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TOPIC
THE RELEVANCE OF THE AMNESTY LAW ON JUSTICE IN UGANDA

JUNE 2015
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DECLARATION

I declare that this thesis is the work of Kwesigabo Frank alone, except where due acknowledgement is made in the text. It does not include material for which any other university degree or diploma has been awarded.

SIGNATURE:  

DATE:  
23.06.2015
DEDICATION

I dedicate this paper to my Parents, Brothers and Sisters. For their unrelenting love.
APPROVAL BY SUPERVISOR

I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate in scope and quality as a dissertation in partial fulfillment for the award of Degree of Bachelor of Law Kampala International University.

NAME OF SUPERVISOR: Diana Rutabingwa

SIGNATURE: [Signature]

DATE: 23/06/2015
ACKNOWLEDGMENT

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ABSTRACT

This research pursues an insight into the enactment of the Amnesty Act 2000 and its implication on justice in Uganda, with particular regard to the criminal justice model. The jurisdiction of the research focuses on Uganda although relevance of other jurisdictions is not precluded. The research has been conducted largely using a qualitative method of data collection as this is the method most suited. The research shows that in the pursuit of peace, justice has been battered for political compromise and thereby crippled. The justice model in Uganda generally relies on both retributive and deterrent elements with regard to criminal justice, and section 2(2) of the Amnesty Act unequivocally deprives this facet in enforcing the rule of law. This deprivation has awakened an appetite for accountability and the research aims to explore the growing trend towards an anti-impunity position, by relying on international precedence to prove criminal justice sustains its character as a necessary facet for post conflict resolution. The findings of the research state that in as much as amnesty has not lost its relevance for post conflict societies, it however necessitates a constrained application so as not to shred the effectual operation of the criminal justice. The recommendations address the inadequacies of the act that represent a hindrance for an effective justice system. These recommendations if implemented are the tools essential for maintaining the nature of criminal justice.
LIST OF CASES

Azanian People's Organisation and 7 Ors v The President of the Republic of South Africa and Ors 1996 (8) BCLR 1015 (CC)

Nicaragua v United States of America (1986) ICJ 14

Prosecutor v Anto Furundziga (1998) IT-95-17/I-T

Prosecutor v Morris Kallon & Anor SCSL 2004 – 15 – AR72 - (E)


LIST OF STATUTES/TREATIES

INTERNATIONAL AND REGIONAL INSTRUMENTS

Universal Declaration of Human Rights (1948)
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International Covenant on Civil and Political Rights (1966)
Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
Convention on Elimination of All Forms of Discrimination against Women (1979)
Juba Peace Agreement on Accountability and Reconciliation

NATIONAL LAWS

The Constitution of the Republic Of Uganda 1995 as Amended
Penal Code Act Cap. 120
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Prevention and Prohibition of Torture Act 2012
International Criminal Court Act 2010
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1. CHAPTER ONE

1.1. INTRODUCTION

The annals of history show civilizations beset by conflict in all its varying manifestations and Africa, in particular Uganda has been no exception. As a result societies have relied on a myriad of structural and legislative measures alike to resolve these conflicts, protecting victims, holding repressors accountable, striking the balance that is aptly called Justice. However the complexities involved in the pursuit of the resolution of these conflicts has given way to the adoption of mechanisms one such as Amnesty, an act of a sovereign power officially forgiving certain classes of persons who are subject to trial\(^1\), but have not yet been convicted for past offences, often conditioned upon a return to obedience of the law within a prescribed period.

Amnesty laws over the course of time have been met with controversy and criticism since it offers immunity from criminal prosecution of offenses which quite candidly can be described as gross human right violations. Amnesty has brought center stage the peace versus justice debate, retributive versus restorative justice, that Tutu contends restorative is characteristic of traditional african jurisprudence, where the central concern is not punishment but healing of breaches for both victim and perpetrator.\(^2\)There is however a growing trend of an anti-impunity position taking hold across a wide spectrum of International legal and political bodies, such as the


\(^2\) Desmond Tutu 'No Future without Forgiveness'.

UN Secretariat, International NGOs such as Amnesty International and Academics³.

Uganda over the past decades has experienced civil conflicts which though have been wrought with grave human rights violations nonetheless has eventually warranted the use of Amnesty laws to find resolution to these conflicts. Although amnesties in general may have a broad application for offences that are of political nature, such as tax amnesties, or amnesties for illegal immigrants. This dissertation exclusively explores amnesties for crimes that arise during or are as a result of civil conflicts and thus sets out to address the impact amnesty has had on the rule of law, in particular the criminal justice model of Uganda.

1.2. BACKGROUND OF THE STUDY

Amnesty is derived from the Greek word amnestia meaning ‘forgetfulness’ it is defined as a pardon extended by the government to a class of persons, usually for a political offense⁴. It much obliterates all legal remembrance of the offense. The earliest amnesty is generally attributed to Thrasybulus of Ancient Greece 403 B.C.E after a long term civil war in Athens. But fifteen centuries earlier Babylonian kings on accession to the throne, would declare a misharum involving a discharge from legal bonds of both civil and penal character.⁵ In 1660 the unification of English, Scottish and Irish monarchies upon the restoration of Charles II of England to the throne, he promised a general amnesty in his conciliatory declarations of Breda, and by the Indemnity and Oblivion Act enacted by parliament secured passage pardoning all that would swear loyalty to the crown, however was conditional as it did not

³ Max Pensky ‘Amnesty on Trial; impunity, accountability and the norms of international law’
⁴ Bryan A. Gardner (ed.) 2009 Blacks Law Dictionary (9th ed.)
extend to the regicides, the judges and officers responsible for the trial and execution of his father Charles I. The last act of amnesty in Great Britain was in 1747, for those that participated in the Jacobite risings of 1715 and 1745.

In U.S. history, the first amnesty was offered by President George Washington in 1795 to partakers in the Whiskey Rebellion, a series of uprising caused by an unpopular excise tax on liquor, it was a conditional amnesty which allowed the U.S government to forget the crimes of individuals involved, in exchange for their signatures on an oath of loyalty to the U.S. During the American Civil War of 1861-1865, President Abraham Lincoln offered multiple amnesties, like to Union deserters conditional they return to their regiment, or amnesties for those who participated in the rebellion also conditional, requiring a loyalty oath and excluding high ranking confederate and political officials. It was however the 1868 Christmas Amnesty proclamation by President Andrew Johnson that was unqualified, granting an unconditional amnesty to all participants of the Civil war which was viewed as favoring southern loyalist, for which he was bitterly attacked it being argued that the power he asserted was in exclusive purview of Congress. Amnesty in U.S politics, like The Congressional Amnesty Act of 1872 meant restoring the right to vote and hold office for ex-confederates which was achieved by an Act of Congress. Other significant amnesties, such as The Carter Amnesty of 1977, after the Vietnam War by the then President Jimmy Carter, which generated a great deal of criticism from veteran combatants, that sent their Vietnam medals in protest. The amnesty that was

http://en.m.wikipedia.org/wiki/Amnesty.
to as many as 50,000 required military deserters and draft evaders to turn themselves in, re-affirm their allegiance to the U.S and perform public service jobs for 2 years.\(^8\)

In Africa, Benin 1990 an economy that was on the verge of a collapse, and virtually ungovernable, in Feb 1990, a Convention comprising of representatives of all sectors declaring itself sovereign and redefining presidency powers, appointed Nicephore Soglo as Executive Prime Minister, in exchange for a full pardon of any crimes committed by the President Kerekou, he was to peacefully cede power.\(^9\) The Lome Peace Accord of July 1999 Sierra Leone, a cease fire agreement between the government of Tejan Kabbah and the RUF, that contained proposals to expunge responsibility for all offences including international crimes otherwise known as *delict jus gentium.*\(^10\) In South Africa, following the end of apartheid the government decided not to prosecute but instead create a Truth and Reconciliation Commission whose aim was to investigate and elucidate the crimes committed during the apartheid regime.\(^11\) The Commission offered conditional ‘amnesty for truth’ to perpetrators of human rights abuses during the era this enabled abusers to confess their actions to the Commission in order to be granted amnesty which aroused much controversy both domestically and internationally.\(^12\)

The history of Amnesty in Uganda predates the NRM government. Since independence Uganda has frequently used formal amnesties to respond to political

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\(^9\) http://en.m.wikipedia.org/wiki/Amnesty
\(^10\) Tejan Cole Painful Peace: Amnesty Under the Lome Peace Agreement in Sierra Leone (1993) 3 Law Democracy and Development
\(^12\) Ibid
crisis often with some success. It was used by Idi Amin in 1978 to encourage exiles to return to Uganda\textsuperscript{13}. The NRM following its seizure of power, in 1987 enacted an Amnesty statute offering amnesty to all opposing forces who surrendered including those directly involved in fighting, those who supported the combatants politically or financially, as well those who worked for former regimes in the police, army, prisons and security forces.\textsuperscript{14} Recently and likely most notably following the LRA conflict in Northern Uganda, the region ravaged and most affected by the devastation executed by the rebel insurgency for over two decades which consequently prompted the enactment of the Amnesty Act of 2000\textsuperscript{15}.

1.3. STATEMENT OF THE PROBLEM:

Amnesty undoubtedly brings to mind issues such as impunity within the justice mechanisms and victims of grave atrocities committed by the aggressors are afforded an occasion of watching their attackers get away scot free. This appearance of a denial justice is not only fertile ground for breeding discontent, but also undermines the deterrent power of criminal law. International NGOs such as Amnesty International and Human Rights Watch, that have been vocal against peace agreements embodying amnesties, consider amnesty as a failure to bring perpetrators of human rights violations to justice, and as such itself constitutes a denial of the

\textsuperscript{13} Report Of The Committee On Defence And Internal Affairs On The Petition On The Lapsing Of Part II Of The Amnesty Act. Republic of Uganda, August 2013
\textsuperscript{14} ibid.
\textsuperscript{15} ibid.
victim's right to justice.\textsuperscript{16} David Smock noted “The downside of it [amnesty] is the impunity that it implies; that people can commit atrocities and say that they only stop if they are given amnesty and that is a very strong argument…”\textsuperscript{17} This contention has some relevance for example concerning Mali’s coup leader Amadou Sanogo, whom after ceasing power, plunged the country into a humanitarian and economic crisis, only relinquished power conditional on amnesty.\textsuperscript{18}

Nonetheless the criticism that has cropped against amnesties has not slowed down its use over the past decades, but in a rather twisted irony has been the tool most reliable in bringing to an end most conflicts,\textsuperscript{19} whether this amounts to sustainable mechanism regarding the rule of law within a transitional society is an issue that time has yet to reveal.

Therefore it is against this background that the researcher seeks to examine the effect of amnesty on the character of criminal justice system within the societal setting of Uganda and in light of its international obligation.

\textbf{1.4. JUSTIFICATION OF THE STUDY}

The rule of law is a time tested principle which is central to the stability of a State, and it is of paramount importance that measures that are employed to supplement its functionality do not operate to weaken its effectiveness. The Nuremberg Trials of


\textsuperscript{18} http://bbc.com/news/world-africa-17642276

\textsuperscript{19} Reiter Andrew, ‘Amnesty for Peace? Analyzing the impact of Amnesties’
Nazi war criminals in the aftermath of World War II, set in motion what has come to be commonly perceived as the Age of Accountability\(^2\), amnesty has come under criticism in the wake of this era as it appears to encourage impunity, that is, failing to bring to penal accountability the offenders for crimes committed, which crimes glaringly constitute gross violations of human rights, crimes against humanity and on the face of it affects the role of Justice within the society. Similarly an absence of a retributive element within the criminal law justice mechanism is nothing short of fertile ground for undermining the deterrent power of the criminal law.

This study sets out to explore the implementation of the policy of amnesty, that had gained prominence in the wake of the Northern Uganda insurgency that had lasted over two decades, recognize any identifiable impact amnesty has had on justice system particularly the criminal law arena, examine its conformity with international law and whether it sustains any future relevance in with regard to the rule of law.

1.5. OBJECTIVES OF THE STUDY

1.5.1. MAIN OBJECTIVES OF THE STUDY

The study principally sets out to identify the relevance of Amnesty laws, regarding their application, any significance or impediments it has had on the criminal justice model of Uganda and any continuing purpose it may hold with regard to criminal justice within the jurisdiction of Uganda.

