

UNIVERSITY OF NAIROBI

**AMNESTY IN CONFLICT RESOLUTION: A CASE STUDY OF UGANDA'S LORD'S
RESISTANCE ARMY (LRA).**

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DECLARATION

This research proposal is my original work and has not been submitted for a degree in any other University.

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This research project has been submitted for examination with my approval as the University Supervisor.

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DEDICATION

I dedicate this project to my family for encouraging and supporting me throughout this course and project.

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ABBREVIATIONS

- ADF** Alliance of Democratic Forces
CRC Convention on the Rights of the Child
GOU Government of Uganda
ICC International Criminal Court
IMT International Military Tribunal
JPN Juba Peace Negotiations
LRA Lord's Resistance Army
NRA National Resistance Army
NRM-O National Resistance Movement Organization
UPDF Uganda People's Defence Force

1.0 CHAPTER ONE: INTRODUCTION

1.1 Background of the study

Northern Uganda has been faced with numerous wars where it is one of the places considered to have had the longest running conflicts in Africa. In this respect, the “Lord’s Resistance Army” as the key protagonist has played a big role in such wars¹. The war in the northern Uganda has been between the LRA and the Ugandan government (GoU) and was ever referred to as the worst global forgotten crisis and as such, it has had a significant impact on post independence Uganda. The effect of this war on civilian population was brutal and protracted². The “Cessation of Hostilities Agreement” signing between LRA and GoU in 2006 led to the subsidizing of direct hostilities. This agreement signing was under South Sudan government auspices and as such, the LRA had to move to the eastern part of Democratic Republic of Congo despite having subsequent peace talks in Juba and hence, the insurgency never ended. Consequently, northern Uganda was seen to be relatively calm and thus, declared to be a post conflict region and increased chances for recovery.

Apuuli³ noted that despite both economical and political divisions together with human rights violations, cyclical and multiple conflicts as well as weak sense of national identity, Uganda still enjoys stability. In northern Uganda, the armed conflict origin can be traced back to ethnic mistrust that was propagated by colonial rulers. In this case, many people in the northern region were recruited by British colonial administration to work in plantations as laborers in the southern part of Uganda. These laborers are seen to later join the armed forces and on the other hand people from the southern and central part of Uganda got most of the civil service jobs

Uganda enjoys stability though there are divisions both political and economical, with a legacy of multiple and cyclical conflicts and grave human rights violations, and a correspondingly weak sense of national identity that will lay the foundations for future conflicts.

These developments led to significant divisions between the southern and northern part of the

¹African Youth Initiative Network (AYINET), 2012. Surgery, Medical and Psychosocial Rehabilitation for Victims of War. Kampala: UN Peacebuilding Fund.

²Cheme, Marie, 2009. ‘Overview of Corruption in Uganda’. Anti-Corruption Resource Centre Brief, 4 March 2009. www.u4.no/publications/overview-of-corruption-in-uganda/.

³Apuuli, Kasaija Philip, 2008. ‘The International Criminal Court and the LRA Insurgency in Northern Uganda’. In The Resolution of African Conflict, ed. Alfred Nhema and Paul TiyambeZezeza. Ohio University Press.

country and hence resulting to the former being more developed while the later remained poorer and hence, they majorly dependent on cattle keeping to earn a living.

It was stated by Collier and Hoeffl⁴ that subsequent governments since independence have as well played a big role in dividing the country ethnically. Political power and wealth concentration in the Southern part of Uganda led to the creation of political and economic exclusion foundations, while the government's military responses to unrest in the northern part of the country is seen to have caused further grievances and hence defining the current North-South relations. Uganda is considered to have had a long journey from violent and turbulent history of armed violence, mayhem and domestic political instability as well as coups d'état that defined the post-independence era from 1962 to 1986.

1.1.1 The Amnesty Concept

The amnesty as a word can be defined as forgetfulness and it is derived from the Greek word amnesia. In this respect, forgetting is considered to be forgiveness concept integral part and hence essential for reconciliation process⁵. Forgiveness as a strategy, it involves forgetting and pardoning of atrocities or crimes committed to one entity by another resulting to conflict between them. Amnesty is deeply rooted in forgiveness and in turn in some religions doctrines such as Islam as well as Christianity. Amnesty enables a given state or nation to 'forget' criminal acts, normally prior to prosecution. Traditionally, Amnesty has been considered to be political tool of reunion and compromise after any given war. Amnesty act is basically granted to any entity or a group with crimes committed against a given state and these crimes can be such as desertion from the military, rebellion or treason⁶.

Amnesty for Ugandans with war-like crimes as well as other related purposes is provided by

⁴Collier, P. and Hoeffler, A., 2004. 'Greed and Grievance in Civil War'. Oxford Economics Papers, vol. 56, issue 4, pp. 563–595. Conflict Sensitivity Consortium, 2012. 'How-to Guide to Conflict Sensitivity'.

⁵Werle, Gerhard (ed.) 2006. Justice in Transition — Prosecution and Amnesty in Germany and South Africa. Berlin: Berliner Wissenschafts-Verlag.

⁶Williams, Sarah 2005. 'Amnesties in International Law: The Experience of the Special Court for Sierra Leone', Human Rights Law Review 5: 271–309.

“Amnesty Act, 2000”. The “Amnesty” has been defined by this act as a discharge, exemption, forgiveness or pardon from any given criminal prosecution or any related punishment effected by the State⁷. The declaration of an Amnesty is based upon any Ugandan involved in armed rebellion or war against the Ugandan government since 26th January 1986. The person or group involved should have participated in combat; linked to the armed rebellion; involved in crimes that enhanced armed rebellion or war or aiding or assisting the armed rebellion prosecution.

The eligibility for amnesty is on the basis of twin individuation concepts as well as full disclosure of crimes that are politically motivated in most governments or states. Individual applicants are the ones to be granted Amnesty based upon their specified act involvement in relation to political objective, on condition that there is full disclosure by the applicant on appropriate facts. The capacity of the alienate victims should not be underestimated despite the fact that the amnesties have been termed as an avenue for engage perpetrators in peace related processes.

1.1.2 International Law and Amnesty

Amnesties fall within international law but limited to a certain level in terms of international humanitarian law and human rights. Uganda is a party to the four Geneva Conventions and the Genocide Convention as well as its additional Protocols. Treaties of international human rights have been ratified and International Convention on the people’s protection from Enforced Disappearances, and other critical treaties such as the “Optional Protocol to the Convention on the Rights of the Child (CRC)” on employment of “Children in Armed Conflict (OPCRC-II) is exempted.” The ICC Rome Statute in 2002 was ratified by Uganda and it was as well signed and supported critical international instruments that included the 2007 Paris Commitments and Principles of: on the children’s role in armed groups or forces⁸.

Uganda has since conformed to the international law dualist theory where its ratified regional and international instruments are never automatically part of Ugandan law and they can be so after

⁷Government of Uganda, The Amnesty Act, 2000; Government printer.

⁸MakumiMwangiru, Human Security: Setting the Agenda for the Horn of Africa, Nairobi, Kenya, African Peace Forum, 2008.

being incorporated through Parliament Act. Such cannot absolve Uganda from its global legal obligations⁹. It does however influence domestic enforceability. There are critical regional treaties that have been ratified by Uganda and they have aimed at imposing some human rights obligations like the “International Great Lakes Conference Protocols,” African Union constitutive acts, the East African Community and most importantly, the African Charter on Human and People’s Rights, the Protocol to the African Charter on the Welfare and Rights of the Child together with its corresponding protocols, on People’s and Human Rights and on Women in Africa Rights (the Protocol of Maputo)

1.2 Research Problem

For most of the Africa’s peace post-colonial history has always been elusive. It has always been a big challenge to achieve development and peace and this has led to a range of external and domestic factors. The daily activities of humans can be disrupted by war and hence denying humanity its freedom and rights. Desirable and ultimate state of peace has not been experienced in Uganda as required by any state. Justice together with reconciliation has been considered to be essential in terms of reuniting all parts of any given country. Joseph Kony together with other four top LRA officers were issued with indictments by ICC and as such, arrest warrants were issued in 2005. This aimed at fostering accountability and justice for those implicated in committing crimes against humanity.

Victims can seek redress through given courts during the process of prosecution. The roadmap for reconciliation or healing of divisions and wounds prescription in the sustained violence aftermath is not available. Trust as well as understanding creation between former enemies is seen to be quite a challenging task. Based upon the experience exhibited by South Africa it is pertinent to note that route to reconciliation should be discovered by the society itself and hence, external imposition of reconciliation is not possible. This therefore poses a big challenge in terms of addressing the victims pain and suffering, understanding the offenders motivations, reconciling estranged communities, attempting to establish a path to truth, justice as well as peace. There is need to device new solutions relevant to a given history, context as well as culture in question in cases of

⁹Mugaju J B, An Analytic Review of Uganda’s Decade of Reforms, Kampala, Fountain Publishers Ltd. 1999.

new cases of violent conflict.

In May 2012, there has been a significant upheaval in the communities affected by LRA and this has been as a result of the decision reached by Ugandan government in ending amnesty for LRA fighters. This made it had ending LRA mission. For about eight years of gun silence, the passel is whether there is a long standing peace in northern Uganda. This can be addressed by considering sub-regional and regional conflict drivers within the development challenges and national-level democratization context confronting the country in its entirety and an analysis of methods that have worked in conflict resolution on countries affected by civil war.

