

**UN POSITION ON UGANDA'S AMNESTY ACT,
2000**

**Submission to the Hon. Minister of Internal
Affairs**

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INTRODUCTION

The Amnesty Act of Uganda, 2000 has played a role in the restoration of peace in the conflict-affected region of northern Uganda, which has suffered greatly due to numerous rebel activities. The hallmark of the Act is the immunity it extends to rebels shielding them from the prospect of facing prosecution, regardless of the crimes they committed during armed rebellion, in exchange for their surrender. Twelve years since the Act came into effect, it is necessary to assess its relevance in Uganda's peace building process as well as to address concerns regarding its compatibility with Uganda's international legal obligations and with local expectations.¹ This analysis on the implications of Uganda's Amnesty Act is presented by the United Nations² to the Minister of Internal Affairs and the Justice Law and Order Sector Institutions in light of the ongoing deliberations on the future of the Amnesty Act, which is set to expire on 24th May 2012.

It is noted that while the United Nations is not strictly opposed to the grant of amnesties per se, there is growing consensus that a State's discretion to adopt amnesty legislation is subject to certain limitations that are necessary to combat impunity.³ Experience has shown that a culture of impunity and a legacy of past crimes that go unaddressed are likely to undermine a lasting peace. Therefore the adoption of domestic amnesties that seek to extend immunity from accountability should be framed in accordance with permissible limits and without compromising the rule of law and the realization of justice.

The United Nations Policy concerning amnesties is grounded in the core principles that have been endorsed by the United Nations System as a whole, which observe that States must (a) ensure that those responsible for serious violations of human rights and humanitarian law are brought to justice and (b) assure victims an effective right to a remedy, including reparation.⁴

This submission is divided into four parts. Part II discusses Uganda's obligations under international and domestic law in relation to amnesty including its duty to investigate and prosecute international crimes, and ensure victims are provided with effective remedies. Part III

¹ In two consultative meetings sponsored by UN Office of the High Commissioner for Human Rights in collaboration with the Justice, Law and Order Sector, UN Women and Refugee Law Project in 2011 and 2012, the majority view was that while amnesty has made an important contribution to facilitating peace, the Act cannot continue in its current form as it is affecting the implementation of meaningful justice for victims by undermining accountability mechanisms for international crimes, impacting on ongoing criminal justice processes and condoning impunity for sexual and gender based crimes.

² This submission was prepared by the UN Office of the High Commissioner for Human Rights in collaboration with UN Women.

³ Principle 22, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states that; States should adopt and enforce safeguards against any abuse of rules such as those pertaining to amnesty.

⁴ The Universal Declaration of Human Rights proclaims: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law" (art. 8). Other relevant United Nations principles are cited in the Basic Principles and Guidelines on the Right to a Remedy and Reparation. See, OHCHR; Rule of Law Tools for Post Conflict States: Amnesties

provides an analysis of the Amnesty Act 2000 and Part IV presents recommendations on the way forward.

UGANDA'S OBLIGATIONS UNDER INTERNATIONAL AND DOMESTIC LAW IN RELATION TO AMNESTY

Amnesties are permissible under international law but within certain limits. Under International Humanitarian Law, in cases of non-international armed conflicts (which is the case of the Ugandan Government's conflicts with the LRA and other rebel groups), amnesties for legitimate acts of war are encouraged at the end of hostilities to permit combatants to return home and reintegrate into society. Nevertheless, amnesties are not justifiable for actions that violate the rules of armed conflict. Under customary law there can be no amnesty for crimes of genocide and grave breaches of the laws of war.

Uganda is party to the Genocide Convention as well as the four Geneva Conventions and its additional Protocols⁵. It has ratified all of the core international human rights treaties⁶, with the exception of the International Convention on the Protection of all Persons from Enforced Disappearances, as well as other significant treaties like the Optional Protocol to the Convention on the Rights of the Child (CRC) on the use of Children in Armed Conflict (OPCRC-II). Uganda ratified the ICC Rome Statute in 2002 and has also supported and signed important international instruments including the Paris Principles and Commitments of 2007⁷ on the role of children in armed forces or groups.⁸ Uganda has also ratified important regional treaties that impose certain human rights obligations such as the constitutive acts of the African Union and the East African Community, the International Great Lakes Conference Protocols and most significantly the African Charter on Human and People's Rights,⁹ the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol)¹⁰ and the African Charter on the Rights and Welfare of the Child and its corresponding protocol.

All the aforementioned instruments impose a series of obligations on the State of Uganda with regard to protecting human rights and instituting measures to ensure accountability for

⁵ ICRC Treaties and Documents for Uganda, Available at: <http://www.icrc.org/ihl.nsf/Pays?ReadForm&c=UG>, Last accessed on 15 June 2010

⁶ United Nations Treaty Collection System, Available at: <http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>, Accessed on 15 June 2010

⁷ The Paris commitments to protect children from unlawful recruitment or use by armed forces or armed groups and the Paris principles and guidelines on children associated with armed forces or armed groups were adopted at the international conference 'Free children from war' in Paris, February 2007 - 100 member states have endorsed the commitments, including Uganda.