\(^2\) Miguel de Serpa Soares; International Opening of International Nuremberg Principles Academy Accountability. 70 years after Nuremberg Trials, United Nation Office of Legal Affairs
1.5.2. SPECIFIC OBJECTIVES OF THE STUDY

- To examine the relevant national laws, and international conventions that govern the criminal justice system of Uganda and how they are to be applicable to civil conflict circumstances.
- Exploring the enactment of the Amnesty Act 2000, the enforcement and the relevance it has had as conflict resolution mechanism.
- Assessing the impact the Amnesty law has had on the criminal justice model and comparing with other jurisdictions.
- To make recommendations and identify any future relevance the law within the Uganda Justice system.

1.6. SCOPE OF THE STUDY

The study primarily will focus on the geographical area of Uganda, particularly Northern Uganda, where the LRA Conflict dominated, and the situation that occasioned the enactment of the Amnesty Act, however this does not preclude the involvement of other jurisdictions such as Sierra Leone, Rwanda, South Africa, as well as South American Jurisdictions such as Argentina, Peru, Uruguay that have encountered similar situations, and where similar measures have been employed, identifying the impediments and there relevance.

1.7. LITERATURE REVIEW

The scholarly discourse within the dilemma of amnesty and justice has attracted conflicting scores of opinions that cannot be exhaustively explored by this paper; the
issue is nonetheless not without a crux that this paper is intent on delving into, that is, its relevance as a remedy for the State and to the direct victims of crimes, its compatibility with international law concerning crimes of *jus cogens*.

In 1999 the infamous "oral reservation" concerning the Lome Peace Accord in Sierra Leone, the UN special representative to the negotiations to bring about a peace settlement when presented with the final document to providing blanket amnesty for leaders, (including the rare bird, a peace treaty that granted amnesty by name to rebel leader Foday Sankoh) who had committed numerous war crimes and crimes against humanity quickly penciled in a ‘reservation’ next to his signature namely, "that the UN did not regard as valid and would not honor any domestic amnesty for international crimes." The reservation is generally regarded as evidence of the slow but definite evolution of the principled position of the international community on amnesties over the last decade. 21

William Bourdon 22 states, there is no doubt that, of all the reasons for ending public prosecution, amnesty is among the ones that give rise to the greatest controversy, abruptly checking as it does the will and the legitimate desire of the victims of the most serious crimes, to see the authors of their suffering identified and brought to justice and to receive compensation for the harm they undergone. 22 The law of amnesty, he contends, ensures the silencing of those victims who have suffered crimes which *a priori* have done the worst damage to a national or international community of nations, from that paradoxical nature he asks how a deed can be made

21 Max Pensky, 'Amnesty on Trial: impunity, accountability, and the norms of International law'
22 William Bourdon, 'Amnesty' http://crimesofwar.org/a-z-guide/amnesty/
23 Ibid
un-punishable when it would seem on its face to be precisely the one that most
demands punishment.

According to Lutz (2003)24 There is a fundamental collision between post-conflict
focus on justice for past crimes of human rights advocates and conflict resolver’s
desire to promote reconciliation or at least peaceful co-existence among previously
warring parties and their concern of human rights community’s ‘no peace without
justice’ sloganeering only creates problems.

Many of the arguments that commend the application of amnesty within the scourge
of conflict generally contend that peace can never be a reality without some form of
forgiveness, as is expressed in the Latin maxim in amnestia consistit substantia pacis,
in forgiving lies the substance of peace. Reiter25 looks at the State’s use of amnesties
rather as a carrot to draw armed actors to the negotiating table, use them as means to
secure demobilization of guerillas and paramilitaries and include them as a crucial
component of major peace agreements.

Alexander Hamilton in his federalist essay to defend the presidential prerogative to
pardon, arguing that otherwise “justice would wear a countenance too sanguinary and
cruel” and that “in seasons of insurrection or rebellion there are often critical
moments when a well timed offer of a pardon to the insurgents or rebels may restore
tranquility of the common wealth.26

24 Lutz Ellen, Eileen F. Babbitt and Hurst Hannum. ‘Human Rights and Conflict Resolution from the
Practitioners’ Perspectives” Fletcher Forum of World Class Affairs vol. 27, no. 1 (Winter/Spring 2003)
26 Alexander Hamilton; ‘Federalist Essay No. 74’
Orentlicher\textsuperscript{27} argues that punishment of war criminals helps prevent future abuses of human rights and further proposes that international law imposes a duty upon States to prosecute human rights abuses of a prior regime.

On the other hand, Minow (1998)\textsuperscript{28} finds that war crimes courts suffer from politicization and selectivity which detract from the perception of fairness and credibility that is so crucial to the efficacy of international justice. The proposition may carry some weight, for example as can be observed since the inception of the ICC, much of the criticism that’s come towards the Court, is how over 90% of its case log has been from countries of on the African continent. There are critics that highlight the atrocities committed on the part of the Ugandan government and call-out the ICC for its seemingly pro-State bias as indictments have focused solely on LRA crimes.\textsuperscript{29}

Snyder and Vinjamuri (2007) assert that “law is too important a business to be left to the lawyers, and amnesty is too vital an instrument to be banished from the toolkit of peacemakers”, in their claim over-reliance on war crimes courts and accountability pays insufficient attention to political realities and preventing atrocities will frequently depend on striking politically expedient bargains that create effective political coalitions to contain the power of potential perpetrators of abuses and spoilers. This particular train of reasoning regarding ‘its insufficient attention to

\textsuperscript{28} Martha Minow, ‘Between Vengeance and Forgiveness; Facing History After Genocide and Mass Violence’ (Boston, Beacon Press, 1998)
political realities' retains credence in light of the use of child soldiers which raises a disturbing notion in holding them accountable, it however falls apart regarding self-amnesties enacted by tyrannical regimes that seek to absolve themselves from offences they are personally responsible for. Pensky goes further so as not to look at amnesties as pragmatic tools for tough negotiations with perpetrators but also as a powerful and more general expression of State sovereignty, useful both in foreign and domestic policy spheres. Amnesties for any crime under domestic law, let alone those crimes whose gravity meets the definition of international crime are acts where by normal operation of the law is suspended. The power to dictate the normal and extraordinary function of domestic law or the power to declare the exception of the law is an integral and highly symbolically visible dimension of State sovereignty.30

Moore (1989) states there exists a moral obligation to victims, and survivors of past atrocities constitutes an obligation that states cannot abrogate for strategic or political purposes, which Arkhaven (1998) identifies as a foundation of the rule of law.31 The failure to deal with past through trials can lead to cycles of retributive violence or vigilante justice (Bass 2000)32

Leila Sadat (2006) states “war lords and political leaders capable of committing human rights atrocities are not deterred by amnesties obtained but emboldened”33, the cases of Sierra Leone, the former Yugoslavia and Haiti suggest that amnesties

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30 Max Pensky, ‘The Amnesty Controversy in International law.’
imposed from above or negotiated at gun point do not lead to the establishment of peace but at best create a temporary lull in fighting.

O'Shea\textsuperscript{34} identifies four purposes to prosecuting a crime: retribution, denunciation, reformation and deterrence, though she does not question the necessity of prosecution draws on its weakness where commission of a crime is more of a political objective, she states makes a lot of difference because prosecution may have no effect in the realm where perpetrators exist and commit crime as they actually believe that there actions are justified according to higher law

At the preparatory conference for the establishment of a permanent international criminal court in August 1997, the U.S Delegation circulated a paper suggesting that the proposed permanent court should take into account such amnesties in the interests of international peace and national reconciliation when deciding whether to prosecute (ICC Prep Con-August 1997, U.S Delegation Draft [Rev] ) advancing that these policies must be balanced against the need to close “a door on the conflict of a past era” and “to encourage the surrender or reincorporation of armed dissent groups” which can facilitate the transition to democracy.\textsuperscript{35} This almost invariably emphasizes pragmatic considerations concerning nature of political compromise and the necessity for concessions in terms of relative strength of the contending parties, Wilhelm Verwoed (1997 p.7) states “guaranteeing amnesty is the price we unfortunately have to pay for peace, for a common good, for a negotiated settlement in 1994 which led to a democratic South Africa”.

\textsuperscript{34} Andreas O'Shea, Amnesty for Crimes in International Law and Practice (Koninklijke Brill NV, 2004)

\textsuperscript{35} Michael Scharf, the Letter of the Law. The Scope of the International Legal Obligation to Prosecute Human Rights Violations.
There are other arguments according Fred Hendriks that perceive amnesty as the only way to achieve a comprehensive account of the past, for example since much of the actions of the security forces are clandestine in nature, the perpetrators are indeed the only ones who can tell the full story.\textsuperscript{36} \textit{Azapo v Republic of South Africa} sheds some light in this regard where it stated “all that often effectively remains the truth of wounded memories of loved ones sharing instinctive suspicions deep and traumatizing to survivors but otherwise incapable of translating themselves into objective and corroborative evidence which would survive the rigors of the law”.

On the other hand there also lies a factor in considering the burden bore in the aftermath, Penman\textsuperscript{37} recognizes impunity as blunting the power of a transitional authority, he states accountability consolidates the rule of law and strengthens the legitimacy of emerging post conflict institutions, for him exposing the strength of the rule of law and institutionalizing justice is important in clearly promoting a message that human rights violations will not be tolerated and that no one is above the law, which in the long term will solidify peace and security, and galvanize authority of post emergent governments.

Dugard\textsuperscript{38} views the abuse of amnesty by military dictatorships in enacting ‘self-amnesty’ laws before surrendering power as an obvious reason but the principal and compelling reason he views for the emergent disdain of the use of amnesties is the internationalization of crime in the global village, most atrocities are not merely national crimes, they are international crimes, genocide, crimes against humanity,

\textsuperscript{36} Fred Hendricks, 'Jettisoning Justice The Case of Amnesty in South Africa'
\textsuperscript{37} Adam Penman, 'The Peace-Justice Dilemma and Amnesty in Peace Agreements'
\textsuperscript{38} John Dugard, 'Dealing with Crimes of a Past Regime. Is Amnesty still an Option'
torture, hostage taking and apartheid which concern the international community as well as the State, consequently the interest in the international community of treatment of human rights violators now contend that there exists an obligation in international law to prosecute.

1.8. RESEARCH METHODOLOGY

The study will rely largely on qualitative method of data collection. This is the preferred method because it seeks concrete understandings of the meanings, experience, and values that are encompassed within the research study. Data is to be collected from primary and secondary sources, domestic statutes, international treaties, and case law as primary sources, whereas detailed research materials from books, journals, newspaper articles, to be found from library resources as well the internet as secondary sources.

1.9. SYNOPSIS OF THE STUDY/CHAPTERIZATION

Chapter One of the study contains the proposal of the study. It identifies the genesis of amnesty laws within a historical perspective, analyses in literature the opinions of scholars and jurist regarding its various usages and maps out the foundation that represents the rest of the study.

Chapter Two covers an overview of laws applicable to the criminal justice system within Uganda and how they apply as conflict accountability and resolution mechanisms.
Chapter Three examines the overview of the LRA Conflict, the enactment of the Amnesty law, and the significance it has had on Northern Uganda in conflict resolution.

Chapter Four sets out to analysis how Amnesty has affected the aim of achieving justice, and the impact it has had on the communities, its relation to international obligations as well as any future relevance it may sustain.

Chapter Five makes summary conclusions and recommendations on the application of Amnesty law.
2. CHAPTER TWO: JUSTICE MECHANISM IN UGANDA

2.1. FORMAL JUSTICE MECHANISMS

This concerns the legal and institutional framework that is employed within the jurisdiction of Uganda. Justice may carry several broad definitions however this paper applies and restricts a narrower definition, to mean the prosecution and holding to accountability those suspected of committing crimes.\(^3\)

The commonly applied and preferred mechanisms of holding perpetrators accountable for crimes in Uganda has been prosecution and punishment, used as tools of not only achieving but also sustaining justice within a society, a model that unambiguously complies with minimum State obligations under both domestic and International norms/law. This criminal justice model gradually imposed by British jurisprudence was adopted by Uganda, has similarly been reliant on both domestic and international treaty law that relies on trial-based accountability.

2.1.1. THE INTERNATIONAL INSTRUMENTS

The National Objective XXVIII (i) (b) of the Constitution provides that all foreign policy of Uganda shall be based on Principles of respect for international law and treaty obligations. Uganda as a state party to various international and regional treaties, its domestic implementations should reflect its international obligation.