1.3 General Objective of the study

The current study's overall objective was to examine the amnesty efficacy in conflict resolution and sustainability of peace in Uganda.

1.3.1 Specific Objectives of the study

- i. To analyse the prosecution approach impact in attaining sustainable peace in Northern Uganda.
- ii. To examine the potential and pitfalls in using amnesty to promote peace in the case of the LRA.
- iii. To examine other conflict resolution interventions in other parts of Africa and draw lessons for Uganda.

1.4 Research Questions of the study

The considered objectives of the study were achieved through the guided questions below:

- i. What has been the effect of the prosecution approach in attaining sustainable peace in Northern Uganda?
- ii. What has been the potential and pitfalls in using amnesty to promote peace in Northern Uganda?
- iii. What other conflict resolution interventions exist in Africa and what lessons can Uganda draw from them in dealing with the LRA problem?

1.5 Hypothesis

This study is based on the assumptions that; amnesty will foster an effective reconciliation process in Uganda compared to prosecuting war criminal which is a slow and difficult process towards the establishment of a unity Government. The LRA leaders and fighters will voluntarily champion for peace in the land if granted amnesty by the government.

1.6 Justification of the Study

1.6.1 Academic Justification

From the premise of the academic field this study will promote a better understanding of the contribution of amnesty to conflict resolution. This however is a largely explored area in the academic field evidenced by the academic work on the subject matter but there is little discussion on the efficacy of amnesty as a conflict resolution mechanism in the context of Northern Uganda that shows the success rate of amnesty in African countries conflict management. The study will shed some light on the uptake of amnesty by victims of war.

Further, the study contributes to academic discourse on Justice, accountability and reconciliation. As various studies show, these are not a static concepts and neither are the tools and strategies for conflict management and conflict transformation. Hence the study will contribute to further the knowledge and theory on tools and measures that enhance conflict management will expand existing knowledge in academics on justice, Accountability and reconciliation.

1.6.2 Policy Justification

A well structured and understood research can create opportunities for analysts to come up with recommendations in terms solutions to relevant policy makers and actors to come up with appropriate measures change initiations¹⁰. There has been a significant upheaval in the affected areas by LRA as a result of the decisions reached by the government of Ugandan in relation to amnesty for LRA fighters, in May 2012. There has been an ongoing debate since 2014 to

¹⁰Klingner, Janette K., David Scanlon, and Michael Pressley. 2005. "How to Publish in Scholarly Journals." *Educational Researcher* 34(8):14-20.

reintroduce the Amnesty Act. Hence in practical terms the study is highly relevant and timely for the policy makers to consider all factors that ensure the effectiveness of the conflict management.

1.7 Theoretical Framework

Conflict resolution cannot be explained with precision with one overarching theory but theories in social conflict and conflict resolution will be relied on for this study. Conflict is a humane society's universal feature. It is seen to originate based upon political organization, psychological development, cultural formation, social change and economic differentiation. All of these are seen to be inherently conflictual in nature – and turns out to be overt via conflict parties' formation, that come for several advocates of human rights, violence victims as well as others. The accommodations of pragmatic' basest is represented by amnesties with former torturers, murderers and despots. For organizations or individuals of this kind, amnesties are considered to be by word for impunity tolerance, lawlessness as well as political expediency triumph as noted by Teitel¹¹. There is still a relative isolation of approaches associated with social conflict systematic study in comparison to studies related to social stratification or on specific institutions' function and structure, societies and organizations. There is need to evaluate the root cause of conflict for the conflict resolution to be defined clearly. The conflict's sociological theory is appropriate where it can itself be confined to a frictions description between the ruled and the rulers in a specified organizations' social structure¹².

The social roles dichotomy within well coordinated groups that are imperative in nature, the division into dominance negative and positive roles is based upon social structure. This factual situation in terms of social conflicts can be explained in a structural manner. The social conflict model analysis developed against a given assumption background like dichotomy entails coordinate groups that are imperative. The two quasi-groups with opposite latent interests are determined by the carriers of dominant negative and positive roles. The emerging Interest groups are seen to be in a conflict that is constant and hence aimed at changing or preserving the status

¹¹Teitel, Ruti, 'Human Rights in Transition: Transitional Justice Genealogy' (2003) 16 Harvard Human Rights Journal 69.

¹²Wangoola Paulo, *Cattle Rustling and Conflicts in N.E. Uganda: Views and Perspectives*, Uganda, 1989-1999.

quo¹³. Changes in a given social relations structure via dominance relations changes is as a result of the conflict observed between the interest groups based upon such model. The development speed or depth depends on conditions that are empirically variable (the structural change conditions).

There was simplified model on seminal thinking suggested by Johan Galtung's and it was based on examining the relationship between peace, violence and conflict. He suggested conflict influential model that incorporated both the asymmetric and symmetric conflicts. His suggestions noted that the view of conflict might be in a triangle manner, with behavior, attitude and contradiction as the key variables. In this case, the contradiction is termed as exhibited conflict situation such as perceived or actual 'incompatibility of goals' existing between the conflict entities created by a 'mismatch between "social structure and social values."' The contradiction is seen to be defined by the interests' parties in a symmetric conflict and this is as well seen to be interest clash between them. It is seen to be defined by the given parties as well as by their relationship and interest conflict that is inherent in the given relationship in an asymmetric conflict. Attitude consists of misperceptions and perceptions of parties of themselves as well as of each other. Such can be negative or positive, but they seem to develop stereotypes that are demeaning of the other in parties with violent conflicts and as such, attitudes are usually affected by emotions like fear, hatred, bitterness and anger. Attitude covers cognitive (will, desire) cognitive (belief) as well as emotive (feeling) elements¹⁴.

1.8 Methodology of the Research

1.8.1 Design of Research

The research questions as well as hypothesis were evaluated using a case study coupled with qualitative method of analysis. The case study was considered in the current study because it is a method frequently used in research of such settings where there was a thorough and careful observation of civilian samples or components. According to Kothari the case method is known for

¹³Tindifa Samuel, *Peace, Conflict and Sustainable Development: The Experience in Uganda*, Kampala, Makerere University

¹⁴Paquette Laure, *Strategy and Ethnic Conflict: A Method, Theory, and Case Study*, Westport, Praeger Publishers, 2002.

its depth rather breadth¹⁵. The case study considered for this study majorly focused on the analysis of a given number of events together with their relationship or interaction. In this case, the case study is majorly based upon the processes observed and their interaction or relationship. Hence, a case study can be considered to be appropriate in conflict resolution investigation

1.8.2 Sampling Design

The sample design will rely on non-probable sampling techniques such as convenience sampling and purposive sampling. Convenience sampling plays a prominent role in organizational research because its opponents critique the fact that it's not generalizable. Conflict varies and cannot be generalized hence the choice for convenience sampling. Purposive sampling in this particular study will be used when a small group relevant to the subject matter is used to reach out widely to the network to make more contacts. This group has to be familiar to the researcher.

1.8.3 Data Collection

This study will depend on primary data acquired through secondary data analysis. Secondary data analysis is a method that involves analysis of data that has been collected by other researchers and also through official statistics. According to Bryman the advantages of the secondary data analysis is the cost and time involved is less than what could have been incurred if student was to collect the data¹⁶. The disadvantage lies with the lack of credibility and lack of familiarity with data. Official statistics nonetheless will be highly considered. The study will bank on both primary and secondary sources of data to examine the role of amnesty in conflict resolution against the actual practise on the ground.

1.8.4 Data Analysis

Qualitative data will gauge the role of amnesty in conflict resolution through the perceptions of the recipients and policy analysts. The analysis of the collected data was based upon procedures suggested by Bogdan and Biklen" .In this case, the data was collected, organized, broken into manageable units, it was later synthesized, the patterns were searched to discover what was critical

¹⁵Kothari, C. R. (2004). *Research methodology: Methods and techniques*. 2nd edition. New Delhi: WishwaPrakashan.

¹⁶Bryman A, *Social Research Methods 3rd Edition*, (Oxford: Oxford University Press, 2008) 183 - 190

as well as what was learned and making decisions on what to report¹⁷.

1.8.5 Data Presentation

The research findings will be presented through charts and diagrams to demonstrate relationships and figures emanated from quantitative data. For qualitative data a narrative description which connects findings to hypothesis and research questions will be employed. Quotes from interviewees will be used to demonstrate, inform and support findings. Care will however be employed to ensure reliability and validity of each quote.

1.9 Chapter Outline

The study is comprised of five chapters as outlined below:

Chapter one provides the background and brief introduction of the study. The section then covers the research objectives, the problem statement and questions, research hypotheses as well as the academic and policy justification of the study. It also elaborates on the research methodology, and finally, the theoretical framework.

Chapter Two provides an in-depth discussion on the persistent conflict in North Uganda and how it has constrained social and economic development in the given region. It analyses some of the measures that have taken to deal with the conflict in Northern part of Uganda including the intervention by ICC. It gives a brief overview of the conflict situation in Uganda and expounds on the LRA movement. Further it illustrates the sequence and growth of knowledge in this area and identifies key existing gaps on the subject matter.

This chapter Three critically reviews the literature/ theoretical debates on amnesty broadly analysing the concept of amnesty and its impact on international law. The aim is to demonstrate how amnesty fits into the broader context of conflict resolution in the world as well as how it has developed over the years. A comparison of the outcomes of cases that were prosecuted and those granted amnesty will be done to determine the more effective of the two.