⁸ According to the Paris Principles, children involved in armed conflict should first and foremost be considered as victims – but this does not exclude them from a process of accountability for crimes committed, where necessary.

⁹ Art. 7.1 (a) of the African Charter recognizes victims' right to a remedy for violations of fundamental rights

¹⁰ Art. 11 (3) of the Protocol 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

conflict related crimes experienced by women that impact on the award of amnesty. In particular, these obligations include the following: (i) to investigate serious crimes (ii) to bring the alleged perpetrators to justice and (iii) to grant redress to the victims of such crimes.

Uganda conforms to the dualist theory of international law where international and regional instruments it has ratified do not automatically become part of Ugandan law unless they are specifically incorporated through an Act of Parliament. This does not absolve Uganda from its international legal obligations. However, it does affect domestic enforceability. Several of the abovementioned treaties ratified by Uganda have been accorded legal effect through the enactment of domestic implementing legislation including the Constitution of Uganda bill of rights (Chapter 4) as well as the Children Act 1996. In addition, the Geneva Conventions Act of 1964 domesticates the four principal Geneva Conventions, and the ICC Act 2010 domesticates the Rome Statute. The ICC Act allows Ugandan courts to try crimes against humanity, war crimes and genocide defined under the Rome Statute.¹¹ The Rome Statute contains specific reference to gender-based violence as a possible war crime and crime against humanity. Included in this definition are rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and “any other form of sexual violence of comparable gravity.”¹² The Statute establishes an important model for defining sexual and gender-based crimes in international law.¹³

Obligations to investigate and prosecute international crimes

Comprehensive human right treaties require States parties to conduct an effective investigation and if necessary ensure prosecution of gross violations such as torture and similar cruel, inhuman or degrading treatment; extrajudicial, summary or arbitrary executions, slavery and enforced disappearance, including gender-specific violations such as rape. The general obligation to prosecute such crimes is expressly recognised in numerous treaties. The International Covenant on Civil and Political Rights (ICCPR) for example under Art. 2(3), states that each State party must ensure that any person whose rights or freedoms have been violated have an effective remedy. The Human Rights Committee has also interpreted the Covenant ‘to require States parties to take effective steps to investigate violations of human rights recognized as criminal and to bring to justice those who are responsible for these violations.’¹⁴

Amnesties for crimes such as torture, prohibited under international treaty law would also violate customary international law¹⁵. Under international humanitarian law, the rule prohibiting torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment is a norm of customary international law applying to non-international

¹¹ Rome Statute of the International Criminal Court, 17 July 1998, A/CONF.183/9.

¹² *Id.*, art.7(1).

¹³ UN Women, *A Window of Opportunity? Making Transitional Justice Count for Women* (2010) pp 6-7.

¹⁴ As cited in OHCHR, rule of law tools for Post-Conflict States, Amnesty, p21

¹⁵ The International Criminal Tribunal for Former Yugoslavia has expressed the view that an amnesty for torture would be “internationally unlawful. *Prosecutor v. Anto Furundžija*, case No. IT-95-17/1-T, Judgement of 10 December 1998, para. 155.

armed conflict. Art. 5 (2), of the UN Convention against Torture states that *each State Party shall take such measures as may be necessary to establish its jurisdiction over offences of torture in cases where the alleged offender is present in any territory under its jurisdiction.*

Similarly, the Rome Statute¹⁶ recognises crimes against humanity among the most serious crimes of concern to the international community as a whole, which must not go unpunished and whose effective prosecution must be ensured by States, either through instituting criminal proceedings against suspected perpetrators in their own courts or by sending the suspects to the ICC for prosecution.

Principle 19 of the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Updated Set of Principles) similarly states that: *States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished.*

Human rights bodies have also generally rejected amnesties for serious violations of human rights. The **UN Human Rights Committee, in its General Comment No. 20 (1992)** on Article 7 of the ICCPR noted that some States had granted amnesty in respect of acts of torture and stated that: *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 may be possible.*¹⁷

In addition, amnesties that prevent prosecution of war crimes, also known as serious violations of international humanitarian law committed during non-international armed conflicts, are inconsistent with States' obligations set forth under Common Article 3 of the four Geneva Conventions of 1949 and the Protocol relating to the Protection of Victims of Non-International Armed Conflict (Additional Protocol II).