\(^3\) Bryan A. Gardner (ed.) 2009 Blacks Law Dictionary (9th ed.)
The Universal Declaration of Human Rights (UDHR). At the end of the Second World War, and with the creation of the United Nations, the international community adopted the UDHR to guarantee rights of every individual everywhere. The declaration was effected on 10th December 1948 by the UN General Assembly motivated by the experiences preceding the World Wars, the universal declaration marked the first time the international community agreed on a comprehensive statement of the inalienable human rights\(^40\) and ensure that atrocities like those of the conflict would not happen again,\(^41\) as recognized in its preamble. It enshrines the basic rights and fundamental freedoms that are inherent in all mankind.

Article 3 recognizes the right to life, liberty and security, Article 4 ensures protection from torture, cruel and inhuman degrading punishment and under Article 8 provides the right to have an effective remedy by competent national tribunals for acts violating fundamental rights granted by the Constitution or the Law.

Though it does not directly create legal obligations as a treaty would, the UDHR is an apt expression of the fundamental values shared by the international community.

The Rome Statute ratified by Uganda in 14th June 2002, and domesticated when it enacted the International Criminal Court Act No. 11 of 2010. Under Article 1, the statute creates the International Criminal Court and designates an obligation of international proportion to ensure that crimes which fall within its jurisdiction effectively prosecuted.


Article 7 encompasses crimes against humanity and defined as acts committed as part of a widespread or systematic attack directed against any civilian population such as murder, extermination, enslavement, torture, persecution against any identifiable group, other inhumane acts intentionally causing great suffering or serious injury to body, mental or physical health.

Further on the Article contains specific reference to sex and gender based violence (SGBV) as a possible war crime and crime against humanity such as rape, sexual slavery, enforced prostitution or any other form of sexual violence of comparable gravity.

The statute is undoubtedly designed to bring to an end to impunity for international crimes. By ratification and domestication, Uganda has expressly committed itself to guarantee accountability for gross violations of human rights and may not derogate from this obligation.

**International Covenant on Civil and Political Rights.** Uganda as a party to the ICCPR treaty has a duty to respect and ensure the rights of all individuals in the Covenant. Article 2 (3) states that each State party must ensure that any person whose rights or freedoms have been violated must have an effective remedy. Specifically this duty requires a State to promptly investigate, prosecute and punish perpetrators for crimes, to respect due process and ensure a remedy for the victims. Such obligations apply to State parties, including Uganda regardless of whether the abuses were committed in peace time or war time. This also suggests that prosecution and punishment are the only means of protecting the rights enumerated within the treaties.
Article 15 provides nothing shall prejudice trial or punishment of any person for any act or omission which at the time it was committed was criminal according to general principles of law recognized by the international community. This provision favorably allows for a non retroactive application of punishment of international crimes.

**Convention on Elimination of all Forms of Discrimination against Women (CEDAW).**

The convention provides a global framework for protection of women’s rights. Uganda ratified the CEDAW on 22 July 1985. Article 2 establishes an important framework for delivering justice to victims and survivors of conflict including establishing legal protection of the rights of women on an equal basis with men and ensuring through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

The convention is gives particular regard to victims of gender based violence within conflict situations and similarly mandates a responsibility ensure that the crimes are to be brought to account.

**Convention on the Prevention and Punishment of the Crime of Genocide.**

Uganda acceded to the convention on Nov. 14 1995, although has not yet domesticated it. Article 1 “The Contracting parties confirm that genocide, whether committed in time of peace or time of war is a crime under international law which they undertake to prevent and punish”. The Convention defines Genocide as one of

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the following acts when committed with “intent to destroy” in whole or in part, a national, ethnical, racial, or religious group, as such;

a) Killing members of a group
b) Causing serious bodily or mental harm to member of the group
c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
d) Imposing measures intended to prevent births within the group
e) Forcibly transferring children of the group to another group.43

Under Article 4 persons committing genocide or any of the other acts enumerated in Article 3 shall be punished whether they are constitutionally responsible rulers, public officials or private individuals. Article 5 requires contracting parties to enact legislation necessary to give effect to the Convention “and in particular to provide effective penalties for persons guilty of genocide”.

Convention against Torture, and Other Cruel, Inhuman and Degrading Treatment or Punishment. On 26th June 1987 Uganda ratified the Convention. The Convention defines ‘torture’ as “any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing him or a third person or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person

43 Article 2, Genocide Convention
acting in an official capacity. It does not include pain or suffering arising only from inherent or incidental to lawful sanctions". The CAT imposes a duty on State signatories a duty to prosecute, under Article 4, “each State party shall ensure that all acts of torture are offenses under its criminal law”. Article 7 declares an obligation on the part of State Parties to prosecute or extradite persons alleged to have committed torture.

**Customary International Law.** This has been identified as the oldest and original source of international law, and remains indispensible to an adequate understanding of human rights law.\(^{44}\) It refers to conduct or the conscious abstention from certain conduct, of States that becomes in some measure a part of international legal order.\(^{45}\) Customary Law is traditionally defined as “firmly established legal principles reflecting a wide spread and consistent practice of States”.\(^{46}\) Two conditions must be met in order for a law or legal principle to meet requirements of customary international law must entail proof of (I) frequent state practice and (II) based on the assumption that States have a legal obligation to uphold the rule.\(^{47}\) Evidence of Customary law may sometimes be found in writings of international lawyers, and in judgments of national and international tribunals which are mentioned as subsidiary means for the determination of rules of law in Article 38(1) (d) of the Statute of the

\(^{44}\) Steiner and Alston

\(^{45}\) Ibid

\(^{46}\) Article 38. (1).b Charter for the International Court of Justice defines custom as “evidence of general practice accepted as law.

\(^{47}\) Stella Yarbrough, 'Amnesty or Accountability. The Fate of High Ranking Child Soldiers in Uganda’s Lord’s Resistance Army
International Court of Justice, as well as treaties although great care must be care from inferring from treaties especially bilateral ones.48

2.1.2. THE REGIONAL INSTRUMENTS

African Charter on Human and People's Rights; A regional treaty that was adopted by Assembly of Heads of State and the Government of the then Organization of the African Union in 1981, and entered into force in 1986. The Charter served as an important illustration of a human rights regime that was more duty-oriented than the universal human rights system.49 Uganda ratified the Charter on 10th May 1986., Under Article 7 guarantees the right to appeal to a competent national organs against acts violating fundamental rights as recognized and guaranteed by conventions, laws regulations and customs in force. Article 6 ensures the right to liberty and security of person.

The Maputo Protocol; Protocol to the African Charter on the Rights of Women in Africa. Article 11(3) commits State Parties to protecting civilians including women during armed conflict and ensuring perpetrators of war crimes, genocide and/or crimes against humanity are brought to justice before a competent criminal jurisdiction.

Juba Peace Agreement on Accountability and Reconciliation (Annexure 1 of Juba Agreement). The result of negotiations known as the 'Juba peace talks' between

48 Steiner and Alston, Comment of Akehurst's Modern Introduction to International Law (Peter Malanczuk, 7th revised edn 1997 at 39)
49 Steiner and Alston, International Human Rights in Context.
the Government of Uganda and the LRA, mediated by Riek Machar, the then vice president of South Sudan Government, which culminated in an Agreement on Accountability and Reconciliation signed by the delegates.\textsuperscript{50} Though it ended without being formally signed by both parties, the Government committed itself to implementing a holistic transitional justice policy to address accountability, reparation and reconciliation.\textsuperscript{51} The agreement was adopted with the intent to prevent impunity for serious crimes, human rights violations and the desire to honor suffering of the victims.\textsuperscript{52} The agreement stated specifically that “formal and criminal justice measures shall be applied to any individual who is alleged to have committed serious crimes or human rights violations in the course of conflict”. The agreement also discussed reparations for victims and representation for the accused, and it obligated the Ugandan government to “address conscientiously” the ICC warrants relating to members of the LRA. Feb. 2008 the Government and LRA signed an Annexure to the Agreement, which specified mechanisms that would be established to achieve the stated goals of the Juba peace Talks. Clauses 7-9 provided for a special division of the High Court of Uganda to try persons responsible for serious crimes.

2.1.3. THE NATIONAL INSTRUMENTS

The Constitution of the Republic of Uganda 1995, the \textit{grundnorm} of the Land guarantees protection of the fundamental human rights as enshrined under Chapter IV’s Bill of Rights that includes among other rights, right to life\textsuperscript{53}, liberty\textsuperscript{54}, security, 

\textsuperscript{50} Kristy McNamara, ‘Seeking Justice in Ugandan Courts; Amnesty and the Case of Thomas Kwoyelo’
\textsuperscript{51} Ugandan rebels prepare for war, http://news.bbc.co.uk/2/hi/africa/7440790.stm
\textsuperscript{52} preamble Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and The Lord’s Resistance Army Movement, Juba, Sudan 2007
\textsuperscript{53} Article 22.
\textsuperscript{54} Article 23
protection from slavery, servitude and forced labor, protection from torture, cruel, inhuman and degrading treatment, and the right to seek redress where there has been and infringement of a vested right. The Constitution sets forth the foundation for the criminal justice system, and likewise permits adoption of international law. The judicial power vested in courts is established in hierarchy therein. From the highest appellate court consisting of the Supreme Court, Court of Appeal, High Court, having unlimited jurisdiction including trying that tries crimes punishable by death or life imprisonment and subordinate magistrate courts for addressing lesser crimes, with all prosecutions conducted by the Director of Public Prosecutions.

The government is bound to respect rights and freedoms of all Ugandans, and mandated to ensure enforcement of these rights, particularly the right of individuals to seek protection where there is a breach and seek redress by applying to a competent court.

The principal domestic legislations governing criminal law in Uganda is the Penal Code Act Cap. 120, that encompass punishing crimes such as murder, kidnapping, aggravated robbery, rape, treason,

The Geneva Conventions Act 1964. The result of domesticating the Geneva Conventions of 1949, They comprise of four treaties and two additional protocols that
establish the standards of international law for the humanitarian treatment of war, including civilians, prisoners of war (POWs) and soldiers who are otherwise rendered *hors de combat* or incapable of fighting.

The Fourth Convention mandates protection of civilians from inhumane treatment and attack, regulations regarding civilian hospitals, medical transports and how occupiers are to treat an occupied populace.

The additional Protocols, Protocol I had more restrictions on the treatment of protected persons, and new rules regarding treatment of deceased, cultural artifacts and dangerous targets such as dams or nuclear installations. Protocol II clarified on the fundamentals of humane treatment, rights of interned persons, protection of those charged with war crimes, and identified new rules for the protection and rights of civilian population.

The Four Geneva Conventions under Article (Section) 49, 50 129 and 146 respectively, state that in the face of Grave Breaches of the terms of the Convention, High Contracting Parties shall undertake to enact legislation necessary to provide effective penal sanctions and shall be under obligation to search for persons....before its own court” the provision unambiguously mandates prosecution of persons for grave breaches of the treaty and defines Grave Breaches of Crimes “involving any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture or inhumane treatment, including

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63 First Geneva Convention protects wounded, medical personnel against attack, Article 3 grants right to proper medical care
64 Third Geneva Convention defines a prisoner of war, right to accorded humane treatment
65 First Geneva Convention protects infirm against execution without judgment, torture assaults upon personal dignity.
biological weapons, willfully causing great suffering or serious injury to body or health, and extensive destruction or appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” The Act requires that violations be done in the context of an international conflict, rather than a civil war.

**Prevention and Prohibition of Torture Act 2012.** The domestication of the Convention against Torture. Under Section 23, no amnesty for the offence of Torture. Notwithstanding the provisions of the Amnesty Act, a person accused of torture shall not be granted amnesty.

**International Criminal Court Act 2010** According to section 2 of the ICC Act, the purpose of the new law is to give the Rome Statute force of law in Uganda, to implement obligations assumed by Uganda under the Rome Statute, to make further provision in Uganda’s law for the punishment of the international crimes of genocide, crimes against humanity and war crimes, to enable Uganda co-operate with the ICC in the performance of its functions, including investigation and prosecution of persons accused of having committed crimes referred to in the Rome Statute, to provide for the arrest and surrender to the ICC of persons alleged to have committed crimes referred to in the Statute, to enable the ICC to conduct proceedings in Uganda and to enforce any sentence imposed or order by the ICC.

The Act allows Ugandan courts to try crimes as defined under the Rome Statute, this enactment and domestication enforces the prosecutorial apparatus and is evidence of commitments of pursue international obligation under treaties.