¹⁷53Robert Bogdan, C., and Biklen Sari K. "*Qualitative Research for Education.*" InJ. Wellington,*Educational Research: Contemporary Issues and Practical Research*, London: Continuum (1982). pg. 145

This chapter Four offers a critical analysis on the place of amnesty in conflict resolution in the context of the LRA in Uganda. Uganda has ratified various international statues and regional treaties though they cannot be part of Ugandan law automatically unless incorporated specifically through a Parliament Act. It will examine the outcome of LRA cases that were granted amnesty and their implication for long-term peace. The chapter discusses the main findings by clustering them under the advantages and disadvantages of amnesty in conflict resolution.

Chapter Five summarizes the study's key debates and provides a conclusion and recommendations.

2.0 CHAPTER TWO: CONFLICT IN NORTHERN UGANDA

2.1 Introduction

This chapter traces the major causes of conflicts in Uganda and looks at the major ones that have occurred since the military coup de tat by Idi Amin with a bias on the northern part of the country.

It analyses why conflicts still persist in the Ugandan communities, their effects on the economic development and society. The repeated power struggles in the history of Uganda's after independence has resulted to impoverished society in its entirety. A domination legacy, as well as militarism and violent politics has been seen to be a challenge to be overcome and more so in the north eastern part of Karamoja and to the north¹⁸. In addition, divisions seen to be more pronounced between the southern and northern part of the country have been propagated by several leaders for the past forty years and hence has remained to be very critical issues amongst the Ugandans where they have sought avenge of mischief¹⁹. In the end, the country's economy has been compromised and remained stagnant.

2.2 Uganda Civil War History

Uganda being a small sub-Saharan African nation has had a history exhibited with ethnic conflict and extreme violence. These clashes are seen to have been in existence between 1860 and 1894, the pre-colonial era. In the post-colonial period which was between 1962 and 1986, this conflict was so pronounced where about 1 million Ugandans lost their lives²⁰. For a period of twenty years civil war has been endured by the Acholi. The operation of these rebel groups was majorly based in the northern Uganda, Acholi sub region since the time Yoweri Museveni took over power from the Acholi regime in 1986²¹. In the early 1990s, the LRA came out to be the most powerful rebel group and this was the time support by other rebels groups within the peasantry of the Acholi had gone down. The reduced support was interpreted by LRA as the government was being supported by the Acholi and hence the violence shifted to the suspected government supporters and collaborators. The LRA since then has emerged to be infamous for maiming, massacres and the recruitment of many Acholi by force where majority were children. The violence spearheaded by LRA is seen to have happened within the ICC temporal jurisdiction which is, since 2002, from July 1. The warrant of arrest for instance was issued for LRA leader, Joseph Kony since then, and charges imposed against him are thirty-three counts of crimes against humanity and war crimes

¹⁸Wangoola Paulo, *Cattle Rustling and Conflicts in N.E. Uganda: Views and Perspectives*, Uganda, 1989-1999.

¹⁹Busia, K. A. (1967) *Africa in Search of Democracy*, New York: Praeger.

²⁰Quinn R Joanna, *Ethnic Conflicts in Uganda*, USA, University of Ontario, 2004

²¹Quinn R Joanna, *Ethnic Conflicts in Uganda*, USA, University of Ontario, 2004

since then²².

The counterinsurgency of Ugandan government has been found to be so harsh against the Acholi, as the “Uganda People’s Defence Force” (UPDF and its successors) have put much focus on the destruction of suspected support of rebel²³. In 1991, the violence by the government was intensified and this was the time the NRA undertook several massacres as well as other atrocities. Intensified government violence was as well experienced in September 1996 in Gulu district, and at this time, there was forced displacement policy instituted by the government and these led to many Acholi peasants being driven into camps from their villages via a campaign of intimidation and murder as well as burning and bombing of the villages. Following camp formation, there was announcement made by UPDF that no one should move out of the camp as he/she would be killed as he/she would be termed as a rebel. These camps were referred to by the government as “protected villages,” and hence considered to be internment camps. By the end of 1996, these camps had a total population that was in hundreds to thousands, but by the moment the ICC intervened, the population was about million, and this consisted of about the whole Acholi sub region rural population²⁴.

The government violence level against civilians experienced in 1992, at the end of Operation North is seen to be lower than that spearheaded by LRA—although torture, arbitrary arrest, the children enlistment, rape and murder spearheaded by government militias or UPDF was more pronounced in the year 2007²⁵. The government forced displacement policy consequences cannot be underestimated and in this respect, several activists and scholars have suggested that displacement is a clear representation of crime against humanity or war crime. In this case, the relief aid provided by the government to the camps was not adequate enough and hence this led to a significant humanitarian crisis where the mortality levels were in excess by about 1,000 per week. Furthermore, the protection of the camps was really wanting; in 2003 for instance, A camp that

²²Lomo Zachary and Hovil Lucy, *Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*, Refuge Law, Working Paper no.11, February 2004.

²³Oloka-Onyango Joe, GariyoZie and Frank Muhereza, *Pastoralism, Crisis and Transformation in Karamoja*, Uganda, IIED Drylands Network Programme. Issues No.43. June 1993, p. 4.

²⁴Kiseka-Ntale Fredrick, *Roots of the Conflict in Northern Uganda: The Journal of Social, Political and Economic Studies*, Volume 32, 2007.

²⁵ Quinn R Joanna, *Ethnic Conflicts in Uganda*, USA, University of Ontario, 2004

had at least 50,000 persons had 45 irregular militia assigned to it. Also, a camp that had 15,000 had only 12 military militia. Camp inhabitants regularly complained about government soldiers' failure to protect the camps as well as responding to incursions by LRA, and hence they were more vulnerable to attacks by LRA²⁶. Such frequent internment of at least a million persons without adequate protection as well as military necessity constitutes violation of war laws thus, is within the ICC's.

2.3 Causes of Conflict in Uganda

Violent transitions were experienced in several African nations after independence and it included mass killings and civil wars. This is seen not to be a surprise based on the fact of processes of boundary-making divisiveness, the colonial rule coercive nature as well as the messy independent process²⁷. Postcolonial states made in haste, have the same properties as the colonial antecedents. The compounding of these problems in certain cases was by natural catastrophe, governance failures as well as non-inclusive political settlements. It has been believed that civil wars in Africa are as a result of religious and ethnic diversity. Contrary to this, we have models that have been developed and used recently where they aimed at determining civil war prevalence in 161 nations and this was between 1960 and 1999. In reference to Africa, lessons have been learned where higher prevalence of civil war was observed and this was not as result of fragmentation of ethno-linguistic of its nations, but it was as a result of economic dependence on natural resources, weak political institutions and high poverty level.

The conflicts experienced in Uganda are referred to as internal conflict since they were initiated through rebellions where, groups that were non-military wanted to topple the incumbent regime. In this respect, such scenarios have been found to be the most frequent political conflict type in majority of African nations. Urban elites have been associated with such rebellions where they are believed to have started it because they were not satisfied with the way government treated them had treated them as well as their ethnic group and region. A section of ethnic or regional supporters were mobilized where arms were obtained clandestinely and as such they had support from the

²⁶Lomo Zachary and Hovil Lucy, *Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*, Refuge Law, Working Paper no.11, February 2004.

²⁷Michael J. Butler, *International Conflict Management*, (London, Routledge 2009) pg. 69

neighboring nations and external powers. This rebel group's leadership was seen to be in different types to be able to achieve their mission (political power), ethnic/region group representation in the administration and government, able to access development funds etc.

Such grievances was shared amongst ethnic groups where there was an alliances formed between the rebel groups and hence leading to a widespread rebellion. This rebel movement's sustenance was only successful if it received support from neighboring nations and such; it was able to access arms as well as bases. Coming up with such rebel groups was not easy in the past where it reduced to ethnic groups and this scenario has tremendously changed for the past few decades

Other conflicts existed like those associated with contestation over international borders existing between Uganda and neighboring nations. This greatly affected the communities' safety and security in the border areas, tensions between government and cultural institutions, personal greed and corruption, North-South fault line, the ethnic identity politicization, transitional justice and reconciliation, lack of truth, civil liberties erosion and human rights abuses, democratic deficits and poor governance, unequal wealth distribution and economic disparities and resource competition²⁸.

2.4 Negotiations of Juba Peace

The Juba Peace Talks (JPT) was considered to be a major initiative in ending conflict in northern part of Uganda and it was held in South Sudan, in Juba between the LRA and the government of Uganda from July 2006 to April 2008. President, Riek Machar, then South Sudan Vice was the one who mediated this JPT²⁹. There were six main agreements or documents generated from this negotiation and they were signed by the LRA and the GoU. The signing ceremony of "The Final Peace Agreement" (FPA) was organized in Ri-Kwangba, for April 2008, but it was not a success since the LRA leader, Kony failed to appear. This was seen to be a big disappointment in this regard. Some of the agreements however are seen to implement already by the government of

²⁸Kiseka-Ntale Fredrick, *Roots of the Conflict in Northern Uganda: The Journal of Social, Political and Economic Studies*, Volume 32, 2007.

²⁹Happold, Mathew 2007. The international criminal court and the lord's resistance army. *Melbourne Journal of International Law*, 8, pp.1-26.