In the context of non-international armed conflict, article 6.5 of Additional Protocol II encourages States to grant former rebels amnesty for such crimes as rebellion, sedition and treason but excludes war crimes. States can also grant rebels amnesty for legitimate acts of war, such as killing members of the opposing forces under circumstances not amounting to a war crime. Rule 159 in the ICRC study of *Customary International Humanitarian Law*, which is now widely accepted as customary law, states that:

“At the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who have participated in a non-

¹⁶ See, Preamble of the Rome Statute, which echoes the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes; Articles 7 and 8 relate to specific war crimes and crimes against humanity – recognized as most serious crimes under the Statute to which the ICC is authorized to exercise jurisdiction.

¹⁷ (A/47/40], appendix VI.A

international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes.”¹⁸

Serious violations of common article 3 of the Geneva Conventions, constituting war crimes to which the ICC could exercise jurisdiction when committed in non-international armed conflicts include *among others* the following acts committed against persons taking no active part in the hostilities including members of armed forces who have laid down their weapons;

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (article 8.2.c, Rome Statute)

Similarly, acts listed under article 8.2.e of the Rome Statute including direct attacks on civilians and civilian objects, pillaging, sexual crimes such as rape, sexual slavery, enforced prostitution, forced pregnancy, enlisting of children, ordering the displacement of civilian populations on account of conflict and killings among others constitute violations of the law of war governing non-international armed conflict and would be subject to ICC jurisdiction irrespective of any domestic amnesty law.

Accountability for conflict related SGBV

The UN Security Council has adopted five resolutions on women, peace and security, namely Security Council Resolutions 1325 (2000), 1820 (2009), 1888 (2009), 1889 (2010) and 1960 (2011). Uganda is a party to all these Resolutions. Together they guide and promote the rights of women in conflict and post-conflict situations. Specifically in relation to amnesty and prosecution, Security Council Resolution 1820 notes that rape and other forms of sexual violence can constitute a war crime, crime against humanity or a constituent act with respect to genocide. The Resolution thereafter stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes. It calls upon Member States to comply with their obligations to prosecute perpetrators of sexual violence, ensuring that all victims, particularly women and girls, have equal protection under the law and equal access to justice. It reiterates the importance of ending impunity for sexual violence as part of a comprehensive approach to seeking sustainable peace, justice, truth and national reconciliation.¹⁹

Security Council Resolution 1888 recalls Member State’s responsibility to prosecute and end impunity for war crimes, crimes against humanity and genocide, noting with concern the limited number of perpetrators of sexual violence brought to justice. It reaffirms that ending impunity is essential if a society is to come to terms with past abuses committed against civilians and prevent future abuses.²⁰

¹⁸ Customary International Humanitarian Law Database, ‘Rule 159 – Amnesties’, Available at http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule159, accessed June 2011

¹⁹ UN Security Council, Security Council Resolution 1820 (2008), 19 June 2008, S/RES/1820 (2008), para 4.

²⁰ UN Security Council, Security Council resolution 1888 (2009), 30 September 2009, S/RES/1888 (2009)

In addition to the international policy framework on women, peace and security, Uganda is party to a number of regional instruments that seek to protect the rights of SGBV victims during and post conflict. These include the Pact on Security, Stability and Development in the Great Lakes Region (Great Lakes Pact) developed by the International Conference on the Great Lakes Region (ICGLR) of which Uganda is a member . The Great Lakes Pact entered into force in June 2008 and incorporates ten protocols including the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children. Objectives of this Protocol include providing protection for women and children against impunity for sexual violence and establishing a legal framework under which Member States undertake to prosecute and punish perpetrators of sexual violence in the Great Lakes Region.²¹

Building on the Great Lakes Pact, in June 2008 a regional consultation meeting lead by Member States of the ICGLR adopted the Goma Declaration on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region. Recommendation 23 of the Declaration calls on Member States not to grant amnesty to perpetrators of SGBV. Recommendation 19 provides that where necessary Member States should amend laws to conform to the ICGLR Protocol on the Prevention and Suppression of Sexual Violence against Women and Children.

In December 2011, Heads of Member States of the ICGLR issued a Declaration with respect to SGBV which includes a commitment to ending impunity for SGBV through establishing appropriate mechanisms for investigating and prosecuting sexual violence crimes that amount to genocide, war crimes or crimes against humanity in the region.²²

The African Charter on Human and Peoples' Rights,²³ and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, commonly known as the Maputo Protocol²⁴ which Uganda has ratified 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.²⁵

In addition to these regional human rights instruments, Uganda has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),²⁶ which provides a global framework for the protection of women's rights. Article 2 of CEDAW 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

²¹ Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children, art. 2 (1, 2), 30 November 2006.

²² Declaration of the Heads of State and Government of the Member States of the International Conference on the Great Lakes Region at the Fourth Ordinary Summit and Special Session on Sexual and Gender Based Violence (SGBV), 15-16 December 2011, Munyonyo Commonwealth Resort, Kampala Uganda, para 9.