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66 Act 2012
Institutional Framework

**International Criminal Court.** A permanent criminal court established by the ICC Act whose jurisdiction under Article 5 is limited to the most serious crimes of the international community including crimes of genocide, crimes against humanity, war crimes and recently defined crimes of aggression.

**International Crimes Division** formally called the War Crimes Division, this is a special division of the High Court created in 2008, now renamed the International Crimes Division, following the passing of the High Court (International Crimes Division) Practice Directions by legal notice No. 10 of 2011. In furtherance of Uganda’s commitment to realize the provisions of the Juba Agreement on Accountability and Reconciliation, it was in part an implementation of key aspects of Agenda Item No. 3 of the Juba Peace Agreement entered into by the Government of Uganda and the LRA. According to Directions 6(1) the Division has jurisdiction to try, among others, any offence relating to genocide, crimes against humanity, war crimes, or any other international crimes that may be contained in the International Criminal Court Act. of 2010, Geneva Conventions Act 1964, Penal Code Act or any other criminal law.\(^{67}\) Penalties for crimes under the ICD’s jurisdiction range from a few years imprisonment to death penalty\(^{68}\) and the decisions can be appealed to Uganda’s Constitutional Court and after to the Supreme Court.

An analysis of the aforementioned applicable laws and institutional framework illustrates a comprehensive system of accountability for gross human rights.

\(^{67}\) ICD Practice Directions, para. 6 (1)
\(^{68}\) Geneva Conventions Act Cap. 363, art.2, ICC Act, art. 7-9, Penal Code Cap. 120
violations. The ratification of Rome Statute, creation of the ICD all ensures prosecution of international crimes through civilian courts. The competing jurisdiction of the ICD with the ICC and serves the principle of complimentarily envisioned by the Rome Statute under Article 1. The international and regional treaties, as well as national laws sufficiently obligate the State to protect fundamental rights and liberties, and duty for redress where there is a violation.

2.2. INFORMAL JUSTICE MECHANISMS

The Juba Agreement contains provisions that permits the use of informal judicial mechanisms, it states “shall promote reconciliation and shall include traditional justice processes, alternative sentences, reparations and any other formal institutions or mechanisms” Traditional justice mechanisms envisaged in the agreement such as Culo Kwor, Mato Oput, ... and others as practiced in the communities affected by the conflict shall be promoted with necessary modifications, as a central part of the framework for accountability and reconciliation.

The provision identifies an array of rituals with correspond with practices in different communities affected by the conflict; mato oput is an Acholi traditional ritual, culo kwor is practiced by Acholi and Lango. The recognition of a multiplicity of traditions within the conflict affected region is significant since for traditional justice to be effective it must be legitimate for the community it serves.

69 Juba Agreement cl.5.3
70 Juba Agreement cl.3.1
71 Louise Mallinder, 'Uganda at a Crossroads; Narrowing the Amnesty?
72 Louise Mallinder.
Acholi Traditional Justice;

The Acholi Ethnicity have their own traditional justice and form of reconciliation, Mato Oput, relying on it to resolve conflict for generations. Mato Oput reconciliation rite involves; “purification, making confessions, making compensation and finally coming together in a joyful celebration, which must eating together from the same dish and drinking from the same calabash.” A system that is connected to fundamental religious concepts “the rite presupposes the existence of the Acholi social and political systems under an anointed chief. The anointed chief represents the clan god through the ancestors. The Acholi reconciliation rite is broad, it covers both culpable and inculpable acts of killing a person. All it says is that life is sacred and so it must be respected and highest care be taken to protect and preserve it.”

Conflict is resolved through symbolic actions, tolerance and forgiveness are enshrined principles of Mato Oput and other associated rituals…that encompasses both individual and collective guilt. The first phase involves purification and reintegration of a former LRA member through symbolic gestures. The next phase involves the offender confessing his harm to the community, and the community typically apologizes for not doing more from keeping the offender from not being abducted, If any direct offense such as murder of another in a village is confessed,

73 Stephen Arthur Lamony, Approaching National reconciliation in Uganda; Perspectives on Applicable Justice systems. Coalition for the International Criminal Court
74 Ibid
75 Ibid
76 James Ojera Latigo, Northern Uganda: Traditional based practices in the Acholi Region in Transitional Justice and Reconciliation after violent conflict: http://idea.int/.../traditional_justice/.../Chapter_4_Northern_Uganda_traditional-based_practices_in_the_Acholi_region.pdf
77 Stephen Arthur Lamony
then compensation in the form of a national currency and a reconciliation ceremony is owed to the victim’s family. Reconciliation is the final phase achieved through sheep sacrifice and drinking of fruit juice and roots known as Mato Oput. Traditional justice mechanism although essential to community rehabilitation, nonetheless falls short of accommodating minimum criminal accountability.
3. CHAPTER THREE: IMPLEMENTATION OF THE AMNESTY LAW

3.1. NORTHERN UGANDA AND THE LRA CONFLICT (BACKGROUND)

The LRA has been fighting the Government of Uganda for the last 28 years. For 22 years, Northern Uganda was its primary battlefield, until 2006 (during Juba Peace Talks) when the LRA moved its operations into South Sudan, Central Republic of Africa (CAR) and the Democratic Republic of Congo (DRC) where it continues to operate today.\(^80\) The roots of the Northern Uganda conflict, some scholars have traced back to ethnic and cultural divisions that formed during the British colonial administration, between the people of southern and northern Uganda, tensions within the socio-political and economic sphere that bred discontentment, the seed of which bore fruit when the then NRA, now NRM helmed by Museveni overthrew the sitting government in 1986.\(^81\) There were several insurgency groups that had been active since Museveni seized power,\(^82\) notably that of the LRA, the Allied Democratic Forces (ADF), Uganda National Rescue Front (UNRF), the West Nile Bank Front (WNBF) and other less prominent rebel groups which operated in different parts of the country,\(^83\) however it is the LRA, known for their horridly atrocious campaigns of


\(^{81}\) Mallinder 2009 supra.


mass murder, rape, kidnapping, child abductions, mutilations, torture that gained the most prominence. For over two decades, Northern Uganda was plagued by the horror of violence dealt by the LRA, a rebel militia that has had an amorphous, incoherent political agenda.  

The LRA emerged from Alice Lakwena’s holy spirit movement (HSM) which aimed to overthrow the newly established NRM government and had enjoyed popular support from 1986-1987. When Lakwena fled to Kenya in 1987 after her forces suffered heavy causalities in engagements with NRM, her supposed cousin Joseph Kony assumed leadership of the HSM remnants. Under the leadership of Kony’s with the emergent LRA, declared his desire to overthrow the Ugandan Government and rule Uganda according to the Ten Commandments. Though the LRA attacks were also aimed at government forces, it primarily targeted Northern Uganda’s civilian population, such as in the districts of Karamoja, Gulu, Kitgum, Padar where the Acholi ethnic group dominated. The LRA’s atrocities included killings, beatings, mutilations, abductions, forced recruitment of children and adults, sexual violence against girls who served as “wives” or sex slaves for LRA commanders. The LRA’s forces almost exclusively comprised of abductions and forced conscription of children usually ages of eleven to fifteen, that were used to carry loot, sustain combat and serve as sex slaves while mutilations served to create perpetual insecurity among the civilian population. According to UNICEF, in 2006 an estimated 25,000 children

84 Yarbrough,
85 Payam Arkhaven, The Lord’s Resistance Army Case; Uganda’s Submission of the First State Refferal to the International Criminal Court
86 Kasalja Phillip Apuuli, The International Criminal Court (ICC) and the Lord’s Resistance Army (LRA) Insurgency in Northern Uganda.
87 Human Rights Watch, Uprooted and Forgotten, Impunity and Human Rights Abuses in Northern Ugandahttp://hrw.org/reports/2005/uganda0905/
abducted during the twenty year conflict, typically the LRA forced newly abducted children to kill their friends or relatives in extremely cruel ways, a tactic that was effective in preventing them to return home.\textsuperscript{88} The Ugandan government struggling to quell this brutal insurgency required the people of northern Uganda to leave their villages and enter government-run camps for internally displaced persons (IDPs), an estimated 1.7 million people relocated to live in these camps supposedly for their safety, in squalid conditions that were rife with disease and violence,\textsuperscript{89} which was the third largest internal displacement crisis in the world.\textsuperscript{90} The UPDF, the national military's engagements with the LRA led to an unprecedented ravaging of the northern region, and were similarly implicated in human rights violations against civilians such as extrajudicial execution, arbitrary detention, torture, sexual assault, forcible relocation.\textsuperscript{91} The negotiations for a cessation of hostilities between the warring parties were for the most part futile and military engagements such as the Operation iron fist, a joint military operation between the governments of Uganda and Sudan after the Nairobi Peace Agreement, was merely escalating the conflict with civilians primarily paying the price.\textsuperscript{92}

\textsuperscript{88} http://aljazeera.com/indepth/features/2014/05/uganda-former-child-soldiers-from-lords-resistance-army-ret2014539240489470.html
\textsuperscript{89} http://invisiblechildren.com/conflict/history
\textsuperscript{90} Chris Dolan, supra, http://sida.se/publications.
\textsuperscript{92} Yarborough.
3.2. THE AMNESTY ACT 2000; ENACTMENT AND IMPLEMENTATION

Following an unsuccessful military campaign, in 1998 a newly established Acholi civil organization society comprised of religious and cultural leaders, the Acholi Religious Leader’s Peace Initiative (ARLPI), arguably the tribe most affected by the LRA atrocities, begun an ultimately successful campaign to lobby Museveni’s government to offer an amnesty to LRA soldiers as part of an incentive package to enter more serious peace negotiations. In response to the Acholi’s petition and increased international pressure to end the conflict, the Uganda parliament enacted the Amnesty Act 2000. The Act that was passed in 2000 guaranteed relief from all domestic prosecution for anyone, LRA member, or other rebel who had committed any criminal act in association with LRA activities or any other rebellion against the government, on the condition that the perpetrator make a formal (and largely pro forma) admission to the amnesty commission and renounce any further violence.93

The Amnesty Act 2000 was broad, essentially granting ‘blanket amnesty’ for all crimes committed during the rebellion provided a reporter agrees to renounce armed struggle. The Act was passed unanimously by members of a reportedly, poorly attended Parliament on 7th Dec. 1999, and came into force January 2000.

93 Pensky, Amnesty on Trial; impunity, accountability and the norms of international law
94 Cap. 294. (Laws of Uganda)
The Act grants amnesty, which it defines as “pardon, forgiveness, exemption, or discharge from criminal prosecution or any other form of punishment by the State”.

Under sec. 2 of the Act, it provides for a declaration of amnesty

“...to any Ugandan who has at any time since the 26th day of January, 1986 engaged in or is engaging in a war or armed rebellion against the government of the Republic of Uganda”, and such persons include those that “actually participated in combat, collaborated with perpetrators of, committed a crime in the furtherance of, or assisted or aided the conduct or prosecution of the war or armed rebellion”.

Thus there are two broad categories of persons eligible for amnesty, combatants who took on arms and non-combatants who were dependants, camp workers, porters and other abducted persons. Therefore persons who fall within the scope of amnesty in accordance with section 2

“...shall not be prosecuted, or subjected to any form of punishment for the participation in the war or rebellion, for any crime committed in the course of the war or armed rebellion”.

The Act has undergone two amendments; the first amendment was Amnesty (Amendment) Act 2002 introducing section 5A. This provides that if after receiving an amnesty certificate; a person commits another act falling with in sec. 3 of the Amnesty Act 2000 relating to crimes of war and armed rebellion, they cannot be

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95 Section 1 Amnesty Act.
96 Section 2(1) Amnesty Act
97 Section 2 Amnest Act
98 Section 2 (2) Amnesty Act
granted amnesty for that act and will be liable for prosecution for that act, although not for acts which were previously amnestied. The Amendment does provide some leeway to the Amnesty Commission by permitting the Commission to grant Amnesty to such re-offenders if it deems that their crimes were committed in such ‘exceptional circumstances’, which can include duress, coercion, undue influence for a person abducted after being granted amnesty.

The second amendment was effected in May 2006, the Amnesty (Amendment) Act 2006 intended to ‘deny amnesty to leaders of the rebellion against the government of the Republic of Uganda, and to provide a grant of amnesty to persons abducted, those coerced into the rebellion and those who apply for amnesty in reasonable time, in good faith and who have demonstrated repentance. The new Act amended section 2 of the Amnesty Act 2000 to read

"Notwithstanding the provisions of section 2 of the Act, a person shall not be eligible for a grant of amnesty if he or she is not declared eligible by the Minister [of Internal Affairs] by a statutory instrument made with approval of parliament".