Uganda. For example, the Ugandan High Court International Crimes Division establishment in the year 2008 was as a result of an agreement on reconciliation and accountability. The JPT was considered to be critical as well since it contributed to international accountability standards embedment, security in northern Uganda enhancement and peace process enhancement. There have been a lot of critics on ICC where it has been alleged to obstruct Peace Talks through declining to withdraw warrants of arrest for the LRA leaders as well as being responsible for the failure of the FPA which was not signed by LRA leader, Kony who feared that he could be apprehended and arraigned in ICC. However, ICC was given credit for spearheading Peace Talks where the threat posed by international prosecution facilitated the bringing of LRA leaders to peace negotiation process. ICC was as well given credit for creating accountability as it was considered to be fundamental issues during the process of negotiation. Therefore, ICC had both a negative and positive effect on peace process as well as on transformation of conflict in Uganda.

Opinion preponderance from respondents is that the LRA leaders were influenced by ICC to join the JPT and hence ICC intervention propagated this peace negotiation process. There was canvassing of this by certain respondents where they suggested that it is not clear whether LRA had considered joining the JPT if there was no indication of the leaders by ICC. It was argued that there was a calculated move by LRA leadership who thought that they could neutralize the warrants of arrest as well as ICC intervention through peace process. Legal Practitioner in Uganda being one of the respondent argued that ‘the Juba Peace Talks was influenced by ICC where peace process was enhanced in Uganda by indicting LRA leaders, and hence making them to negotiate for peace. The conflict and peace organization Project Coordinator and director the after being interviewed they argued that ‘the ICC was a major pillar in influencing the LRA leaders to come to a peace negotiating table, and in this respect, Juba Peace Talks were considered to be critical since they resulted to addressing issues related to Ugandan conflict where there was LRA withdrawal from Northern part of Uganda³⁰. The view by the minority is that the intervention of ICC halted JPT and hence, this compromised the peace process. There was a youth leader who argued that, ‘the peace process in Uganda was negatively affected by ICC. In this respect, the Juba

³⁰ Beyond Juba: Building consensus on sustainable peace in Uganda 2015. Agreement on Accountability and Reconciliation signed between the GoU and the LRA during the JPT.

peace talks was disrupted by ICC since Kony had considered signing the peace agreement, but this was not successful due to ICC intervention³¹.

2.5 The Conflict Impact

In the 1960s and since independence, a former British colony, Uganda has traversed through several stages of political and stability alternation through force (civil wars, coups d'état, rebellions, dictatorship)³². The northern Uganda economy has been dwindling, particularly in relation to the fact that the majority of the population was internally displaced as well as some people had to leave the region. In the northern Uganda region, the internally displaced people (IDPs) were approximated at 446,300 since November 2010. Between 2009 and 2010, at least 400,000 IDPs had to go back to their homes³³. Children who were not IDPs left their homes during the night where they sought shelter in churches or hospitals, although there have been tremendous improvements for the past year. The prolonged and horrific consequences for such a war have led to a society that is devastated and reduced to 'displaced camps' as well where protection and assistance towards people was wanting. The Acholi's culture as well as social fabric is seen to have been destroyed by this war. A big percentage of orphans fending for themselves, gives a clear picture of this tragedy. In addition, there has been abduction of some children by the LRA where they were recruited to kill and torture. The introduction of a curriculum by the Government to champion industrialization in the war affected areas was key and it focused on engineering relevance where raw materials are converted to manufactured goods. Interdisciplinary curricula that focused on engineering as well as its sub specialties have been considered to be "sine qua non" to the processes of industrialization.³⁴

In Uganda, the burden is to the government to take the responsibility in ensuring the conflict is resolved. The negotiations have had a lot of complexities and have brought about a general feeling that they are compromised.

³¹ Human Rights Watch 2012. Justice for serious crimes before national courts: Uganda's international crimes division.

³² Freedom House. (2009) Freedom in the World: Uganda. <http://www.freedomhouse.org>

³³ Wangoola Paulo, *Cattle Rustling and Conflicts in N.E. Uganda: Views and Perspectives*,

³⁴ Freedom House. (2009) Freedom in the World: Uganda. <http://www.freedomhouse.org>

There was another terrorist group referred to as “Alliance of Democratic Forces” (ADF) and it comprised of opposition forces of Ugandan. This group (ADF) considered adopting Islam as its ideology. The group emerged from puritanical Moslems core group, termed as Tabliq sect and its members referred to themselves as ‘Moslem evangelists’³⁵. Rear bases were staged up by this group in DRC and after setting up these bases, they immediately started training as well as recruiting fighters with education and money promise. It was easier to recruit in DRC where the people were not hostile to the ADF. Atrocities were committed by this ADF rebels against the local population, and hence they were driven from their farms and homes to the Ruwenzori Mountains, lowland towns. Food was scarcer as well as well as towns was not able to absorb the IDPs as the population of the IDPs increased (70,000 people) in the western and northern part of Uganda. Security concerns have compromised crop production in the western and northern part of Uganda. In this respect, reducing inflation policy was seen to be adopted by Museveni with the aim of stabilizing the economy while simultaneously increasing export earnings and production. Ugandan government boosted civil service wages, raised the imported petroleum products prices and increased producer prices on export crops. The agricultural productivity has been disrupted significantly in northern part of Uganda as a result of long forced displacement periods, but it was recently reported by USAID that security enhancements have enabled most farmers to come back to their home areas and embark on usual cultivation activities. Normal farming activities restoration is critical to the process of recovery.

Attacks have been done indiscriminately with the aim of killing and in this case, the IDPs were considered to be soft targets. There was escalation of atrocities and attacks to the level where it was very hard to be contained by the army, and weak alpine force was seen to be one of the challenges faced. The activities of the rebel Allied Democratic Forces were intensified in 1998 to the southwestern and western part of the country. These activities included frequent attacks on private homes, trading centers and civilian targets, and this led to hundreds of abductions and deaths. This instability had a major cause and it was on the basis of economic and political antagonism between the northern part of Uganda’s populations and the southern one and as such,

³⁵Kasule Donald, *President Attribute Conflict in Africa to Underdevelopment*, Journal Uganda Media Centre, 27 July 2010

there was competition for political power based upon political, religious, ethnic and geographical origins. The establishment of this competition conditions was during the colonial era where the post-independence governments were manipulated.

2.6 Existing Literature Gaps and Opportunities

In summary the literature review reveal certain shortfalls which can be complimented by this study. The review shows that the conflict in northern Uganda has been ongoing for a long period and constrained the economies but the extent impact of the interventions by the government is not clearly outlined. There were incidences of forced displacements that have brought avoid dire consequences to many generations in terms of livelihood. The literature review does not answer the question on who determine what ways to resolve conflicts in Uganda and whether there is adaptation on the needs on the ground. These will be explained in chapter three and four as more research is made on the subject in conflict resolution in Uganda.

3.0 CHAPTER THREE: THEORETICAL DEBATES ON AMNESTY IN CONFLICT RESOLUTION

3.1 Introduction

In the last three decades many nations in the world have witnessed long and painful shifts from dictatorial and tyrannical regimes to more democratic systems of government. This wave of change has hit both post-conflict and conflict-ridden societies. In fact, newly elected governments in such countries had/have to decide on the most appropriate way to deal with past atrocities and gross human rights violations while, at the same time, negotiating a peaceful transition from authoritarian regime to democratic rule³⁶. In most cases, they have to face the dilemma of transitional justice, that is: either to prosecute the old political establishment and confront the danger of derailing the peace and reconciliation process, or to grant them amnesty and confront both the anger of the victims of past atrocities and other gross human rights violations, and the criticisms of the international community.³⁷

Amnesty has been offered in exchange of different things in many parts of Africa. In South Africa, amnesty was exchanged for truth³⁸. In Nigeria amnesty was offered in exchange for the demobilization and disarmament of militants. In Nigeria, upon surrendering their weapons, militants would receive financial compensation from the government over a period of time³⁹.

In some cases, criminal prosecutions have been chosen as the most appropriate way of breaking with the past, whereas in others, non-prosecutorial mechanisms have been adopted as the best way to address past atrocities. As a result of the latter choice, various nations have set up truth commissions whose functions were, among others, to investigate the circumstances of the

³⁶Arsanjani, M.H. "The international criminal court and national amnesty laws" 93 *The American Society of International Law Proceedings of the 93rd Annual Meeting of March 24–27 1999* (2000), Washington D.C., The American Society of International Law, pp. 65–68

³⁷Schlunck, Angelika *Amnesty versus Accountability: Third Party Intervention Dealing with Gross Human Rights Violations in Internal and International Conflicts*(2000), Berlin, Verlag Arno Spitz GmbH

³⁸Kasule Donald, *President Attribute Conflict in Africa to Underdevelopment*, Journal Uganda Media Centre, 27 July 2010

³⁹Kasule Donald, *President Attribute Conflict in Africa to Underdevelopment*, Journal Uganda Media Centre, 27 July 2010

commission of past crimes and, eventually, to grant amnesty to the perpetrators thereof⁴⁰. This section will discuss the amnesty act in Uganda, the process it has gone through to be incorporated in to law and whether it helped resolve conflicts in Uganda. The section will also seek to establish the major causes of conflict determining whether the real solution is internal or external of the country in war.

