war-torn regions

³⁸ Integrated Regional Information Networks (IRIN), *Uganda: Amnesty or prosecution for war criminals?* (17 May 2012)

³⁹ Amnesty International. 'Public Statement: International Criminal Court investigation an Important Step toward Ending Impunity.' (29 July 2004)

⁴⁰ IRIN News. 'Uganda: The ICC and the Northern Uganda Conflict.' (9 June 2005)

⁴¹ 'Justice for a Lawless World? Rights and Reconciliation in a new era of International Law,' *IRIN In-Depth*, (July 2006)

⁴² 'LRA talks over, says Bigombe,' *New Vision*, October 10, 2005, available at <http://www.newvision.co.ug/D/8/12/460057>. last accessed on April, 2nd 2020.

⁴³ K. McNamara, *Seeking Justice in Ugandan Courts: Amnesty and the Case of Thomas Kwoyelo*, *WASH. U. GLOBAL STUD. L. REV.* (2013) 653

⁴⁴ T. Chris. 'Uganda and the International Criminal Court: Debates and Developments.' (2013) Available at <<http://www.africaportal.org>> Accessed March, 15th 2020.

⁴⁵ S. Birjandian, *Uganda's Transitional Justice Policy Development Process and the International Criminal Court*. E-International Relations. (Apr 21 2020) Available at <https://www.e-ir.info/2020/04/21/ugandas-transitional-justice-policy-development-process-and-the-international-criminal-court/>. Last Accessed April, 24th 2020

⁴⁶ N. Wesonga, *Parliament Wants Amnesty for Rebel Combatants Extended*, *Daily Monitor* (Apr. 29, 2013).

⁴⁷ Y. Mugerwa, *Lawmakers Agree to Extend Amnesty Act*, *Daily Monitor*, available at <http://www.monitor.co.ug/News/National/Lawmakers-agree-to-extend-Amnesty-Act/-/688334/1854016/-/24j4chz/-/index.html> accessed on March. 20, 2020.

⁴⁸ Ibid

of Sudan, Congo, Central African Republic and Uganda.⁴⁹ The rationale for the preservation of amnesty are based upon Acholi tribe's stands and believe in the likelihood of resurgence of conflict. In such a case, amnesty would still be vital towards enabling persons captured return to their dwelling places as the amnesty emphasizes forgiveness. The Acholi cultural leaders maintain that a great number of combatants are currently seeking amnesty, hence the need for the continued existence of the Act.⁵⁰ The northern traditional leaders also praised the Amnesty Act for enabling the people of northern Uganda return home from internally displaced persons camp (IDP). In Addition, the returnees were subjected to limited harassment or stigmatization, as would have been the case assuming that amnesty never existed.

7. A Brief Comparative analysis of Ugandan Amnesty Act with Selected African States.

In South Africa, the Promotion of National Unity and Reconciliation Act, established the Truth and Reconciliation Commission,⁵¹ with powers to give conditional amnesty even to those individuals who had committed severe human right violations under certain specific condition to wit truth-telling. Amnesty in South Africa received acceptance based on cultural factors, as priority was placed on forgiveness and the tenets of Christian religious practices. Mozambique on the other hand, adopted the use of blanket amnesty, lacking any formal procedure, in its attempt to deal with past crimes. The State of Mozambique is frequently celebrated for its triumphant transition from conflict. This is captured by some writers who draw attention to the States preference for openly 'forgetting' serious human rights violence. Mani notes that 'in Mozambique, the desire to remember simply did not exist. The greater public pushed for forgiveness and moving on'⁵² This should not be interpreted to mean that victims anguish was never addressed, but rather there appeared to be a traditional call for grassroots 'cleansing' rites over truth-telling or prosecution.⁵³

8. Conclusion and Recommendations

This paper has assessed the gains and impacts of the Amnesty Act 2000 as well as various arguments proffered for the retainment of the Act. The paper reveals that the Acholic action group comprised mostly of top representatives, drawn from Christian, Orthodox representatives, Muslim sheikh, catholic archbishops and bishops of the Anglican cathedral in Northern Uganda, welcomed the Act and supports its retainment as it aided in bringing to an end the internal armed conflict in Northern Uganda. However, the victims maintain that there should be compensation for them who are victims of the hostilities just as the Act has done for violators. It also reveals that the ICC contend and rightly too for the prosecution of violators. Currently one of the violators is standing trial at the ICC and one is at large. Notwithstanding the above, this paper contends and supports the victim's stand of providing compensation and rehabilitation for them, in order to bring to an end or to reduce to a great extent bitterness of the victims. Undoubtedly, there are ethical and moral concerns hindering criminal trials in circumstances where it will result to further loss of life and political instability. It is worthy to note that the restrictive nature of State's responsibility to punish and try internationalised violations creates room and opportunity for war-torn societies to deal or exchange amnesties for fragile sustainable harmony. Northern Uganda, enacted the Uganda Amnesty Act of 2000 for former rebels resulting in over 13,000 Lord's Resistance Army (LRA) combatants being granted blanket amnesty. The Act continues to remain in force till date despite its violation of International laws and victims' rights. In 2003, the Uganda Government by a twist of action, handed over to the ICC, the Northern rebel group for prosecution in an attempt to attain justice for victims. These acts have generated debates and accompanying tensions as exemplified by the disagreements around the appropriate response to the LRA in the northern region of Uganda.

From the foregoing, the following recommendations are made that will enhance the Amnesty Process with a view to its wider acceptability by the Ugandan People. The Amnesty law should provide for adequate reparation packages, and should have been enacted through democratic procedures in order to ensure that the victims' affected by the crimes have a role to play in determining the country's response in the aftermath of atrocities following the violent conflict. This would have promoted a sense of moral justification, and desire for the grant of amnesty. The Amnesty law should it continue to remain in force, be remodeled to include non-legal accountability measures such as Truth Commission as is the case in South Africa and Non criminal penalties for the perpetrators, thus making them responsible to the victims in respect of the atrocious acts they perpetrated.

⁴⁹K. Tumutegyereize. What will it take to end the LRA conflict? Open Democracy, (2012) Available at www.opendemocracy.net, Last Accessed February 10th, 2020.

⁵⁰ K. Agger, Enough Project, 'Completing the Mission', US Special Force Are Essential for Ending the LRA (October 2013), p8-9. Available at <http://www.enoughproject.org/files/Completing-The-Mission-US-Special-Forces-Essential-to-Ending-LRA.pdf>. Accessed on February, 20th 2020.

⁵¹ The Promotion of National Unity and Reconciliation Act came into effect on December 15, 1995.

⁵² R. Mani, 'Rebuilding an Inclusive Political Community After War', (2005) 36 *SEC. DIALOGUE*; 511, 519

⁵³ P. Granjo, 'The Homecomer: Postwar Cleansing Rituals in Mozambique', (2007)33 *ARMED FORCES & SOC.* 382

This will ensure criminal responsibilities, healing for victims as well as strengthen and guarantee non-reoccurrence of future humanitarian violence. As such, perpetrators in search of amnesty must openly confess his or her involvement in the violence and at the same time plead for forgiveness from the victims.