This makes a provision to exclude persons identified by the Minister essentially qualifying what would otherwise have remained as a blanket amnesty.

The Act Renewal. In 2013 the ARLPI, the group responsible for the Act’s enactment once again lobbied Parliament to reinstate the lapsed portion of the Act and empower the Commission to grant amnesty, coupled with the Parliamentary Committee on Defense and Internal Affairs recommendation that the amnesty provision be
reenacted “to achieve the intention for which it was established”\(^99\) the Act was reinstated. The Act according to sec. 16 was to expire six months after it came into force, however the Parliament has repeatedly extended the expiration date of the Amnesty Act 2000, the Act that was due to expire on May 24 2013, was renewed for another 2 years, \(^100\) although having let it lapse only a year earlier \(^101\) is now due to expire in May 2015 \(^102\).

Section 3 of the Act provides the criteria for a grant of amnesty to a reporter, who is defined as “a person seeking to be granted amnesty under the Act”\(^103\). According to the Act, the government will not prosecute or punish such persons

> “if they report to the nearest local or central government authority renounce and abandon any involvement in the war or armed rebellion, and surrender any weapons in their possession”.

In renouncing involvement, the rebel’s declarations need not be onerous or specify the crimes for which they seek the amnesty. After a reporter rebel has completed the above steps, he or she becomes a “reporter” whose file the Amnesty Commission reviews before a certificate of amnesty is issued and the process is completed.

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\(^101\) The Amnesty Act (Declaration Of Lapse Of the Operation of Part II) S.I (2012) (Uganda hereinafter The Amnesty Act (Declaration of Lapse)) declaring a lapse in the amnesty provision of the Act in May 2012.

\(^102\) Amnesty Act (Extension of Expiry Period) S. Supplement No.15 2012

\(^103\) Section 1 Amnesty Act
Section 3(2) applies to persons who sought amnesty while in detention and in such a case a person would only be released after the DPP certifies that the crimes committed fall under those crimes that are eligible for amnesty.

**Structural Composition;** Under section 6 of Part III, the Act established the Amnesty Commission, the agency responsible for pardoning those involved in the armed rebellion, persuade reporters to take advantage of amnesty and encourage the community to reconcile with those who have committed the offenses. The Commission consists of a chairperson, a Judge of the High Court (or a person qualified to be a judge of the High Court) and six other persons of high moral integrity. The Commission’s functions also involved monitoring programs such as the Disarmament, Demobilization and Reintegration (DDR) program, which involves sensitization and dialogue, processing of reporters, social and economic reintegration, support for children and women, monitoring and evaluation. The Act also creates a seven member Demobilization and Resettlement Team (DRT) which functions at regional level establishing programs for decommissioning arms, demobilization, resettlement and reintegration of reporters.

By May 2012, a total of 26,288 reporters from 29 different rebel groups had been issued with Amnesty Certificates by the Commission, this represents an average of 7

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104 Section 7 Amnesty Act
105 Section 8 Amnesty Act
106 Section 10, 11 and 12 of the Amnesty Act
reporters per day, and many had been assisted to return to the communities. Of these 12,971 (under half) are former combatants of LRA.\textsuperscript{108}

Since the passage of the Act more than 26,000 and 5000 resettlement packages of which over 45% were LRA members. The Amnesty Commission records show that the Commission has processed applications for amnesty for nearly 30 groups\textsuperscript{109}.

In conclusion the Act reserves minimum conditionality for a grant of amnesty, it insufficiently addresses criterion by which an individual may be declared ineligible for amnesty, and the preceding amendments assign authority that is largely discretionary which brings a gap in identifying formal standards of application within the process.

3.3. THE CASE OF THOMAS KWOWELO

The case of \textit{Uganda v Thomas Kwoyelo} has rattled up the debates surrounding the use of amnesty in an already contentious climate.\textsuperscript{110} Kwoyelo was a former mid-level LRA commander and a consequence of forced children conscription into the LRA forces when he was abducted at age 13 in 1987 coming home from school, he developed in rank within the LRA, and was later apprehended in Garamba by the UPDF in the Democratic Republic of Congo (DRC) in 2008.\textsuperscript{111} While in detention, Kwoyelo made a declaration renouncing the rebellion and seeking amnesty pursuant to the Amnesty Act. The declaration was submitted to the Amnesty Commission, in

\textsuperscript{108} Ibid

\textsuperscript{109} Ibid.

\textsuperscript{110} Uganda’s amnesty for LRA commander a setback for Justice, http://amnestyusa.org/new/new-item/uganda-s-amnesty-for-lra-commander-a-setback-for-justice

\textsuperscript{111} Kwoyelo amnesty leaves justice at crossroads, http://monitor.co.ug/SpecialReports/-/688342/1279134/-/veo0wr/-/index.html
March 2010 the Commission forwarded Kwoyelo’s application to the DPP for consideration.

On 6th Sept. 2010, Thomas Kwoyelo was instead charged by the DPP with various offences under Article 147 of the fourth Geneva Conventions before Buganda Road Court, where he was committed for Trial before the International Crimes Division (ICD). On 11th July 2011, he appeared before the court for plea taking, where his indictment was amended from 12 counts to 53 counts of war crimes under the Geneva Conventions Act, with alternative charges including murder, kidnapping with intent to murder, attempted murder and robbery under the Penal Code Act, to which he pleaded ‘not guilty’ when charges were read to him. The matter was adjourned for hearing of preliminary objections, where his lawyers requested for a constitutional reference contending that he was indicted for offences of which he qualified for amnesty under the Amnesty Act.

The Constitutional Court Reference

On 16th Aug. 2011, the Constitutional Court heard the reference by the ICD in the case of Uganda v Thomas Kwoyelo about his application for a grant of amnesty with respect to the alleged involvement for the commission of international crimes during the northern conflict between 1993-2005.

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112 Ibid.
114 Ibid.
115 Constitutional Petition No. 36 of 2011 (reference)
The main issues before the Court were

1) Whether failure by the DPP and Amnesty Commission to act on the application by the accused person for a grant of a certificate of Amnesty, whereas such certificates were granted to other persons in similar circumstance to the accused person is discriminatory, in contravention of, and inconsistent with Articles 1, 2, 20(2), 21(1) and (3) of the Constitution of the Republic of Uganda.

2) Whether indicting the accused under the 4th Geneva Convention of 1949 and Geneva Conventions Act Cap.363 for alleged offences was inconsistent with, and in contravention of Articles 1, 2, 8(a) and 287 of the Constitution of the Republic of Uganda and objectives III and XVIII(b) of the National Objectives and Directives Principles of State Policy contained in the 1995 Constitution of the Republic of Uganda

3) Whether sections 2, 3 and 4 of the Amnesty Act are inconsistent with Articles 120(3) (b) (c) (d), (5) and (6) 126(2) (a) 128(1) and 287 of the Constitution (Submission by the Respondent which the Constitutional Court considered in the ruling on grounds that “it touched on a legality and constitutionality of an Act of Parliament under which the applicant was claiming he had a right to granted amnesty”)116

The Constitutional Court in its ruling found in favor of the applicant on his equal protection challenge, upheld the constitutionality of the Amnesty Act as being

116 Ruling of the Constitutional Court, Constitutional Petition No. 036/11(REFERENCE) Arising out of HCT - 00 - ICD - Case No. 02/10
consistent with international obligations and not infringing on the prosecutorial powers of the DPP. The court ordered the trial against applicant to be ceased and effect his subsequent release.

Although principles of equality and fairness supported the Constitutional Court’s ruling, that Kwoyelo receive the same treatment as others had similarly received,¹¹⁷ the decision created serious concern with regard to its implications on the pursuit of justice and accountability in Uganda, its national and international human rights obligations and its duty to ensure justice for the victims of these violations, and impaired the functionality of Uganda’s ICD¹¹⁸

On 30th March 2012 the orders were subsequently stayed by the Supreme Court to allow the DPP to appeal the ruling to the Supreme Court itself¹¹⁹. For some it is argued the order contained significant problems, such as it offered no rationale for its ruling, making the continued detention seemingly de facto arbitrary, and that the case had already been dismissed by the ICD¹²⁰ and thus had no legal grounds for continuing to hold Kwoyelo.¹²¹

¹¹⁸ Barrie Sander ‘why Museveni is allowing Dominic Ongwen to be sent to the ICC’ http://justiceinconflict.org/2015/01/15/why-is-museveni-allowing-dominic-ongwen-to-be-sent-to-the-icc/
¹¹⁹ Kasande Sarah Kihika
¹²⁰ Refugee Law Project, Ongwen’s Justice Dilemma; Perspectives from Northern Uganda..
The Supreme Court Constitutional Appeal

The State’s appeal to the Supreme Court raised three substantive issues for the court’s determination;

The appellants argued that DPP’s powers which are constitutionally mandated to prosecute crimes were impeded by section 2 and 3 of the Act which contained a blanket nature of amnesty, exempting as it is rebel suspects from penal accountability, infringing on DPP’s prosecutorial,122 and further qualifying the powers by subjecting them to the Minister’s discretion for persons considered ineligible, where as Art.120 (6) the DPP is not subject to any control in exercise of powers to institute criminal proceedings, thereby holding such sections inconsistent with the Constitution.

The appellant further contended that blanket nature of amnesty was inconsistent with international obligations and the Constitution123. They argued that constitutional court considered the purpose of the act to restore peace and reconciliation but not the effect in granting blanket amnesty to all crimes including those which amount to gross violation of human rights.

The appellant asserted the court erred when it found that the respondent had been discriminated against by failing to identify evidence of an objective criterion for which the respondent was selectively excluded, that is suspects who were in similar circumstances as the appellant under lawful custody and were not subjected to similar treatment.

122 p. 24 line 25
123 p. 25 line 5
The Supreme Court ruling

The unanimous decision by the Court in the lead judgment of Chief Justice Katureebe found that the Amnesty Act was consistent with the Constitution and gave several reasons to support their holding.

From the onset regarding the infringement of the DPP, the court observed under the Constitution the DPP is granted powers to prosecute, however the Legislature in accordance with Article 28(12) and 79 of the Constitution creates and defines offences, as well as prescribes sanctions and in this manner determines what it is that may be subject to prosecution. Therefore the mere passing of legislation, it observed would not in itself violate prosecutorial powers of the DPP. The court further held that Minister being given power to determine who is ineligible for amnesty did not amount to direction or control of the DPP.

For the issue concerning the blanket nature for all crimes including gross violations, the court construed, the wording in section 2 of the Act concerning those eligible for amnesty“....any crime committed in the furtherance...and in the cause of war or rebellion....” not to apply to those responsible for gross violations and crimes against humanity and as such held to be consistent with the Constitution and International Obligations.

On the question of whether the respondent suffered discrimination, since he was charged with criminal offences where as the others were granted amnesty. The court
observed the Act envisioned to apply to a person who voluntarily reported to authorities as compared to one captured in the battlefield that subsequently renounced the rebellion in custody and applied for amnesty.\textsuperscript{127} It further stated that the respondent failed to provide clear evidence in which sphere where he had suffered unequal treatment under the Constitution, be it race, color, sex, political, or other\textsuperscript{128}...and the fact that other commanders like him were granted amnesty was not sufficient, since he did not state nor allege that those commanders committed the same offences as his\textsuperscript{129}. On this basis the Appellate Court reversed the Constitutional Court’s ruling regarding unequal treatment and ordered for the trial of Kwoyelo to resume.

**Implications of the Court’s holding.**

The ruling to a large extent brings into conformity Uganda’s national and international human right obligations, and resolving the disturbing dilemma of pursuing criminal accountability while a supposedly blanket amnesty was in implementation by simply declaring that the Amnesty Act was not offering a blanket amnesty but a qualified. Although the Court clarified that the Amnesty Act did not apply to those suspected of committing war crimes, it did however uphold an unfettered discretion to the Minister to determine those not eligible for amnesty.