3.2 Amnesty in Context

Historically, the right of grace was initially an act of individual clemency of theocratic origin⁴¹. The middle ages were characterised by the monarch having great powers and it was believed that God granted them these powers. The divine nature of grace was linked to the sacred character of the King, as a divinity or as an intermediary between divinity and mankind. However, with the birth of constitutional proceedings, a parallel idea developed which recognised the power of clemency as an attribute of the sovereign power of the people. It was then admitted that it is the people who has the faculty to grant clemency throughout its different manifestations. Thus, individual grace developed in a parallel form with collective grace, the real predecessor of modern amnesty⁴². Thus, the history of modern amnesty may be divided in three significant time periods: the pre-World War II period, the period covering World War II trials, and that covering immediate post-World War II conflicts. During this time-frame, recourse to amnesty clauses in international peace treaties decreased as a result of important developments in international law, while increasing significantly in the context of civil war, insurrection or political uprising.

3.2.1 Amnesty in World War Conflict

The First World War lasted for five years (1914-1918). The effects of the war were devastating and since most people expected that the war would be a short and fast conflict. After World War I, the Allied and Associated Powers opposed any idea of general amnesties for the German war criminals. The only amnesty clause provided for in Article 6 of the Conditions of Armistice signed

⁴⁰Viljoen, Frans, Overview of the African regional human rights system, in Christof Heyns (ed.), *Human Rights Law in Africa* (1998), The Hague, Kluwer Law International, pp. 128–199

⁴¹Chigara, Ben *Amnesty in International Law: The Legality under International Law of National Amnesty* (2002), Harlow, Longman

⁴²Dixon, Martin and Robert McCorquodale *Cases and Materials on International Law* 3rd ed. (2000), London, Blackstone Press Ltd

on 11 November, 1918 was that which the German Government was to observe in respect of persons in all areas from which the German armies were to evacuate⁴³. However, amnesty was used in conflict resolution way before the World War began. At the end of the Peloponnesian War in 404 BC, which saw the victory of the Spartans over the Athenians, an oligarchic provisional government was established in Athens. It consisted of thirty officials who became known as the ‘Thirty Tyrants’ because of the ruthless nature of their rule. Within eight months they executed 1,500 persons and banished 5,000 others. Thrasybulus, an Athenian general, led a revolt, which resulted in the fall and expulsion of the Tyrants. After the revolt, Thrasybulus proposed an amnesty law, which forbade any accusation or punishment of Athenian citizens for wrongs and offences committed on either side before the expulsion of the Tyrants⁴⁴. The Tyrants and their agents were accepted. The citizens of Athens were requested to take an oath to respect amnesty and the first man who violated the provision on the amnesty was executed.

The trend towards excluding amnesty clauses from peace agreements culminated in 1945 with the Charter of the International Military Tribunal (IMT), which provided for the individual criminal responsibility of persons responsible for crimes against peace, war crimes and crimes against humanity committed during World War II⁴⁵. It is worth noting that the IMT Charter was not a peace treaty agreed upon between the Allied Powers and Germany; it was rather an instrument negotiated by the victors among themselves and imposed on the vanquished. Nevertheless, on the basis of the IMT Charter, subsequent agreements also put great emphasis on the trial and punishment of the Axis war criminals rather than on oblivion, pardon and amnesty. Thus, the Charter of the IMT for the Far East as well as Control Council Law No. 10 contained no amnesty clauses.

Nevertheless, in relation to World War II, the practice of punishing war criminals did not completely eliminate that of granting amnesty. Amnesty clauses contained in individual peace

⁴³Arsanjani, M.H. “The international criminal court and national amnesty laws” 93 *The American Society of International Law Proceedings of the 93rd Annual Meeting of March 24–27 1999* (2000), Washington D.C., The American Society of International Law, pp. 65–68

⁴⁴ Albertini, Luigi. *The Origins of the War of 1914*. -- Translated and edited by Isabella M. Massy. Westport, CT: Greenwood Press, 1980.

⁴⁵*American Armies and Battlefields in Europe*. -- Washington, DC: U.S. Army, Center of Military History, 1992. LC Call Number: D528.A44 Alc

agreements with other Axis Powers were negotiated only on behalf of those who fought for, or sympathized with, the Allied Powers. Thus, amnesty became a means by which the victors could exonerate from criminal liability their nationals or sympathizers who had committed criminal offences when resisting the Nazi hegemony. This one-sided approach to amnesty, which characterized the immediate post-war period, could be seen in amnesty clauses contained in peace agreements signed between the Allied and certain Axis Powers, which exonerated only crimes committed on behalf of the United Nations⁴⁶.

3.2.2 Amnesty schemes in African Countries

Amnesty has been used by many African nations as a tool of building reconciliation and peace after war. In many African nations, the effect on conflict has been found to be a significant rift based upon ethnic lines. In reference to Africa's post-colonial history, peace still remains elusive. Development and peace have been found not to be achieved easily when compared to Afro-optimists envisaged in the post-independence era, and this owes to a range of both external and domestic factors. Two iconic images that are contrasting are seen to have dominated the public as well as Africa perception⁴⁷. There have been at least 30 wars fought on African territory since 1970 and they have been intra-state in nature. 14 out of the 53 African nations were faced by armed conflicts in the year 1996. These wars are responsible for at least half of all the wars associated with deaths globally and this led to the existence of at least eight million displaced persons, returnees and refugees. Consequently, the efforts made by Africa in ensuring peace, prosperity and long-term stability have been undermined significantly.

The amnesty concept indicates political and legal dimensions and it has well been considered as an essential tool for confidence-building, trust restoration and reconciliation amongst parties that are disputing in civil conflicts. This tool has been adopted by African nations, for instance, “the Niger Delta Amnesty Programme” in Nigeria and “the Truth and Reconciliation Committee” in

⁴⁶Bayliss, Gwyn M. *Bibliographic Guide to the Two World Wars*. -- London and New York: Bowker, 1977.
LC Call Number: Z6207.E8 B39 Alc

⁴⁷Triffterer, Otto (ed.), *Commentary on the Rome Statute of the International Criminal Court* (1999), Baden-Baden, Nomos

South Africa⁴⁸. South Africa had to reach out to violence perpetrators after attaining its democracy in 1994, and this was from all parties involved and hence, amnesty was granted based on condition that the perpetrator had to fully disclose their crimes that were politically motivated. South Africa was deteriorating economically as well disintegrating in early 1990s. In this case, the government was morally bankrupt as well as its efficiency in curbing political violence level that was ever-rising was wanting. The transformation of South Africa into a more stable democracy following a long violence period was enhanced through a political peace deal. Amnesty promise for ‘all offences, acts and omissions related to political objectives as well as committed in the conflicts past course was considered to be an integral deal part. After the struggle of south African led by Nelson Mandela together with his ANC party in ending apartheid rule, the agreement that justified the cease fire as well as the start of post conflict processes, came up with the “Truth and Reconciliation Commission” that as well consisted of provision for amnesty to be given to persons with crimes during the war⁴⁹. This was not successful since the black South Africans never liked everything about it since they wanted the former white persecutors to face the law.

Legislation was passed in 1995, in South Africa, and it provided for a TRC which was empowered so that it can be able to operate an amnesty scheme that is disclosure-based. In this case, applications from the perpetrators through Amnesty Committee were the ones allowed⁵⁰. Amnesty granting was made subject to a given material and procedural conditions. It promised protection from civil claims as well as from criminal prosecution, but based on full disclosure of all facts of the perpetrator’s offence. Furthermore, the previous regime’s supporters and servants as well as the opposition’s supporters and members were eligible to apply for amnesty. Interestingly, it as well extinguished any organization’s liability that was behind the perpetrator – regardless of political or state organization based on legal personality⁵¹.

⁴⁸ Robertson, Geoffrey Q.C. *Crimes against Humanity: The Struggle for Global Justice* (1999), London, Penguin Press

⁴⁹ Crocker, C. et al. (2005) *Turbulent Peace: The Challenges of Managing International Conflict*, Washington, DC:USIP Press.

⁵⁰Dugard, John 2005. *International Law – A South African Perspective*, 3rd edn. Lansdowne: Juta

⁵¹Lederach John, *Building peace: sustainable reconciliation in Divided Societies*, (Tokyo: Syracuse University Press, 1994)

The oil rich region of Nigeria, the Niger delta, has exhibited numerous insecurity issues since the time oil was discovered in the 1970's. The Nigerian economy since this period has shifted gradually to a dominant reliance level on the regions oil thus, leading to the area being of much interest to the whole country. The region's socio economic development poor state has resulted to grievances by the region's ethnic groups like the *Itsekiri* and *Ijaw*. In this case, it is the subsequent governments' failure at federal, state and local level to satisfy the people's needs for socio economic development. A two-month amnesty window was opened to all militants by President Umaru Musa Yar'Adua (06 August 2009 - 04 October 2009) in the Niger Delta region⁵². The Nigerian amnesty was granted in exchange for the militants' disarmament and demobilization and this was different from that of South African where it was exchanged for truth. Financial compensation could be given to the militants after them surrendering their weapons.