²³ Uganda ratified the African Charter on Human and Peoples' Rights on 10 May 1986.

²⁴ Uganda ratified the Maputo Protocol on 22 July 2010.

²⁵ Maputo Protocol, art.11(3).

²⁶ Uganda ratified CEDAW on 22 July 1985.

ensuring through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.²⁷

Right to effective remedy and reparation

While amnesties are often resorted to as an avenue to engage perpetrators in peace processes, their ability to alienate victims must not be overlooked. States are generally required to “provide effective remedies to victims of gross violations of human rights and serious violations of humanitarian law, including reparation,”²⁸ and may not abrogate these duties through the operation of an amnesty. Several key human rights treaties obligate states to provide an adequate and effective remedy to those persons whose rights and freedoms have been violated under the respective treaty.²⁹

The *Basic Principles and Guidelines on the Right to a Remedy and Reparation*³⁰ affirm a general duty of States to “provide effective remedies to victims, including reparation,” for victims of gross violations of international human rights law and serious violations of international humanitarian law and provide detailed guidelines on the nature of this obligation (para. 3 (d)). The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Updated Set of Principles) likewise reaffirm the right of victims of human rights violations to “have access to a readily available, prompt and effective remedy” (principle 32) and to obtain reparation (principle 31). Accordingly, the Updated Set of Principles provide that: “Amnesties and other measures of clemency shall be without effect with respect to the victims’ right to reparation...” (principle 24 (b)).

Right to truth

Linked to the State’s duty to conduct effective investigations into serious violations of human rights and the right to an effective judicial remedy is the victim’s right to know the truth about gross human rights violations. **The right to the truth about gross human rights violations and serious violations of humanitarian law is an inalienable and autonomous right, recognized under international law and cannot be compromised through the adoption of blanket**

²⁷ CEDAW, art.2(c).

²⁸ General Assembly resolution 60/147, annex, para. 3 (d)

²⁹ Article 8 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child, and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977,⁹ and articles 68 and 75 of the Rome Statute of the International Criminal Court, as well as regional treaties such as the African Charter on Human and Peoples’ Rights, article 7.

³⁰ General Assembly resolution 60/147, annex.

amnesty.³¹ The Updated Set of Principles³² re-affirms the inalienable right to know the truth vis-à-vis gross human rights violations and serious crimes under international law.³³ The former UN Commission on Human Rights has also made reference to the right to know and ensure that amnesty “is not an obstacle to the search for the truth and the punishment of the guilty”.³⁴ In its resolution 2005/66, it also recognized “the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights” (para. 1).

The International Committee of the Red Cross (ICRC) has also affirmed **the right to truth as a norm of customary international law applicable in both international and non-international armed conflict**, which obligates “each party to the conflict to take all feasible measures to account for persons reported missing as a result of armed conflict and provide their family members with any information it has on their fate.”³⁵ Article 32 of the Additional Protocol I to the Geneva Conventions, of 12 August 1949 recognises the right to the truth for relatives of missing persons, including the victims of enforced disappearance.

Given various sources of international human rights, criminal and humanitarian law, blanket amnesties are generally inconsistent with the obligation of States to provide accountability for serious crimes under international law and are no longer acceptable. Moreover, they would not prevent prosecution before foreign or international courts. As noted by the Special Court for Sierra Leone, one consequence of the nature of grave international crimes against humanity is that States can, under international law, exercise universal jurisdiction over such crimes.³⁶

³¹ See, OHCHR study on the right to the truth (E/CN.4/2006/91).

³² (E/CN.4/2005/102/Add.1)2

³³ Principle 2 of the UN Set of Principles also declares that “[e]very people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes.” While Principle 4 thereof articulates that “[i]rrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate”.

³⁴ UN Commission on Human Rights, *Situation of human rights and fundamental freedoms in Chile.*, 8 March 1989, E/CN.4/RES/1989/62, available at: <http://www.unhcr.org/refworld/docid/3b00f0c62c.html> , para 7 (b)

³⁵ Rule 117 in ICRC, *Customary International Humanitarian Law, Volume I, Rules*, Cambridge Press University, 2005, p. 421.

³⁶ See *Prosecutor v. Morris Kallon and Prosecutor v. Brima Bazzy Kamara*, paras. 70 and 67. See also Principle 7 of the *Princeton Principles on Universal Jurisdiction (2001)*

ANALYSIS AND IMPLICATIONS OF THE AMNESTY ACT 2000

Obligation to Prosecute International Crimes

Taking into account the various treaties and customary law obligations mentioned above, the Amnesty Act as it stands now is in violation of the State's international obligations under human rights and humanitarian law. In particular, the blanket nature of amnesty as understood under the Amnesty Act is, in practice, incompatible with international standards by seeking to extend amnesty to any individual who has renounced rebellion irrespective of the crimes committed.