The application of the Fourth Geneva Conventions to non-international armed conflicts on account of cross border incursion by the LRA, some have argued was an erroneous application of the law, they assert that the mere spill over of a conflict into

\textsuperscript{127} p. 47 line 15
\textsuperscript{128} p.53 line 5
\textsuperscript{129} p. 53 line 5 to 20
another territory or country does not change the conflict into an international one provided the conflict continues to take place between State and armed group and the State whose territory has been breached does not support the rebel group. 130

The inevitable consequence of the Act is that is a reporter who has been granted a certificate of amnesty is wholly protected from criminal prosecutions for crimes committed during the armed. This prosecutorial bar however explicitly exempts a victim’s right to seek redress especially victims of gender based crimes. The Act fails to provide for a victim’s right to appeal decisions of the Amnesty Commission, or a revocation of an amnesty certificate and in essence impedes the effectual operation of criminal law.

4. CHAPTER FOUR: ANALYSIS AND RESULTS

4.1. THE RIGHT TO JUSTICE AND THE DUTY TO PROSECUTE

Bassiouni identifies three major categories of international crimes that is genocide, war crimes and crimes against humanity\(^{131}\) that constitute crimes of *jus cogens*\(^{132}\) because of the gravity of their nature more often attract the international criminal justice model, and it is in within this arena that amnesty collides with international conscience, given that it is commonly applied to offences that by and large are of a *jus cogens* character. Jurists and legal scholars have met themselves at odd ends in attempting to reconcile the responsibility of criminal justice and application of amnesty, the outcome of which creates more questions than it answers.

International Law arguably proffers prosecution of these manner of offences as a minimum state obligation, a position that has been recognized by several judicial decisions and support from legal scholars; on the other hand it is also argued that in entire body of multilateral human rights, humanitarian law and criminal treaties, no explicit prohibition of amnesty exists,\(^{133}\) the absence prohibition is not the equivalent of permission, indeed some duties imposed on States by international treaty law may

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\(^{131}\) Cherif Bassiouni, 'Searching for Peace And Achieving Justice; The need for Accountability'

\(^{132}\) Vienna Convention on Law of Treaties defines *jus cogens*; "a norm accepted and recognized by the international community of States as a whole as a norm from which non derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

\(^{133}\) Max Pensky, The Amnesty Controversy in International Law
effectively prohibit the granting of a far reaching amnesty—namely the duty to
prosecute violators of humanitarian or international criminal law.\textsuperscript{134}

The Nuremberg trials responsible for prosecution of the leaders of the Third Reich in
Nazi Germany following the end of World War II left a legacy that spawned a
growing body of treaty law expressly requiring criminal prosecutions.\textsuperscript{135} The
codification of specific crimes, that scholars have identified international law imposes
an obligation on States to prosecute, such as war crimes, genocide, torture, gross
violations of civil and political rights, and crimes against humanity, establishment of
\textit{ad hoc} international tribunals of Former Yugoslavia, Rwanda and Sierra Leone,
raised a growing trend towards no longer accepting amnesty as a natural price to be
paid.\textsuperscript{136}

The Vienna Convention on Law of Treaties stipulates “...State may not invoke
provisions of internal law as justification for failure to perform a treaty...”\textsuperscript{137} It
therefore follows, that if there exists a duty to prosecute certain offences under a
treaty or customary international law, such obligation is not to be tampered by
domestic law or political considerations.\textsuperscript{138} There are several international
conventions that provide for a duty to prosecute humanitarian or human rights crimes
defined therein.\textsuperscript{139}

\textsuperscript{134} Yarbrough
\textsuperscript{135} Lisa J. LaPlante, Outlawing Amnesty. The return of Criminal Justice in the Transitional Justice
Schemes.
\textsuperscript{136} John Dugard, Dealing with Crimes of a Past Regime. Is Amnesty still an Option?
\textsuperscript{137} Article 27, Vienna Convention on Law of Treaties.
\textsuperscript{138} Orentlicher.
\textsuperscript{139} Scharf
The Rome Statute preamble states one of the primary purposes of the ICC is to ensure that “the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures and enhancing international cooperation”. The ICC’s principal purpose is therefore ‘to put an end to impunity for perpetrators of crimes and thus to contribute to the prevention of such crimes’ as even the very next sentence of the Statute insists that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes’. There are those that suggest, its more ambiguous provisions creates space for domestic amnesties to function within the scope of international criminal law. Article 53 of the Statute for example was arguably drafted with an amount of “creative ambiguity” in light of the debate over the acceptability of amnesties during its drafting. Under Article 53 (1) (c) when determining whether to proceed with an investigation, the prosecutor shall consider whether, “taking into account the gravity of the crimes, and interests of the victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice”. This “interests of justice” provision could allow a prosecutor to forego prosecution if it impedes a more effective system of traditional or alternative justice mechanisms or otherwise disserve the interests of the victims.

Though an end to impunity is stated as one among its primary goals, the Statute does

\[\text{\textsuperscript{140}}\] Pensky, ‘Amnesty on Trial
\[\text{\textsuperscript{141}}\] Yabrough
\[\text{\textsuperscript{142}}\] Ibid
not explicitly mandate a duty to prosecute. Consequently a party could enact an amnesty provision without violating its obligations.\textsuperscript{143}

**Grave breaches of the Geneva Conventions.** The framework therein imposes an obligation on State Parties to prosecute “grave breaches” of their provisions. The duty to prosecute or extradite is however limited to the context of “international armed conflicts”, which common Article 2 of the Conventions defines as declared war or other armed conflict that arises between two or more states. Thus the duty to extradite or prosecute seemingly cannot be applied to conflicts of a non-international character\textsuperscript{144}. By contrast Common Article 3 of the Conventions, concerned with non-international armed conflict does not contain a similar exhortation to extradite and prosecute violators of its provisions.\textsuperscript{145} Some have argued that the distinction between international and non-international armed conflicts has largely disappeared and obligation extends to national conflicts,\textsuperscript{146} however the ICJ in Nicaragua’s suit against the United States reinforced the distinction between international and non-international conflicts.\textsuperscript{147} Protocol II of the Geneva Conventions which governs the protection of victims in non-international conflicts, provides that, “at the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesties to persons who have participated in the armed conflict, whether they are interned or detained” and the majority of national courts have relied on it as a legal basis to uphold to validate amnesties covering serious crimes of human rights.

\textsuperscript{143} ibid
\textsuperscript{144} Louise Mallinder, Role of Amnesties in Conflict Transformation, at pg.4 This ambiguity is primarily based on continued state practice of states to enact amnesty laws to tackle ongoing conflicts and insurgencies and to include amnesties provisions in negotiated peace agreements.
\textsuperscript{145} Yarbrough
\textsuperscript{146} John Dugard
\textsuperscript{147} Yarbrough, Nicaragua v U.S (1986) ICJ 14, 114 (June 27)
violations. Perhaps the most known case is that of Azapo v. President of the Republic of South Africa wherein court upheld the South African amnesty against constitutional attack. 148

However in the context of non-international armed conflicts, article 6(5) of additional protocol II, although it encourages States to grant former rebels amnesty for such crimes as rebellion, sedition and treason, it expressly excludes war crimes. 149 In addition it could be argued that the subsequent incursion of LRA destruction into neighboring states of DRC, CAR and South Sudan, would constitute an international armed conflict, from which the duty to prosecute arise 150.

The Genocide Convention provides for an absolute obligation to prevent, punish and prosecute 151 persons responsible for committing acts of genocide as defined in the Convention. The Convention embodies primarily two criteria. First is the specific intent to literally destroy a substantial portion of the population of a targeted group. Second the victims must constitute one of the groups enumerated in the Convention namely national, ethnic, racial or religious. Scholars and Judicial bodies concur that customary law requires States to prosecute acts of genocide committed within their territory. 152 The ICJ has asserted in an advisory opinion, that the principles underlying the Genocide convention are recognized by civilized nations as binding on

148 Pensky, Amnesty on Trial
150 Uganda v Thomas Kwoyelo Supreme Court Appeal
151 Article 1, Genocide Convention.
152 Nancy Louise Hustins
States even without any conventional obligation. The language adopted in Article 4 calls for the ‘punishment’ of all who commit genocide whether government officials or private actors. The term punishment however is a matter for adjudication since it is not immediately obvious whether punishment could entail the kind of investigation, prosecution, trial and conviction and sentencing normally envisioned as the suite of legal proceeding that amnesties foreclose. Indeed in the context of post-genocide Rwanda, punishment was meted out via non-traditional justice mechanisms of gacaca tribunals. However in light of a customary practice regarding genocide, punishment may be favorably construed to apply to prosecution.

The CAT imposes an unambiguous duty on State parties to prosecute acts it defines as criminal and similarly enshrines the doctrine of *aud dedere aud judicare* (extradite or prosecute) under Article 7, imposing the responsibility on States in whose jurisdiction an alleged torturer is found. The Act nonetheless limits the context of torture encompassing “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person...by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Thus an act only constitutes torture when committed by a state actor or public official. It can be stated hence that an amnesty that applies to non-state actors does not violate the state’s obligation to prosecute torturers. Uganda however enacted the Prevention and Prohibition of the Torture Act that broadens the spectrum to non-state actors, and further explicitly exempting from amnesty anyone alleged to have

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153 Orentlicher.  
154 Yarborough.  
155 Article 4, Convention against Torture.
been suspected of committing such acts, a position that has been recognized by human rights bodies and judicial decisions, in the Trial Chamber for the ICTY in *Prosecutor v Furundzija* held that amnesties for torture are null and void and will not receive foreign recognition.

ACHPR, ICCPR, are silent about the duty to punish violators however does obligate states to ensure the rights enumerated there in and to provide a remedy. Article 2 of the ICCPR provides an obligation to bring to justice and punish those responsible for violations of human rights by obliging state parties to “respect and ensure” the rights enumerated therein. One can infer from this provision the duty to investigate and prosecute under this covenant. The UN Human Rights Committee concerning Article 7 of the ICCPR stated “the Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as possible”. Similar principles applied in the decisions of the Inter-American Court in the *Velaquez Rodriquez Case* ruling in against Honduras, held that Article 1 of the Convention, requiring States to “ensure the rights set forth in the Convention”, obliged States to investigate and

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156 Section 23 Prevention and Prohibition of Torture Act 2012.
158 African Charter, Art.1...“The Member States...shall recognize the rights duties and freedoms enshrined in this Charter and shall undertake to adopt legislative and other measures to give them effect”
159 General Comment No. 20
punish any violation of the rights recognized in the American Convention of Human Rights.160

**Customary International Law.** The Customary International Law which is just as binding upon states as treaty law,161 arises from a general and consistent practice of States followed by them from a sense of legal obligation referred to as *opinio juris*.162 In *Nicaragua v US* the ICJ stated “for a rule to be established as customary, the corresponding practice must be in absolute rigorous conformity with the rule”163

Rule 159 of the International Committee of the Red Cross study on Customary International Humanitarian Law, which is now widely accepted as customary law, states that “at the end of hostilities, the authorities in power must endeavor to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict or those deprived of their liberty for reasons related to armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes”164. Commentators arguing against customary duty to prosecute assert that the practice of granting amnesty not prosecution has been established by international norm.165 citing a non exhaustive list of countries, Algeria, Cambodia, Chile, El Salvador, Suriname South Africa, Sierra Leone, Uruguay as States that have granted

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160 John Dugard.
161 Article 38, Statute of the International Court of Justice
162 Pensky 2nd
163 Steiner and Alston (75)
164 Customary International Humanitarian Law Database, Rule 159 – Amnesties
http://icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule159
165 Scott W. Lyon. ‘Ineffective Amnesty: The Legal impact on Negotiating the End of Conflict’
amnesty for atrocities over the last four decades, sometimes with the explicit UN encouragement and approval.  

**Juba Peace Agreement on Accountability and Reconciliation.**

The Juba Peace Agreement was designed to reflect the South African model of Transitional Justice, which has been heralded as the most successful means of transitional justice being able to accommodate the balance between pursuit of peace and accountability of Justice.

The creation of a special division of the High Court of Uganda “to try individuals who are alleged to have committed serious crimes during the conflict”, establishment of a unit for carrying out investigations and prosecutions in support of trials and other formal proceedings as envisaged in the Principal agreement.