3.3 Amnesty Role in Political Transitions

Since ancient times, amnesty has been considered as a political tool and it has been employed by states with the aim of introducing reforms, quelling dissent or attaining relationships that are peaceful between enemies. They have been considered to be contentious in recent years as they have been believed to violate international law specifically, the victims' rights and hence, contributing to further violence⁵³. This claim has been disputed by several entities such as political negotiators where their argument has been that amnesty is essential in achieving equitable, peaceful and stable government system. For instance, South Africa was associated with "self-confessed ex-aggressors" reports where these ex-aggressors pleaded for criminal and civil amnesty and as such, its activities were initiated 6 months after TRC establishment⁵⁴. There were 3 requirements that were to be met by solicitant in order to receive this benefit and they include political motivation proof behind their act; the truth about the committed crime and prove of the actions relative to the stipulated objective. If all these requirements were not met by the solicitants then they would be subjected to traditional judicial processes

⁵²Elster, Jon 2004. Closing the Books. Transitional Justice in Historical Perspective. Cambridge: Cambridge University Press

⁵³Akanji, T. A., &Oyitso, M. (2012). Consumers' views of the strategies for promoting peace and sustainable development in the Niger Delta region. *Review of European Studies*, 4(2), 168-174. doi:10.5539/res.v4n2p168

⁵⁴Villa-Vicencio, Charles, and DU TOIT, Fanie. (Ed.). (2006), *Truth & Reconciliation in South Africa: 10 years on*. Cape Town: Institute for Justice and Reconciliation/ Davidphilp.

Truth commission was created in Brazil in 2011 and it aimed at investigating as well as clarifying serious human rights violations propagated under military rule. This commission was in line with the long term debate related to amnesty for human rights violators. However, there were no changes made to this 1979 Amnesty Law, and it precluded the judgment of the human rights violators in the course of dictatorship regime as well as subsequent criminal accountability⁵⁵. The situation was not the same in Sierra Leone. The Parliament was seen to have a foresight in an “official follow-up body” establishment in the truth commission legislation making in that country⁵⁶. It was tasked to monitor and facilitate the implementation of the Commission’s recommendations. Quarterly reports were provided by the Government to the body and hence, the steps taken in implementing the recommendations were summarized. The Government reports were published by the follow-up committee and quarterly reports were submitted to the public for evaluation⁵⁷. These commissions were Created based upon the fact that amnesty alone was not sufficient enough to give justice as well as persecution never led to long-term peace.

3.4 Conclusion

This chapter majorly focused on investigating whether an amnesty is associated with either international obligations violation of the state or optional justice mechanisms and as such, it can contribute to both justice and peace in a positive way. Human rights related crimes amnesties are considered to be inherently problematic as well as controversial due to certain reasons such as victim’s rights can be violated by amnesties, the rule of law can be subverted and public disillusionment and cynicism can be enhanced. Similarly, amnesties are considered to be real- and they can be avoided on the basis of human and political cost. For instance, violent rebel movements have always invoked amnesties as a precondition for demobilization and disarmament (Sierra Leone) as well as by corrupt or authoritarian regimes as a peaceful democratic transition

⁵⁵De Greiff, Pablo. “Justice and Reparations”. In: DE GREIFF, Pablo (Ed.). *The Handbook of Reparations*. Oxford: Oxford University Press, 2006.

⁵⁶Malamud-Goti, J., *Game Without End. State Terror and the Politics of Justice* (Norman, OK: University of Oklahoma Press, 1996).

⁵⁷Nino, C., *Radical Evil on Trial* (New Haven, CT: Yale University Press, 1996)

precondition (Haiti)⁵⁸. In cases of such situations, parliaments have a major role to play and furthermore might aid in making sure that amnesty success is put into consideration after canvassing less extreme options, and this includes doing nothing, because amnesty is considered to be a proactive step where court jurisdiction is circumvented.

⁵⁸Hanson, S. (2007). Disarmament, demobilization and reintegration in Africa. Council on Foreign Relations. Retrieved from <http://www.cfr.org/africa/disarmamentdemobilization-reintegration-ddr-africa/p12650>.

4.0 CHAPTER FOUR: A CRITICAL ANALYSIS OF THE LRA AND AMNESTY PROVISIONS.

4.1 Introduction

Many processes have been initiated since 1986 by nongovernmental organizations (NGOs), foreign governments, individuals, the Uganda government and the rebels themselves with the aim of ending conflict in the northern part of Uganda⁵⁹. Various means have been employed by the Ugandan government and they are such as propaganda and amnesty law, law enforcement and military means. However, as a result of these means as well as due to other complex factors, the conflict escalated and expanded where it turned out to be so devastating and hence made the people to doubt the capacity of the government in tackling the war. It was viewed as the government had failed since President Museveni declared repeatedly that Kony might be defeated militarily.

Several arguments have dominated the literature on amnesty questioning its legitimacy. Amnesty has long been a political tool used by governments for both good and bad purposes. It has been used as a political tool for many purposes, some of which are morally right and some that are self-serving. When used right, amnesty can warrant times of great social stability but if used wrong it brings great social unrest. The purpose of amnesty should be to end unrest in a way that all parties feel that justice has been served. This is most cases is not the case as most victims prefer persecution of culprits. Uganda cases of amnesty in this chapter will be scrutinised on the basis of their intentions or morality. However, the most scrutiny of amnesty comes from the domain of law, especially international law⁶⁰. Granting amnesty against the worst crimes against humanity presents a dilemma for most countries. These crimes many of which involve murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population make concrete cases for persecution. African countries such as Rwanda, Nigeria, Somalia and many other countries have experienced long term conflict with violation on human rights.

⁵⁹Latigo, James, 'The Acholi Traditional Conflict Resolution in Light of Current Circumstances: National Conference on Reconciliation, Hotel Africana, Kampala', Law Reform Journal (Uganda Law Reform Commission), 4 (September 2006)

⁶⁰Elster, Jon 2004. Closing the Books. Transitional Justice in Historical Perspective. Cambridge: Cambridge University Press

It is critical to distinguish between legitimate and illegitimate amnesties in cases where serious crimes have been covered by amnesties. Illegitimate amnesties are considered to be unconditional and are associated with investigation prevention as well as enhancing impunity for peoples involved in serious crimes. In most cases, amnesties are considered to be legitimate and they have been designed primarily in creating security and institutional conditions for the sustainable human rights protection and need the engagement of individual offenders with measures in ensuring reparations, accountability and truth. Amnesty is seen to have been granted to some LRA cases and this aimed at encouraging defections more so to make the commandants powerless. The majority of people, particularly those based in the northern part of Uganda expected that the fighters of LRA will consider amnesty and return to go through traditional reconciliation rituals.

4.2 The Amnesty Act in Uganda

Amnesty Act of Uganda had to be enacted in 2000 and it was a tool used in ending rebellions in Uganda through the encouragement of the rebels so that they can be influenced to surrender their arms with no prosecution fear for the committed crimes when fighting the government. The promise of reintegration and amnesty had a major role in encouraging fighters to defect or escape from the LRA⁶¹. With the amnesty provision removal, no amnesty certificates can be granted, and hence, there is no protection from prosecution. Individuals escaping or defecting from the LRA will be required to come back home and be reintegrated. The government of Uganda, organizations and individuals has the capacity of prosecuting former rebels based upon the crimes committed.

A series of obligations are seen to be imposed by all instruments on the Uganda State in relation to human rights protection as well as instituting measures to address the issue of accountability for crimes associated with conflict experienced by women that have an effect on the amnesty award. Specifically, such obligations include prosecution and investigation of international crimes like human rights gross violations, crimes against, war crimes and humanity genocide. The human right gross violation are such as enforced disappearance, slavery, arbitrary executions, degrading treatment; extrajudicial and torture as well as gender-specific violations like rape; to particularly

⁶¹Quinn R Joanna, *Ethnic Conflicts in Uganda*, USA, University of Ontario, 2004

protect children and women against impunity for sexual related violence as well as to prosecute and investigate and punish gender and sexual-based violence perpetrators; to provide effective and adequate resolutions to victims of such crimes, and this include reparation to ensure the inalienable right of the victims so that they can be able to know the truth regarding gross human rights violations as well as serious humanitarian law violations.

Amnesty effectiveness being a strategy for addressing conflicts is partly based upon the conflict stage when it is applied. Amnesty can easily be applied at the pre conflict phase and this is based upon forgiveness and hence, the conflict is prevented from becoming violent prevent. Amnesty in this regard can be employed in preventing conflict. It is not essential to apply amnesty at crisis phase since there is a high level tension and hence, sentiments are deep as well as there are stratified polarized positions.

4.3 The Amnesty Law before the Ugandan Courts

In most countries in the world, there is limitation to courts decisions on amnesty. This is because courts have rules that guide their decisions while amnesty is granted by a head of state which in most cases is subjective. Courts in Uganda sees granting amnesty as an encroachment on parliament's law making powers. In July 2008, there was establishment of International Crimes Division to act as a special Division of Uganda's High Court. A High Court Principal Judge, Hon. Justice James Ogoola who was pursuant to Article 141 of the Republic of Uganda's constitution 1995 came up with War Crimes Division and currently, it is referred to as the high court's international crimes division. It is mandated to try war crimes, piracy, human trafficking, terrorism, genocide, against humanity, crimes as well as other related international crimes⁶². Its advantage is that its mechanism is home grown with its proceedings, in relation to International Criminal Court, was easily accessed by the public and victim communities. The ICD came into existence as a result of Juba Peace Negotiations which aimed at ending hostilities between LRA and Uganda. Traditional institutions and local council courts have as well been employed in addressing

⁶² International Centre for Transitional Justice 2015. Pursuing accountability for serious crimes in Uganda's courts. Available from: <<https://www.ictj.org/sites/default/files/ICTJ-Briefing-Uganda-Kwovelo-2015>> [Accessed 13 August 2015].

land related conflicts in the northern part of Uganda.