Common Article 3 of the Geneva Conventions, which is also part of customary law and applicable in cases of non-international armed conflicts, ensures protection of rights of civilians and any violation of these rights would constitute war crimes.

- The Amnesty Act contravenes international law because in practice it has barred from prosecution persons who could be responsible for war crimes, crimes against humanity and gross violations of human rights. This is because the Act guarantees that reporters “*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 cause of the war or armed rebellion.*”³⁷
- The blanket amnesty permitted under Uganda's Amnesty Act seems to have been interpreted to cover any crimes that are related to the armed conflict, including serious violations of human rights and humanitarian law, contrary to international customary and treaty obligations. Granting amnesty for serious crimes is a clear violation of the State's international legal obligation to prosecute and punish perpetrators of the most serious crimes of concern to the international community as a whole.

Since the enactment of the Amnesty Act, a number of significant legal and institutional developments addressing issues of justice and accountability have occurred, which impact on the Amnesty Act. These include:

- Uganda's ratification of the Rome Statute³⁸ (14th June 2002) and accession to the Optional Protocol to the UN Convention on the Rights of the Child on the involvement of children in armed conflict (OPCRC-II) (6 May 2002) – two key frameworks that pertain to legal obligations on protection and duty to ensure justice in post-conflict settings.
- The adoption of the International Criminal Court Act 2010 (ICC Act), expressing the Government's clear commitment to investigate and prosecute international crimes in Uganda's domestic courts.

³⁷ Amnesty Act, Section 3

³⁸ Rome Statute of the International Criminal Court, 17 July 1998, A/CONF.183/9.

- The creation of the International Crimes Division (ICD) of the High Court of Uganda to try crimes against humanity, war crimes and genocide defined under the Rome Statute and in accordance with the principle of complementarity.³⁹

An amendment made to the Amnesty Act in 2006⁴⁰ (which gave the Minister of Internal Affairs the power to present to parliament a list of individuals who could not be eligible for amnesty) was an attempt by the Government of Uganda to address some of the inconsistencies between the Amnesty Act and the country's international obligations, especially those arising from the ratification of the Rome Statute in 2002, the referral of the LRA situation to the ICC in 2003 and the subsequent peace negotiations with the LRA in 2006 which eventually lead to the signature of the Agreement on Accountability and Reconciliation.

Under the Juba Peace Agreement on Accountability and Reconciliation, the Government committed itself to "introduce amendments to the Amnesty Act...in order to bring it into conformity with the principles of the Agreement."⁴¹

- However, the 2006 amendment to the Amnesty Act did not make reference to the criteria by which individuals may be considered to be ineligible for amnesty, nor does it make the designation of ineligibility of amnesty a requirement by law. Consequently, the power to declare an individual ineligible for amnesty remains at the discretion of the Minister and Parliament. To date no individual has been declared ineligible.
- Despite the amendments to the Amnesty Act and the creation of the International Crimes Division, it is clear that the Amnesty Act continues to provide for impunity. The absence of a specific declaration of those individuals deemed to be ineligible hampers the ability of the ICD to hear cases against those alleged to have committed serious crimes during the conflict. Yet the ICD's work in securing accountability and justice for victims, especially women, is crucial to demonstrate the Republic of Uganda's compliance with international agreements on this matter and to which it is a party.
- The Amnesty Act similarly contradicts Uganda's obligations arising from the Rome Statute. Based on Uganda's referral of the LRA case to the ICC in 2005, there are still four pending ICC arrest warrants against top LRA commanders. If any of the four indicted LRA members were captured, it would be very difficult for the Government of Uganda to call on the principle of complementary to try these persons in Uganda through the ICD instead of turning them over to the ICC. This is because the Amnesty Act would effectively prevent the Government from pursuing prosecution and this could be interpreted as a sign of the State's

³⁹ Article 17 of the Rome Statute, affirms the primacy of national governments in ensuring accountability for those who bear the greatest responsibility for perpetrating international crimes.

⁴⁰ Amnesty (Amendment) Act 2006

⁴¹ Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, 29 June 2007, Clause 14.4.

inability or unwillingness to prosecute such crimes and therefore justify the ICC to take over.

- Similarly, the Amnesty Act presents real challenges for the future of prosecutions of individuals suspected of committing gross violations of human rights in Uganda and in the neighbouring countries of Sudan, Democratic Republic of Congo (DRC) and the Central African Republic (CAR). Victims groups in many of these countries are seeking justice and calling for their governments to put in place accountability measures including prosecutions for LRA combatants. Many former combatants however have returned to Uganda and obtained Amnesty and are now actually serving in the Uganda People's Defence Forces. If any of the neighbouring countries were to call for extradition of some of these persons that would present a real challenge to Uganda. Meanwhile, the Government's commitment to extradite any such individuals to face prosecution for alleged crimes outside Ugandan jurisdiction will likely be put to test
- The blanket amnesty granted under the Amnesty Act is not internationally binding and would not bar prosecution of individuals implicated for such crimes in foreign jurisdictions acting under the principle of universal jurisdiction. It therefore does not absolve such individuals obtaining amnesty from facing criminal liability in any other country with universal jurisdiction..