The agreement states in “any individual who is alleged to have committed serious crimes or human rights violations in the conflict shall appear before formal institutions... formal courts provided for under the Constitution shall exercise jurisdiction over individuals who are alleged to bear particular responsibility for the most serious crimes especially crimes amounting to international crimes during the conflict. It further states that formal courts and tribunals established by law shall adjudicate allegations of gross human rights violations arising from the conflict. The agreement further stipulates that ‘prosecutions shall focus on individuals alleged

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166 Ibid
167 Louise Mallinder, Narrowing the Amnesty.
168 Annexure cl.7
169 Annexure cl.10
170 Annexure cl.6
171 Annexure cl.6.2
to have planned or carried out widespread, systematic or serious attacks directed
against civilians or who have alleged to have committed grave breaches of the
Geneva Conventions. 172

The agreement as outlined above similarly places an obligation on the State and not
allow the crimes to go unaccounted for, though it also accommodates for alternative
penalties and sanctions giving due regard to the circumstances of the perpetrators,
nature or gravity of the offence. 173

**SGBV under the CEDAW and Maputo Protocol.** This gives particular attention to
gender based crimes such as victims of forced marriage, rape and other forms of
sexual violence. Uganda’s obligations as enshrined in the regional and international
treaties protect the rights of SGBV victims during conflict and post conflict period.

Security Council Resolution 1820 notes that rape and other forms of sexual violence
constitute a war crime, crime against humanity and constitute an act with respect to
-genocide. It stresses the need for exclusion of sexual violence crimes from amnesty
provisions in the context of conflict resolution processes, mandates States to comply
with their obligations to prosecute perpetrators of sexual violence ensuring that
victims particularly women and girls have equal protection under the law and equal
access to justice. 174

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172 Annexure cl.14
173 Louise Mallinder, Narrowing the amnesties
174 UN Positon on Uganda’s Amnesty Act 2000. UN Security Council, Security Council Resolution 1820
Juba Agreement incorporates a similar exhortation “Investigations that shall give particular attention to crimes and violations against women”\textsuperscript{175}. The agreement further states, government shall in consultation with relevant interlocutors examine practices of traditional justice mechanisms in affected areas with a view to identifying the most appropriate roles for such mechanism, in particular it shall consider the role and impact of the processes on women and children.\textsuperscript{176}

From the analysis, it is apparent minimum yard stick in relation to crimes of \textit{jus cogens} gravity is a duty to prosecute especially for genocide torture and war crimes, the nature of conflict not having any relevance, it is in this regard that amnesties may not be applied where the duty to prosecute and punish is obligated. The right to justice from an international perspective is to be unfettered and although a country may enact amnesties without breaching its international obligations, there is general consensus that amnesty exempting the prosecution of international crimes would violate the relevant international obligations.\textsuperscript{177}

### 4.2. VICTIM’S DEMAND FOR JUSTICE AND ACCOUNTABILITY

Mendeloff (2009) states that the effects of conflicts on victims and the needs and wishes of victims in post-conflict situation are not the same as the effects, needs and wishes of a post conflict society in general. It is problematic to assume the post-conflict truth telling has the same psychological and emotional impact on victims as it

\textsuperscript{175} Annexure cl.13  
\textsuperscript{176} Annexure cl.20.  
\textsuperscript{177} Max Pensky
does on the general non-victimized population.\textsuperscript{178} Looking at the effects of amnesties on society in general, might therefore not provide clear insights into effects of amnesties on victims “the experience of the TRC and ICTY show that what may be desirable for societal peace and stability may not be conducive to victim’s psychological well-being and vice-versa, the most obvious example being the issue of vengeance”.\textsuperscript{179}

**Definition of the term Victim.** Under the Rome Statute; victims means natural persons who have suffered harm as a result of commission of any crime within the jurisdiction of the court.

The UN guidelines expounds by stating “persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, humanitarian law. where appropriate and in accordance with domestic law, the term victim also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”.\textsuperscript{180}

The concept of harm, though not defined in the instruments has been defined by the ICC to mean “harm suffered by natural persons is a harm to that person, i.e. personal harm, material, physical and psychological harm are all forms of harm that fall within

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\textsuperscript{178} Mendeloff, D. Trauma and Vengeance; Assessing the psychological and emotional effects of post-conflict justice. p.619 Human rights Quarterly 31 (3) 592-692

\textsuperscript{179} Ibid.

\textsuperscript{180} The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violation of Humanitarian Law
the rule if they are suffered personally by the victim. Harm suffered by one
victim…can give rise to harm suffered by other victims. This is evident for instance
when there is a close personal relationship between a child soldier and the parents of
that child soldier. The recruitment of a child soldier may result in personal suffering
of both the child concerned and the parents of that child...”

The above definition of the victim may not be exhaustive and has been criticized for
example Von Hentig who argues that a victim will not always be a passive player in
the victimization but will most probably have consented, tacitly, co-operated,
conspired, or provoked the perpetrator.

For the victim, justice and accountability is an indivisible concept that a State is
under responsibility to effect. Accountability it is suggested take on three main
aspects of Truth, Justice and Redress that all constitute an indispensible facet of peace
and eventual reconciliation.

i) Prosecutions before a permanent or adhoc international criminal court or
National courts, for jus cogens crimes, genocide, crimes against humanity,
war crimes, and torture.

ii) International and National Criminal Investigatory Commissions. These
include commissions or designated individuals assigned to collect
evidence of criminality.

181 Joseph Akwenyu Manoba, Victims; The International and Transitional Justice Niche, Regional
182 Ibid.
183 Cherif Bassiouni
iii) Acknowledgement and responsibility through national mechanisms, such as investigative and truth commission, reconciliation hearings and findings both national and international level. Truth commissions however should not be deemed a substitute for prosecution of *jus cogens* crimes.

iv) Mechanisms for Victim compensation.\(^{184}\)

The obligation of the law is to provide an effective remedy for the victims. The 1995 Constitution of the Republic of Uganda,\(^{185}\) and its ratification of core international human rights instruments such as the UDHR\(^{186}\) ICCPR,\(^{187}\) ACHPR,\(^{188}\) all mandate States to provide an effective remedy in the event of a fundamental human right violation and ensure accountability.

UN General Assembly resolution affirms States are the obligation for fair, effective and prompt access to justice. Guideline VII, one of the remedies a victim is entitled to is the right to equal and effective access to justice and to access relevant information concerning violations.\(^{189}\) Guideline III of the same resolution concerning gross violations of human rights law and international humanitarian law constituting crimes under international law, States have a duty to investigate, the duty to submit to

\(^{184}\) John Akwenyu Manoba
\(^{185}\) Article 50.
\(^{186}\) Article 8 Everyone has the right to an effective remedy by the competent national tribunals for acts violating fundamental human rights granted him by the constitution or by law
\(^{187}\) Article 2(3)
\(^{188}\) Article 7 (a) recognizes the victim's right to a remedy for violations of fundamental rights
\(^{189}\) UN General Assembly Resolution 60/147, The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violation of Humanitarian Law
prosecution the person allegedly responsible for the violations and, if found guilty the
duty to punish him or her\textsuperscript{190}.

The complication on the ground, concerns to the popularity of the victim’s support
for the Amnesty Act, and forgiveness.\textsuperscript{191} Bassiouni argues that justice is all too
frequently bartered away for political settlements, victim’s right become the objects
of political trade-off in the pursuit of peace. The grim reality is that in order to obtain
peace, negotiations have to be held with the very leaders who frequently are the ones
who committed, ordered or allowed terrible crimes to be committed. Thus the choice
presented to negotiators is whether to have peace or justice.\textsuperscript{192} Peace he states takes
on a wide range of character, from a cessation or absence of hostilities, to popular
reconciliation and forgiveness between social groups previously in conflict with one
another.

Another complication, concerns the dilemma of perpetrators who are also
victims.\textsuperscript{193} In as much as the LRA committed horrible, the fact is a vast majority of
the rebels were forcibly abducted, some at a very young age and forced to commit
crimes. Thus the distinction between victim and perpetrator is blurred, which can
affect the ability of the legal system to deal with perpetrators.\textsuperscript{194}

\textsuperscript{190} Ibid
\textsuperscript{191} Justice and Reconciliation Project “Who forgives Whom? Northern Uganda’s Grassroots Views on
the Amnesty Act” http://justiceandreconciliation.com/publications/statements-briefs/2012/who­
forgives-whom-northern-ugandas-grassroots-views-on-the-amnesty-act/
\textsuperscript{192} Cherif Bassiouni
\textsuperscript{193} Refugee Law Project, Ongwen’s Justice Dillema; Perspectives from Uganda.
\textsuperscript{194} Kasper Agger. ‘The End of Amnesty in Uganda: Implications for LRA Defections’
The Court’s Ruling in *Azanian People’s Organisation (AZAPO) v The President of the Republic of South Africa*[^1] The unanimous judges’ decision gives credence to the concern of political realities. The court’s analysis of Article 6(5) of the Protocol II Geneva Convention though made in *obiter* why the article appears specifically in there and not in humanitarian treaty laws that concern international armed conflicts stated “It is one thing to allow the officers of a hostile power which has invaded a foreign state to remain unpunished for gross human rights violations perpetrated against others during the course of conflict. It another thing to compel such punishment in circumstances where such violations have substantially occurred in the consequence of conflict between different factions within the same state in respect of permissible political direction which that state should take, with regard to the structures of the state and the parameters of its political policies and where it become necessary after the cessation of such conflict for the society traumatized to reconstruct itself. That is difficult exercise which the nation within such a state has to perform, by having regard to its own peculiar history, its complexities, even its contradictions and its emotional and institutional traditions. What role punishment should play in respect of erstwhile acts of criminality in such a situation is part of the complexity.” The court disagreed with the applicant’s position and held that the amnesty for criminal liability was permitted by the epilogue because without it there would be no incentive for offenders to disclose the truth about past atrocities. In their

[^1]: 1996 (8) BCLR 1015 (CC)
opinion, the truth might unfold with such an amnesty, assisting in the process of reconciliation and reconstruction.\textsuperscript{196}

When the Act was enacted in Uganda, it was responding to the expressed wishes the people, particularly those of the Acholi people, it was intended to promote peace and encourage an end to the hostilities.\textsuperscript{197} The Gulu-based Justice and Reconciliation project found in their 2011 research that an overwhelming 98\% of respondents across Northern Uganda thought that the “amnesty law was still relevant and should not abolished”, and 2012 study found general support for the renewal of the Act. The wide spread support for amnesty among the local communities in Northern Uganda is mostly grounded in the fact most of the rebels were abducted children that were forcibly conscripted, in essence the strict distinction between perpetrator and victim doesn’t exist among the community.\textsuperscript{198}

**Traditional Informal Justice Mechanisms.** The UN established ICTR for prosecution of persons responsible for genocide and other serious violations of international humanitarian law\textsuperscript{199} has to-date convicted 48 persons relating to crimes of genocide,\textsuperscript{200} and which retributive approach has provoked 10,000 Rwandans to flee false accusations which is neither conducive to sustainable peace nor real to justice.\textsuperscript{201} On the contrary **Gacaca courts**, tradition based tribunals were originally mandated to hear cases such as killings and destruction of property committed by

\begin{itemize}
  \item \textsuperscript{196} Avocats Sans Frontieres (ASF), Amnesty as a tool of Transitional Justice
  \item \textsuperscript{197} Hon. Hilary Onek, Minister of Internal Affairs, Dialogue: The Crossroads of Amnesty and Justice http://jlos.go.ug.
  \item \textsuperscript{198} Kasper Agger, Enough Project, The End of Amnesty in Uganda; implications for LRA defections.
  \item \textsuperscript{199} International Criminal Tribunal Rwanda http://unictr.org
  \item \textsuperscript{200} ibid.
  \item \textsuperscript{201} Adam Penman
\end{itemize}
low-level offenders. Depending on the gravity of the crime the gacaca tribunals could issue both penal and alternative sanctions,\textsuperscript{202} 11,000 courts located all over the country that heard 2,000,000 cases were brought before the courts,\textsuperscript{203} using locally elected inyangamugayo judges.\textsuperscript{204} The legacy of the gacaca courts shows that primary instruments of justice in a local context should be developed at community level.\textsuperscript{205}

In response to the plights of the victims, alternative forms of accountability have been the preferred mechanism, one that is rooted in cultural legacies and was envisaged in the Juba Agreement, that has been successful in reintegrating LRA members.

**Acholi’s Mato Oput.** Traditional forms of justice. A local ceremony which focuses on forgiveness and reconciliation over punishment, the victims argue that international justice does not address local legacies of violence and potentially puts unjust blame on child soldiers. Ex-combatants granted amnesty under the Act, communities have consistently used *Mato Oput* to re-integrate and reconcile with the ex-combatant.