4.2.1 International Crimes Granted Amnesty

Most of the Acholi believe that the combatants in the LRA were abducted by force and themselves have been vindicated as victims. This causes a moral empathy amongst the perpetrators as well as an acknowledgement that there is no sufficient formal justice system to be able to distinguish between moral and legal guilt. Remarkable commitment has been created with the aim of peaceful settlement and reconciliation. In September 2011, the Constitutional Court of Uganda ruled that Colonel Thomas Kwoyelo, the ex-LRA commander to be charged with 53 alternative counts and twelve substantive counts of crimes against humanity and war crimes– in line with 2000 Amnesty Act of Uganda was entitled to amnesty. His trial was halted forthwith after the courts ruling. This court ruling however, led to mixed reactions from international and national actors. While some supported the ruling made by the court relative to amnesty, others were seen to condemn both. This disparity was evident in certain parties at a workshop on amnesty held in Kampala on the 18th November 2011, to call for the amnesty law amendment. In 2008, UPDF captured Kwoyelo DRC and when in custody, he was seen to denounce rebellion as well as seeking amnesty. His application was later forwarded in March 2010 to the Amnesty Commission to the “Director of Public Prosecutions” (DPP) for it to be considered. No response came from DPP in regards to this letter and he charged instead with several offences based on the Fourth Geneva Conventions Act under Article 147. The trial postponement was seen in several occasions and this was until August 2016 where there was setting up of a pre-trial hearing for September 2016.

Dominic Ongwen, the commander of LRA turned himself in to the authorities. In this case, since 2005, Ongwen who was the second in command to Joseph Kony, the LRA leader had evaded charges at ICC for his role he played in atrocities in the northern part of Uganda. At a young age of 10, he was captured by the LRA. He was elated to higher ranks and later emerged as LRA commander who was very ruthless and he spear headed all the observed atrocities in the Central African Republic, DRC and Uganda. After he had surrendered, Uganda government had to announce that Ongwen to account for the crimes he had committed in Uganda rather than to face trial at The Hague. This decision was in line with the ongoing resistance intervention by ICC. It

was quite a challenge to the ICC in terms of prosecution since President Yoweri Museveni was considering withdrawing from the Rome Statute of the ICC completely. The intervention of ICC in post-conflict issues is in line with conflict transformation. Investigations were commenced by ICC to look into the armed conflict issues in Uganda in 2004. Arrest warrants were issued in 2005 to five LRA leaders. ICC was seen to take over cases from Uganda in 2003 following referrals created by the government. An application of arrest warrants for the five LRA leaders was filed by the chief prosecutor. No single UPDF member was indicted because the chief prosecutor found out that the LRA crimes committed were of a higher magnitude when compared to those committed by the UPDF⁶³. The ICC Pre-Trial Chamber 11 In July 2005 had to grant the application of the chief prosecutor where the arrest warrants were issued for five LRA leaders who included Dominic Ongwen, RaskaLukwiya, OkotOdhiambo, Vincent Otti and Joseph Kony. In October 2005, the arrest warrants were unsealed. The cases against OkotOdhiambo and RaskaLukwiya had to be terminated following the confirmation of their deaths. Dominic Ongwen had to surrender in 2014, and he is being held up at the ICC where he was charged with 4 counts of war crimes as well as 3 counts of crimes against humanity. For Kony et al. Case; Vincent Otti; ICC-02/04-01/05 and Joseph Kony v. Prosecutor, it will be in the Pre-Trial stage till further notice because individuals are not tried by the ICC until they appear in the courtroom by themselves⁶⁴. Vincent Otti and Joseph Kony are still at large. General deterrence is as well promoted by the ICC prosecution and investigation and hence, this increases sanctions likelihood. It can be argue based on findings that the ICC has positively influenced peace in Uganda. The ICC in the short term on the other hand, tends to contribute to reconciliation processes in Uganda, but this reconciliation may be enhanced in the long-run in terms of accountability. ICC had a negative and positive effect on the JPT. The ICC has been associated with compromising Peace Talks as well as being responsible for influencing LRA leaders not to sign the FPA. The ICC however, has been linked to propagating the Talks, since the international prosecution threat by the ICC influenced the LRA leadership to come to the negotiation table, as well as for accounting key matters during the negotiation. It can be concluded the involvement of ICC in Uganda facilitated conflict transformation.

⁶³Lanz, David 2007. The ICC's intervention in northern Uganda: Beyond the simplicity of peace vs. justice.

⁶⁴Teitel, Ruti 2011. *Humanity's law*. Oxford, Oxford University Press.

4.2.2 Amnesty Alternative Traditional Reconciliation Mechanism in Uganda

The tradition of the Acholi embodies the practices and principles which are core in facilitating amnesty and reconciliation within that community. For several decades, this community has suffered the LRA war effect and most conflicts were seen to be resolved locally. Matooput being a long as well as complex process it starts by sorting the clans affected, establishing the "truth" through mediation as well as compensation payment based upon the by-laws⁶⁵. Restoring relationships between clans is a ritual ceremony as well as a process and it is associated with accidental killing and intentional murder. These ritual ceremony and processes are carried out in relation to accidental or intentional killing a person. The ritual ceremony consists of two clans where the victim and perpetrator are brought together in a quest for harmony. In this respect, Ugandans have found justice as a passel to unravel. For a nation with such kind of troubled history, amnesty has been considered to be the most appropriate way of resolving issues between the present and the past with the aim of rebuilding the nation. A legal framework for such was provided by the amnesty Act of Uganda. In this case, traditional justice mechanisms have been recognized and they are such as matooput well known by the Northern Uganda Acholi people.

There are other cleansing rituals a part from matooput and they were carried out whenever the former members of LRA came back to the community. Most agencies that reintegrate and receive ex-combatants ensured traditional rituals integration into the process. The offender made reparation to the victims, accepted responsibility as well as asked for forgiveness. The family of the victim and the perpetrator then shared the root drink from a calabash, to bury and recall the soured relation bitterness⁶⁶. This is seen to have worked for a long time in providing reconciliation as well as bitterness elimination between the offenders and the victims. Traditional elders as well as leaders provided guidance to the community in terms of their cultural roles and hence, this was significant in the search for peace in northern Uganda.

⁶⁵Mallinder, Louise 2009. Uganda at a crossroads: Narrowing the amnesty?

⁶⁶McCleary-Sills, Jennifer and Stella Mukasa 2013. External evaluation of the trust fund for victims' programmes in northern Uganda and the Democratic Republic of Congo: Towards a perspective for upcoming interventions.

4.3 Conclusion

There are several conclusions to be drawn from critical analysis of amnesty application on peace building initiatives in Uganda, particularly on the use of amnesty to end the decade long war in northern Uganda. The analysis greatly demonstrates that the situation in northern Uganda has greatly improved and that amnesty contributes towards peace building in the Uganda, although it has certain negative connotations towards ex-militants. There are barely proven records of improvement in the socio-economic situation of the communities that have been experiencing the war. However, unsatisfactorily, the use of amnesty shows a huge sacrifice for peace in the region. Essentially, the need for sustainable peace can be attained in case the living standards of the most persons in the region are enhanced. The study demonstrated that infrastructural development essential in peace building efforts in the region. Findings indicate that rapid transformation of the region will definitely encourage the ex-militants to maintain peace as well as contribute towards the region development. The meaningful participation of the youths and elders of a community results in a more effective management of the participation-representation polarity⁶⁷. In other words, such engagement provides a greater legitimacy to the authority of the peace building initiative. The ICC however is required to work with the Ugandan government in ensuring that its involvement in Uganda's affairs doesn't compromise the amnesty for the low-level LRA soldiers who may still want to come back home. In a community where people have used traditional reconciliation mechanisms, the government and international courts should allow for people who surrender to be granted amnesty and for the community involvement in any talks regarding their long-term peace process.

⁶⁷ Tobor, J. (2016). Culture and the amnesty program in the Niger Delta region of Nigeria. *European Journal of Research in Social Sciences*, 4 (3), 14-22.

5.0 CHAPTER FIVE: STUDY SUMMARY AND RECOMMENDATIONS

5.1 Introduction

This study sought to examine the efficacy of amnesty in conflict resolution and sustainability of peace in Uganda. In order to achieve this broad objective the study aimed to achieve three main objectives. To start with, the study explored the impact of the prosecution approach in attaining sustainable peace in Northern Uganda. The role of the Ugandan courts in carrying out investigations, arrest and persecuting the culprits. Even with prosecution going on, the study also sought to find out if they were contributing to lasting peace among the people in the affected areas or if they were causing more tension to the people.

The second objective was to examine the potential and pitfalls in using amnesty to promote peace in the case of the LRA. This was preceded by an evaluation of how amnesty has led to reconciliation in most of the conflict areas in the world. The Ugandan Parliament, in 2000 also passed a bill offering amnesty to rebel fighters in an attempt to end insurgencies in the north and west of the country and so the study sought to examine whether any fighters were granted amnesty and its effect on the community reconciliation process. This second objective was tied up to the hypothesis which expressly specified that amnesty will foster an effective reconciliation process in Uganda compared to prosecuting war criminal which is a slow and difficult process towards the establishment of a unity Government. The LRA leaders and fighters will voluntarily champion for peace in the land if granted amnesty by the government.

The last objective examined conflict resolution interventions in other parts of Africa in order to draw lessons for Uganda. This is linked to the outcome of all other objectives examined in this study. The objective and hypothesis were examined through the theoretical framework of social conflict and conflict resolution theories. The social conflict helps understand the war and its impact to the society and foster ways to resolving the conflict in northern Uganda.