The Right to an Effective Remedy

Uganda's Amnesty Act as it stands now will also interfere with victim's right to an effective remedy, including reparations as well as the right to truth in the following ways;

- Since the Act stipulates that no form of punishment can be imposed by the State against reporters, this could effectively mean that victims are being prevented from seeking a civil remedy for the violations they have suffered. This would be in clear violation of the ICCPR as well the Uganda Constitution on the right to effective remedy.

This issue is particularly grave when considering the situation of formerly abducted girls who were forced into marriages and had children while in captivity. Upon returning from the bush, these young women are faced with a multitude of challenges including sometimes being shunned by their communities and/or forced to remain with their captor husbands. Much emphasis over the "appropriate signals" to send to the rebels has been at the heart of arguments that promote a broad amnesty. However, bringing people out of the bush without submitting them to any process of accountability undermines the realization of sustainable peace and justice.

In the case of victims of forced marriage and children born in captivity for instance, their victimization does not end with the granting of amnesty. Worse still, the amnesty process itself can permit the original crime to be perpetuated, as "forced wives" see their only alternative to survival is to maintain their relations with their commander/bush husbands where domestic and

sexual violence can continue without accountability for these crimes. Meanwhile, local authorities are wary to send “wrong signals” to the men still in the bush. Alternatively, women have to weigh the burden of providing for their children whilst former “bush” husbands are not required to provide for the children. These situations will alienate the victims of such crimes.

The Right to Truth

Similarly, the Amnesty Act additionally compromises the victims’ right to truth as set out under the UN Updated Set of Principles since it does not impose any requirements on the reporters for full disclosure on their participation in the conflict.

- The application for amnesty is limited in space and in effect, only requires that the reporter give a broad indication as to which rebel group he or she participated in and what types of activities the person was involved in (direct combat, collaboration, etc). For those children that went through reception centres, the practice was actually that the centre staff would fill out the amnesty forms and then give the forms to the children to sign without properly explaining the objective and implications of the amnesty process.⁴²
- Additionally, because the amnesty process is linked to demobilisation and reintegration, a number of returnees, in particular former abductees and forced wives may not be willing to go through the amnesty process to obtain amnesty certificates and are therefore excluded from demobilisation and reintegration programmes. For example, many abducted women played support rather than combat roles and are unwilling to accept implied responsibility for participation in armed rebellion associated with receiving an amnesty certificate. Such groups often need those resettlement packages to integrate properly in their local communities where they are sometimes shunned and lack assistance. This also points to what some in the community have argued is a disproportionate focus on former combatants without sufficient regard to the needs of their victims. This ultimately affects community reconciliation in the broader transitional justice context.

⁴² Interview with former psychologist of a reception center in Gulu - March 2011

RECOMMENDATIONS ON THE WAY FORWARD

As noted in section II of this submission, under international law, amnesties are 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 victims' right to an effective remedy, including reparation; or
- c) Restrict victims' and societies' right to know the truth about violations of human rights and humanitarian law.

The Amnesty Act in its present form, giving a blanket amnesty to all crimes, does not permit the fulfilment of these obligations. The continued validity of Uganda's Amnesty Act needs to be reviewed in light of relevant standards and harmonised with other transitional justice processes in Uganda. On this basis, the following recommendations are made:

General recommendations

- Ensure compliance with international law obligations. International law clearly prohibits amnesties in the most serious cases. Conditional, accountable amnesties could be considered for less serious crimes to facilitate truth-recovery and reconciliation initiatives.

The UN's position is informed by cited international and regional instruments which clearly state that legal provisions extending amnesties for genocide, war crimes, crimes against humanity, and gross violations of human rights are impermissible and do not preclude those amnestied from being tried by other external justice mechanisms such as the ICC or under the principle of universal jurisdiction for violations committed. Principle 7 of the *Princeton Principles of Universal Jurisdiction*, drafted in 2001, states that amnesties are generally inconsistent with the obligation of States to provide accountability for serious crimes under international law.

- Uphold the rule of law and fight against impunity by excluding serious crimes and gross violations from the scope of amnesty. Such gross violations of human rights include torture and similar cruel, inhuman or degrading treatment; extra-judicial, summary or arbitrary executions; slavery; enforced disappearances; and rape and other forms of sexual violence of comparable gravity.
- Provide conditional amnesty for those implicated for less serious crimes to fully participate in truth telling procedures, for example requiring full disclosure on their experiences during the conflict before amnesty can be awarded.
- Delink amnesty from DDR processes and ensure their co-existence with broader transitional justice mechanisms in a positively-reinforcing manner. In particular, there should be a balance between amnesty and interventions in favour of victims' needs. The

centrality of victims in the participation of transitional justice processes and mechanisms including during the process to grant amnesty should be ensured.