The rite embraces collective guilt as well as individual guilt. It is a process where by the parties to a conflict resolve to deal with the consequences of the conflict and its implications for the future in a collective, mutually and democratically acceptable manner. The process recognizes and seeks to salvage and affirm the moral worth and dignity of everyone involved, victims, perpetrators and the community at large in the pursuit of a decent society, with the primary focus on co-existence and the restoration

\textsuperscript{202} Louise Mallinder, *Role of amnesties.*
\textsuperscript{203} Gacaca Courts website, http://inkiko-gacaca.gov.rw
\textsuperscript{204} Gacaca Courts website, http://inkiko-gacaca.gov.rw
of relationships between former enemies as a basis for the prevention and re-
occurrence of gruesome crimes.\textsuperscript{206}

Some authors have argued that such traditional practices that involve confessing harm
and compensating the victim's family could represent a way of reconciling amnesty
with accountability\textsuperscript{207}

The victim's demand for justice and accountability within the context of Northern
Uganda conflict here takes on an unusual character for informal justice mechanisms as
opposed to retributive justice application.

4.3. ASSESSING THE IMPACT OF AMNESTY ON JUSTICE

The Supreme Court decision commendably clarified the legality of the Amnesty Act,
of which the continued operation of the supposedly blanket nature of the Amnesty
Act had hampered the ability of the ICD to prosecute cases.\textsuperscript{208} The Court tediously
reasoned out the Act's interface between Uganda's criminal justice system and its
international treaties to support the preposition that the Act was in conformity with it
obligations, balancing both the duty of prosecution of suspects for human right
violations\textsuperscript{209} and affirming implementation of amnesty did not represent derogation
those duties.

\textsuperscript{206} James Ojera Latigo, Reconciliation and Traditional Justice; Learning from the African Perspective,
\textsuperscript{207} Louise Mallinder. Uganda at crossroads; narrowing the Amnesty Act
\textsuperscript{208} JLOS, Community dialogue on the future of the Amnesty Act
\textsuperscript{209} p. 50 line 10
The Amnesty Act as it stands, was held to be consistent with both the Constitution and International Law, this declaration of the constitutionality in itself effectively prevents a victim’s pursuit for redress to courts of law for human rights violations with regard to a reporter granted a certificate, simultaneously affecting concern for victims of gender based crimes\textsuperscript{210}. Although it may prevent redress, this contention has to be qualified in regard of the seemingly popular preference of forgiveness over criminal model of punishment. Nonetheless the consensus surrounding forgiveness has been particularly inclined to those that were forcibly conscripted or abducted as children, as opposed to persons who willingly participated in the rebel insurgency and the leaders of the LRA who held most responsibility for crimes\textsuperscript{211}.

The inconsistent application of the Act by the State; concerns what has been simply perceived as the selective prosecution of Kwoyelo\textsuperscript{212}. The commanders that were higher in rank compared to Kwoyelo, bears upon the conscience how the former child abductee, could be solely identifiable as accountable for gross violations of crimes against humanity as compared to the likes of Sam Kolo and Kenneth Banya who were granted certificates.\textsuperscript{213} In the Supreme Court’s ruling against discrimination, it is important to note was founded in a failure by the respondent to adduce evidence, and neither ‘state nor allege’ that the other commanders had committed similar offences he was charged with, and one could not merely imply it. The respondent in leaving to the court an inference that they as rebels in the same outfit, they committed similar

\textsuperscript{210}Voices; Sharing Victim centered views on Justice and Reconciliation in Uganda Issue 1-2012, A Publication of Justice and Reconciliation Project.  
\textsuperscript{211}Ibid.  
\textsuperscript{212}Supreme Court ruling fuels debate over double standards in war crimes prosecution, International Justice Tribune http://justicetribe.com.  
\textsuperscript{213}http://www.irinnews.org/report/98133/rebel-amnesty-reinstated-in-uganda
offences is primarily what affected the issue of discrimination, criminal liability is personal liability.

Compatibility with International Jurisprudence States cannot use domestic action to preclude international criminal liability, thus if there exists a duty to prosecute resulting from either treaties or international customary law, amnesty is invalidated. The Amnesty Act as was held by the Supreme Court as in conformity with international obligations that excludes crimes constituting gross violations against humanity.

The Court's ruling favorably conforms to international jurisprudence regarding the exemptions of grave crimes from amnesty. The SCSL in Prosecutor v. Morris Kallon & Another the appeals chamber continued to prosecute the accused persons despite the presence of a domestic law permitting amnesty for the two. In the opinion of the court, the Lome Agreement created rights and obligations that are to be regulated by the domestic laws of Sierra Leone. Consequently, whether it is binding on the Government of Sierra Leone or not does not affect the prosecution of an accused person in an international tribunal for international crimes. In this case the Appeals Chamber noted that there is a "crystallizing international norm that a Government cannot grant amnesty for serious violations of crimes under international law". Article 10 of the Statute of the Special Court of Sierra Leone (SCSL) provides that an amnesty for crimes falling under the court's jurisdiction "shall not be a bar to prosecution", and the SCSL's appeals Chamber explicitly held that the Lome

\[214\] Scott W. Lyons, 'Ineffective Amnesty: The Legal Impact on Negotiating the End of Conflict'
\[215\] p. 62 line 5
\[216\] Ibid.
agreement amnesty could not deprive it of its jurisdiction. In cases involving non-State actors reiterated that amnesty granted by a State cannot cover crimes that subject to universal jurisdiction and is ineffective in removing the universal jurisdiction to prosecute such persons accused of crimes.\textsuperscript{217}

The Inadequacy of the Amnesty Act concerns the grant of unconditional amnesty, as it does not require truth telling or full disclosure in exchange for amnesty nor provide for investigation and accountability. The success of South Africa’s amnesty is that it addresses or provides meaningful investigation and expressly sorting actors for those considered ineligible. In Uganda closure for victims is left to traditional justice mechanisms.

Under the Act it places minimal obligations on a reporter before being granted amnesty\textsuperscript{218}, this absence of rigid conditionality undermines the transitional justice functionality in that it grants amnesty to any war criminal regardless of the whether they were captured, the conditions concerning the capture, or if they had acted voluntarily, renounced and turned themselves in.

The Act insufficiently addresses the persons ineligible from amnesty, by reserving it to the discretionary powers of the Minister of whom to this date has not considered any one ineligible. Further the 2002 Amendment to exempt re-offenders doesn’t address for a revocation of an Amnesty Certificate.

\textsuperscript{217}Prosecutor v Kallon, Case No. SCSL-2004-15-AR72 (E). Decision on Challenge to Jurisdiction; Lome Accord Amnesty
\textsuperscript{218}Section 4 Amnesty Act.
The Act also fails to consider possibilities of investigations or a more systematic form of justice to victims by merely providing a pardon for rebels without accountability. By contrast the success of the South African transitional justice model, was its accommodation of the TRC to allow for investigation into those accused and accountability.\(^{219}\)

In conclusion, the commencement of criminal proceeding against the rebel suspect Kwoyelo, is evidence that the prosecution against LRA suspects for gross human rights violations cannot be impeded by the enactment of Amnesty law, a position of law settled by the Supreme Court and in tandem with International law. The aspect however of a discretionary exercise by the Minister in absence of an objective criterion for who is ineligible in contrast to other jurisdictions that had enacted the law has amounted to short fall of the law and it similarly has insufficiently addressed redress for victims of SGBV.

4.4. EXPLORING THE FUTURE OF AMNESTY

In the light of the fact that enactment of the Amnesty Act ushered in stability to the conflict-ridden Northern Uganda in a manner that was unprecedented, cannot be ignored and is invaluable when considering any future relevance. However the application must be viewed in light of the peculiar circumstances surrounding the conflict of Northern Uganda, principally abduction and forced conscription of child soldiers, and the legitimate concern of the victims directly exposed the conflict plays an important role in the future divide.

\(^{219}\) Sarkin, The Trials and Tribulations of South Africa's Truth and Reconciliation Commissions
The benefit of the South African and Sierra Leone model, is critical in considering the necessary exclusion to be granted amnesties, and amounts to a crucial facet with regard to how the criminal justice is to be applied. Finding vindication for victims through the functionality of criminal justice system is an operative necessity that enhances the deterrent power of the law.

For some it is contended amnesty may merely postpone eruption of discontent, regurgitating old conflict into future. Examples such as Cote d’ivoire, Sierra Leone portrays a vivid imagery of the long term effects of amnesties for serious crimes. In 1999 the RUF leader Foday Sankoh responsible for horrific crimes received an amnesty and was rewarded the vice presidency in exchange for signing the Lome Peace Accord, which was intended to end Sierra Leone’s ongoing conflict. Sankoh later attacked both government forces and UN Peacekeepers taking hundreds of them hostage. The revived conflict was not declared over until more than two years later.

5. CHAPTER FIVE: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1. SUMMARY AND CONCLUSIONS

The policy of amnesty has undoubtedly contributed to large-scale defections from LRA and helped in bringing the conflict to an end which indisputably has been beneficial to stability of the Northern Region and the Country in general. Traditional informal ceremonies such as Mato Oput has helped facilitate community

\[220\] Adam Penman
\[221\] Ibid
rehabilitation and reconciliation given the forced conscription circumstances child abduction and indoctrination, that the victims and perpetrators find themselves on peculiar footing.

The Supreme Court’s ruling supports the popular position that justice is necessarily retributive and sustains the element to hold accountable those responsible for gross human rights violations and effectively rein enforces the deterrent power of criminal law. Simultaneously by upholding the Constitutionality of the Amnesty Act addresses the peculiarity of the nature of conflicts and legitimate concerns of the people afflicted by the scourge of the LRA.

The prosecutorial obligation for crimes of *jus cogens* under International law makes amnesties impermissible if they;

a) Prevent prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity or gross violations of human rights including gender specific violations.

b) Interfere with victim’s right to an effective remedy, including reparation or Restrict victims’ and societies right to know the truth about violations and human rights and humanitarian law.

Notwithstanding the success of the Amnesty policy regarding peace, The Amnesty Act’s interface with the criminal justice system though unfettered left a lot to be desired, considering the anomalous discretion extended to the Minister, it further fails to make reference to the criteria by which individuals may be considered to be ineligible for amnesty nor does it make a designation for ineligibility of amnesty a
requirement by law. The power remains at the discretion of the Minister and Parliament and to date no individual has been declared ineligible for amnesty.

The recently enacted Prevention and Prohibition against Torture Act 2012, supports commitment to ensuring international obligations are met, by providing for an express exemption to amnesty for persons suspected of its violation.

Victim’s demand for justice and accountability. Though support for the act is overwhelming, and this in itself can affect the pursuit of prosecution, it however fails to sufficiently satisfy the accountability standard in incorporating truth commissions, criminal investigations, and adequate relief for victims.

5.2. RECOMMENDATIONS

Amendments to the Amnesty Law to be conditional on soldiers intentional and willing defection of their own volition, rather than making amnesty available to any armed combatant whether captured or not. The perception of impunity gradually withers away, with express exemptions incorporated and further brings it in conformity with standards that have been recognized as credible within the international community.

An Amendment to the Amnesty Act to have an expressly identifiable criterion, such as full disclosure by a reporter similar to the South African Amnesty model, further objective standards for whom may be eligible for amnesty as opposed to a discretionary exercise by the Minister that cannot be subject to analysis, such as those
accused most serious crimes, War Crimes and Crimes against Humanity cannot benefit from the Act.

The DPP should publish a prosecutorial strategy, one that clearly identifies objective criteria for those who hold responsibility for the most heinous crimes.

Amnesty Law should be revised, to allow decisions of the Amnesty Commission to be appealable before courts of law. An inclusion of such a provision would afford victims an avenue to seek redress particularly with regard to victims of gender based crimes. This is in effect accommodates a minimum compliance with international obligation to guarantee a victim an appropriate redress to a court.

An amendment to the Amnesty Act to allow for revocation of an amnesty certificate issued for example in respect to re-offenders. Although provided for in 2002 Amnesty amendment Act, insufficiently caters for this position in that it merely prevents issue of a grant for subsequent crimes. The provision for a deterrent element in the rule of law cannot be over stated and with such incorporation constructively supports the principle.

Implementation of Truth Commissions that operates in official capacity is an indispensible component of transitional societies. The Annexure the Juba Peace Agreement made provisions for this mechanism that has yet to be enforced, investigation and accountability into events that transpired during the conflict, assists victims with closure.
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