5.2 Chapter Summaries

This section offers the individual chapters summaries and conclusions.

Chapter one provided the study layout starting with a background to the study which pointed out the history of the war in northern Uganda and how it has affected the whole country. The chapter also considered the statement of the study problem through which motivated the conduct of the study.

Chapter one offered a glimpse on the LRA movement on how it started and the period that it has been causing conflict in Uganda and its neighbouring countries. It described the war as one between the government and the rebels as they tried to overpower the government. The chapter draws the source of conflict from the colonial period and outlined its prolonged impact on the economy of the country decades later. To its end the chapter highlighted the study objectives, guiding questions and hypothesis through which the research was framed. Further, the section expounded on the theoretical framework by discussing in-depth the social conflict and conflict resolution theory, in this manner linking up the significance of these theories to the subject matter. Further, the chapter offered academic and policy justification through highlighting the unique features of the study and its contribution to the academia and policy makers. Finally, the chapter illuminated in detail the methodology used to attain the envisaged goal and objectives.

Chapter two exploited the conflict in Northern Uganda tracing major causes of conflicts in Uganda and looked at the major ones that have occurred since the military coup de tat by Idi Amin. Like many African countries, Uganda has had a history of repeated power struggles and has seen a history of extreme violence and ethnic conflict⁶⁸. The working paper by Lomo and Hovil highlights the causes, consequences and helps search for solutions in the war stricken zones of Uganda⁶⁹.

⁶⁸Quinn R Joanna, *Ethnic Conflicts in Uganda*, USA, University of Ontario, 2004

⁶⁹Lomo Zachary and Hovil Lucy, *Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*, Refuge Law, Working Paper no.11, February 2004.

Further, the chapter analyses the impact of the war to Uganda and also its neighbouring countries who have to take over the burden of hosting people who are fleeing from the war. Based on the developments made on this chapter, existing literature gaps were marked out to provide a clear roadmap of the study.

Chapter three involved analyzing the theoretical debate around amnesty in conflict resolution. The concept of the amnesty is well outlined and countries that have successfully used amnesty to bring peaceful solutions to their war situations analyzed. Chigara identifies that amnesty laws are political tools used since ancient times by states wishing to quell dissent, introduce reforms or achieve peaceful relationships with their enemies⁷⁰. This chapter was linked to the second objective that examined the potential and pitfalls in using amnesty to promote peace in the case of the LRA. The lessons were drawn from countries such as South Africa, Nigeria and various other countries around the world. The chapter also analyzed on lessons learnt from the world war.

Chapter Four examined peacebuilding initiatives in Uganda with a particular emphasis on the Amnesty law in the country. Uganda has used alternative reconciliation mechanisms to try and achieve its goal of restoring peace and stability in the region. For most conflict resolutions, disarmament, demobilization, and reintegration (DDR) programs have been a core component of the peacebuilding model used by the United Nations and other institutions. This however has not reached the ultimate peaceful existence of citizens that have experienced war for long periods. In Uganda the courts have carried out prosecutions, the traditional communities have used traditional mechanisms, the ICC has opened up cases but still amnesty needs to be explored as a means to lasting peace in the country.

5.3 Study Conclusions

A report given in 2009 by the United Nations (UN) Secretary-General Ban Ki-moon analyzed

⁷⁰Chigara, Ben *Amnesty in International Law: The Legality under International Law of National Amnesty* (2002), Harlow, Longman

peacebuilding in the immediate aftermath of conflicts⁷¹. He emphasized that education is one of the recurrent priorities in the peacebuilding process, especially as it relates to the transitioning process for post conflict communities. This chapter also indicates the needs of educating the young people of northern Uganda so that they can get out of the poverty circle which at times pushes them in to war and other forms of crime. Education helps to preserve peace in post conflict environments. Education which is a long-term process and one that is focused on the development of children and youth can restore peace in a conflict environment.

Emphasis should be placed on the provision of modern schools, readily available employment opportunities, modern technological facilities, pipe borne water, tarred road, hospitals, consistent power supply and attractive developmental projects that can transform the region from its present situation to an industrial area. Failure to include the youths in educational and training programs thereby successfully reintegrating the ex-militants into society may have both short and long term impacts. Short-term impacts could be that ex-militants may return immediately to violence or conflict thereby threatening the peace and security of their various communities, while long-term impacts could be the potential of ex-militants preventing the social and economic development of the country through their disruptive activities. The success of peace making initiatives in Ugandan communities will be guaranteed if the unequal exchange relationships that place the region in a disadvantaged position are addressed. In this regard, the Ugandan government and international region are encouraged to put northern Uganda at the centre of their priorities. The involvement of the ICC in Uganda brought international justice nearer to the country after many years of armed conflict, atrocities and impunity. The ICC facilitated conflict transformation, by promoting accountability to the law through enactment of laws that promote accountability. It also encouraged the establishment of justice institutions. Amnesty therefore should be allowed to restore the lasting peace that is needed in the region by encouraging defection from the LRA movement.

⁷¹The United Nation's Office of Special Advisor on Africa. (2007). Final report on the second international conference on disarmament, demobilization, reintegration, and stability in Africa. Retrieved from http://www.un.org/africa/osaa/reports/DDR_Kinshasa_Final.pdf.

5.4 Recommendations

Based on the findings of this study and the theoretical debates on amnesty in conflict resolution this section presents some recommendations that can improve the conflict situation in Uganda and foster lasting peace in the northern region of the country.

5.4.1 Reconciling International Legal Norms

Taking account the discussion in chapter three and chapter four, the challenge remains of how to reconcile the diverse and competing legal questions concerning amnesties. Putting aside the issue of whether states retain an untouched amnesty-granting power, as well as the issue of whether there is a salient legal defense or applicable limitation or derogation clause, there is need to focus on the issue of how to reconcile the inherent tensions between the transitional justice obligations of prevention and redress⁷². It is important to note that there are no well-settled answers as to precisely how to implement each of these obligations. There are many questions that may be asked in determining this obligation such as, what are the essential laws and practices necessary to effectively end torture or prevent crimes against humanity? What is the permissible scope of a prosecutor's discretion to make plea bargains or indict for lesser offenses in respect of serious international crimes? How many presumed perpetrators of serious international crimes must a government actually investigate or prosecute when their number rises into the tens of thousands? These questions are then followed by determining the legality of amnesty in international crimes. This legality is usually determined by necessity, state determined⁷³. It has been described as the principle of independent responsibility. This principle holds that each State has its own range of international obligations and its own correlative responsibilities.

The key to effectively operationalizing a balancing test is to ensure that there is enough specificity, for legitimate amnesties to receive their imprimatur of national and international recognition that they deserve and illegitimate ones the rejection that they deserve. Getting to use amnesty effectively

⁷²Tobor, J. O. (2014). *Urhobo culture and the amnesty program in Niger Delta, Nigeria: An ethnographic case study*. Doctoral dissertation, Walden University, Minneapolis, Minnesota, U.S.A. ProQuest, UMI Dissertations Publishing, 3645926.ent/uploads/2012/07/Youth_education_Peacebuilding.pdf

⁷³Zena, P.N. (2013). The lessons and limits of DDR in Africa. *Africa Security Brief*, 24, 1-8. Retrieved from <http://www.dtic.mil/dtic/tr/fulltext/u2/a571579.pdf>

in Uganda needs an understanding and full awareness of the new international framework that affects amnesty decisions. This framework includes, most importantly, the creation of the permanent International Criminal Court and the adoption by the UN Secretariat of a formal amnesty position. This means that however much amnesty may be the necessary route to reconciliation, some cases as assessed by the international courts will require prosecution from this court.

5.4.2 Institutionalization of Lessons Learnt

There are many lessons drawn from the study. The survival of the LRA movement can be attributed to the low economic activities in the northern region of Uganda. Many young people get recruited and for lack of better activities to engage in they engage in crime. This study recommends that the amnesty program should be complemented with other innovative measures such as wide consultation with various key stakeholders and inclusion of all youths in the educational and vocational training programs that will cater to essential needs of the majority in the region.

In countries such as South Africa and the Niger Delta in Nigeria, truth reconciliation commissions have been used to fasten the process of reconciliation. When amnesties are granted many may feel that justice has not been served. Using the commissions makes it an integrated process. The Ugandan situation should also be handled by a commission that has clear goals that are articulated and communicated to the public as to what the commission intends to achieve with regard to each of the three elements (truth, justice and reconciliation).

5.4.3 Amnesty on LRA's fighters

Among the major cases are of the five LRA leaders. Two have since passed on while is in the custody of the ICC. The other two are still in hiding and it is believed that their followers still continue to work under their command. The prosecution going on for Ongwen, Joseph Kony and Vincent Otti continue being at large and continue recruiting soldiers for fear of prosecution if they surrender. Granting them amnesty may seem the solution to ending the war but may not be the ultimate mechanism for justice for those that have suffered in the wars. This study therefore recommends that international laws and local laws be reconciled so as to grant amnesties that are legal and that may not be revoked by any arm of law.

Many countries neighboring Uganda are affected by the war as most of the fighters take cover in these countries such as Sudan. There should be unity among these countries and there should be a unanimous decision to reassure the LRA fighter of the impartiality of the mediation process and restore peace in the region. African representatives and other representatives that are involved in Uganda's peace talks should act in good faith and broker compromises on difficult situations arising during negotiations between the LRA leaders and the GoU.

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