- Incorporate a time-limit that prescribes the end date/period within which crimes committed during such period would be considered for amnesty. There should be no grant of amnesty for continued crimes.
- Include special provisions for treatment of former child combatants. The Paris Principles clearly provide that children involved in armed conflict should be considered as victims. While it is not appropriate to exclude them entirely from legal accountability, there should be appropriate systems of accountability to accommodate their needs, which should also draw upon traditional principles of justice.
- Considering the previous experience where former LRA combatants are absorbed into the UPDF as part of the amnesty process, there should be clear vetting criteria to select individuals that have undergone psychosocial assistance and training before being deployed in the UPDF.

Specific recommendations

The UN is aware that the Government of Uganda's deliberations on the future of the Amnesty Act are focused on four specific options.⁴³ In light of those options, the following specific recommendations are made to guide the final decision taken by the Executive. These recommendations focus on ensuring the Government is able to fulfil its international legal obligations.

Option 1: Act Is Extended As Is

Implications: Considering that the Act as currently drafted is in violation of international law and the Constitution of Uganda, extension of the Act without amendment is problematic as it will continue to be an instrument that allows impunity to prevail and could even encourage continued violence. **In principle, amnesties do not prevent legal liability for conduct that has not yet taken place, which would be an invitation to violate the law.** However, the Amnesty Act provides amnesty for crimes committed since the NRM came into power.⁴⁴ In the absence of a time limit, the Act generally exempts from responsibility anyone who may decide today to pick up arms against the Government. It is therefore an incentive to engage in rebel activity.

In accordance with the United Nations policy, the UN cannot support the extension of laws that promote impunity and that can hinder or operate in isolation from other transitional justice measures. Should the Government of Uganda extend the Amnesty Act in its current format, we recommend this extension for a limited period such as to allow relevant institutions to take prompt action to amend the Act. Such amendments should address the following aspects;

⁴³ JLOS Technical Committee meetings of the Formal Criminal Justice Sub-Committee and the Transitional Justice Working Group, Issues Paper, April 2012

⁴⁴ 26th January 1986. See, Amnesty Act 2000, s. 3(1).

- Exclude certain crimes considered especially serious from the award of amnesty. In particular, the Act should exclude international crimes (crimes that fall under the jurisdiction of the ICD).
- Adopt conditional amnesties which exempt lower-level perpetrators from prosecution if one applies for amnesty and satisfies certain conditions such as: acknowledgement of harm done, seeking an apology, full disclosure of the facts about the violations committed, commitment to cooperate with truth telling procedures (national and/or traditional) aimed to promote reconciliation.
- Delink amnesty from the reintegration process to allow parallel processes that can accommodate both those subject to amnesty and those outside its scope, especially vulnerable groups such as child soldiers/formerly abducted children, forced wives and children born in captivity.

In the short term, the Government could consider:

1. The Minister of internal affairs presenting immediately to Parliament a list or categories of persons (such as those who have committed international crimes) that should not be covered under the Amnesty law.
2. A judicial interpretation of the Act as to which crimes can actually be amnestied. The Amnesty Act declares under clause 3(2):

“A person ... shall not be prosecuted or subjected to any form of punishment for participation in the war or rebellion *for any crime committed in the cause of war or armed rebellion*”

This provision has generally been understood to mean that amnesty is to be provided on a blanket basis. However, this interpretation could be challenged by Government through the DPP or the Attorney General’s Office as to which crimes are actually covered by the Act. Crimes committed in the case of war or rebellion could be understood to mean all those actions taken as part of combat or to further the cause of rebellion which is justifiable and according to the laws of armed conflict. Given customary law, international law and the Ugandan Constitution, any other crime that could not be justifiable under armed conflict could be subject to prosecution. The Government could seek an interpretation from the court in this regard. This would provide an authoritative interpretation on the scope of the Act that would bring it in line with the Constitution, other national laws (ICC Act, the Prevention and Prohibition of Torture Act 2010 and the Geneva Conventions Act) and international law.

In other jurisdictions, amnesty laws have been interpreted by the courts to mean that amnesty was to be provided for political crimes and other crimes that are expected to occur in the transgression of a war (eg. murder in combat), however not for crimes that cannot be justified in the context of war or rebellion. In Argentina for example, alleged rebels who were detained and who gave birth had their babies taken from them and given to military families or put up for adoption instead of returning to their families. Courts found that this was not a crime covered by the amnesty laws for example. Similarly in Chile the crime of enforced disappearance was

deemed by the courts as un-amnestiable because it was a crime that continued to be perpetrated. In Uganda, this interpretation could apply to gross violations such as enslaving women, forced marriages, torture/mutilation, etc.

3. The Minister could also issue regulations that could make the application of the Act more rights-compliant. Clause 14(1) of Part III and clause 18 of Part IV of the Act provide the Minister with power to issue regulations on the operations of the Demobilisation and Resettlement Team and more generally for the better carrying out of the provisions and principles of this Act. To date no such regulations have been passed. Regulations that could be issued by the Minister could be more explicit on the following:
 - Procedure for the transfer of formerly abducted persons from combat zones back to Uganda.
 - Guidelines on what constitutes “renouncing rebellion” under section 4 of the Amnesty Act to distinguish those rebels captured in active combat.
 - Information to be provided by reporters to obtain amnesty (for example, providing a full account of his or her experience to make it part of a truth telling process – or permit greater involvement of the community in the process of issuing certificates).
 - Categories of victims that should be reintegrated but not be required to go through the amnesty certificate process.
 - Reintegration of former combatants.
 - The role of security forces with regards to the Amnesty Act and its application.
 - Tightening the framework of operation of the Act by stipulating which rebel groups are covered under the Act. This would prevent the Act being used for other purposes.

Option 2: Partial Extension

The Act was initially meant to remain in force for a period of six months but was extended on numerous occasions. The 2006 amendment included a provision that would allow the Minister to declare the lapse of Part II of the Act (Section 16 (3)) by statutory instrument. In this case, amnesty for former combatants would no longer be an option and the issuance of amnesty certificates would no longer take place. Importantly though, the Amnesty Commission could continue to carry out its reintegration and rehabilitation functions.

Reintegration and promotion of peace and reconciliation with local communities are important functions of the Amnesty Commission to cater for the safe return of former combatants but it is equally important to leave space for justice to take place. In order to assuage fear in communities that removing the option of amnesty could lead to the prosecution of all returning combatants, the AG and DPP should make a declaration that they would only seek prosecution of those responsible for international crimes and other gross violations of human rights and that preference would be to help those that were forcibly conscripted to reintegrate into their communities. In this case, a clear prosecutorial strategy needs to be put in place and publicised for transparency.

Furthermore the Minister of Internal Affairs should issue regulations, establishing the procedure for receiving anyone who participated in armed rebellion and assisting them through

the amnesty process. These regulations could encapsulate the fact that reporters no longer receive amnesty certificates but this should not disqualify those returning from the bush from getting assistance for DDR. These persons should only be arrested in cases where the DPP finds that it has sufficient evidence as to the degree of responsibility of that person for international crimes/gross violations of human rights in accordance with a specific prosecutorial strategy. Removing the option of receiving amnesty certificates should not be a green card for the military to detain all former combatants at will. This partial lapse should be a temporary stop measure until a comprehensive transitional justice policy/law is in place which will have to integrate all elements of peace, justice and reconciliation. In our view, the focus of government now should be on instituting rehabilitation, reconciliation and reparation measures in the conflict-affected communities.

In this case, we would recommend changing the name of the Amnesty Commission to reflect its functions related to demobilization, reintegration and reconciliation. Additionally, the Commission's capacity to handle reintegration services should be strengthened to cater for psychological and medical needs of returnees.

Option 3: Act Is Let To Expire

If the Act is left to expire then there would be a vacuum in terms of what happens to anyone returning from the bush. Similarly many questions would arise at the local level such as:

- What happens to all those that have already received amnesty?
- What of the "children" still in the bush? Will all those returning be arrested?
- What would happen to the activities of the Commission? Who would handle reintegration/resettlement assistance?

In this case there would need to be an immediate and comprehensive information campaign at district levels, especially targeting former combatants, so that people are assured that those that have already been awarded amnesty would not lose their certificates. Similarly the Government would have to find a way to continue reintegration and reconciliation programs. The Minister of Internal Affairs could administratively create a department that would absorb former structures and employees of the Commission that would be solely dedicated to DDR.

Option 4: Enactment of a new Law or TJ Policy

No matter which of the three options highlighted above are chosen, it is imperative that the Government work towards the adoption of a comprehensive transitional justice policy and law. It should be recalled that during the parliamentary debate on the proposed list of ineligible persons under the Amnesty Act, some MPs argued that the possible prosecution of LRA fighters should not be considered in a vacuum but rather that it should be part of a wider process of accountability, truth-telling and reparations that also scrutinizes in detail the violations committed by the Government of Uganda, including the issue of forced displacement.⁴⁵ There is

⁴⁵ Declarations made at public events by MP. Norbert Mao and Jacob Oulanya

a strong need to focus attention on the needs and concerns of victims especially in respect to their right to truth, justice and reparation.

In this case, we would recommend that the Government of Uganda enact legislation to address broader transitional justice aspects outlined in the Juba Peace Agreement.