

Reinstate the Full Amnesty Law

Note Accompanying Fairway Communiqué

Background

On 23rd of May 2012, the Minister of Internal Affairs declared the lapse of the amnesty of Uganda, in a decision, which has come as a shock to conflict-affected Ugandan communities, which believe the amnesty still to be useful, and had been led to understand that the Act would be extended in its entirety. The decision was apparently taken without any reference to Uganda's Parliament.

The decision appears to be based of three main assumptions: that the wars the amnesty was addressing are now over; that the lapse of the amnesty will not have negative consequences; and, that the Amnesty Act violates Ugandan and other laws.

This note addresses the above assumptions, which might be genuinely held, but are in fact mistaken. It provides a background to the communiqué endorsed by the Religious, Traditional, civil society and other organisations, within and outside Uganda, including neighbouring countries, following a review meeting on the Minister's decision held at the Fairway Hotel, Kampala, Uganda, on 12th June 2012.

Uganda's armed rebellions continue outside the country

An Act of solidarity

As a result of the August 2006 cessation of hostilities agreement signed between the Lord's Resistance Army and the Government of Uganda in Juba, LRA combatants left Uganda for Sudan, removing a key source of insecurity from northern Uganda. However, the group is now active in South Sudan, the Democratic Republic of Congo and the Central African Republic, with tragic and well-publicised humanitarian results.

In addition to the LRA, the Allied Democratic Forces (ADF) are still said to be active in eastern DRC, where the Amnesty Commission has maintained an office in Beni, working with MONUSCO (the UN agency in DRC) to repatriate former ADF combatants to Uganda.

Thus the remnants of Uganda's conflicts have simply been transferred to neighbouring and other States. Today, other Africans, and not Ugandan

communities, are paying the highest price for the Uganda's rebellions. This reality means that Uganda has a moral responsibility to continue to employ all means necessary to end the suffering of other communities, including the same tool of amnesty that has served it so well within Uganda.

Amnesty encourages defections

On the basis of the amnesty law and process in Uganda, a strategy has been established in the DRC, the CAR and South Sudan to encourage defections of LRA combatants. Using various messaging methods, including leaflets, radio and others, the military, the United Nations with the active support of affected communities are seeking the defection of key combatants.

Without an effective amnesty in Uganda these efforts to secure defections will be undermined to the detriment of the security of those communities.

The Amnesty Act helps fulfilment of other moral obligations

Another moral justification for the amnesty arises because many of the rebels (children and adults alike), are unwilling combatants, having been forcibly recruited through abduction. They continue to be kept within LRA ranks through fear. They cannot therefore be treated as volunteers or as unwilling to take advantage of the amnesty.

Because of the above circumstances, the amnesty process has come to represent a possibility for redemption and escape for individuals who are essentially as much, or more, victims as they may be perpetrators. Uganda, whose efforts failed to protect these individuals in the past, thus continues to bear a particular moral responsibility to encourage them to take the risks associated with defection, and thereafter to reintegrate them properly into society.

Removing the amnesty may give the damaging impression that Uganda is indifferent towards its responsibilities towards these individuals and towards the communities currently affected by their activities.

Other negative impacts of removal of Part II of Amnesty Act

Without Part II of the Act, the Amnesty Commission is impaired

It has been suggested that an informal amnesty would continue in Uganda. This is not correct. Without a legislative amnesty, no authority in Uganda can grant to any person an amnesty capable of offering legal protection from future official or private prosecution. Neither would the Commission be able to promote dialogue with armed groups and potential defectors.

Because of the legal protection against self-incrimination, the Commission could not now require any person to disclose any conduct which might expose them to prosecution. Since the Amnesty Commission would no longer have the mandate to receive reporters or issue certificates, it also could not run new programmes of reintegration for former combatants.

All this will leave returning ex-combatants without the social and other support that the Commission and its implementing partners have been providing to reporters.

The resulting uncertainty, confusion and fear, which are already being seen, will inevitably undermine the goals of the Amnesty Act, of social cohesion, reintegration and reconciliation in the areas affected by conflict. These goals cannot be achieved in the absence of Part II of the Amnesty Act.

The Amnesty Act is not inconsistent with Ugandan or other laws

A review of the history and content of the Amnesty Act will show that the law is in fact sufficiently flexible to serve the multiple goals of peace, reconciliation and justice. It has not been found to be legally flawed, or inconsistent with the Constitution of Uganda.

Not a Blanket Amnesty

The widespread belief that the Ugandan amnesty is a blanket pardon does not reflect the reality. It implicitly and expressly excludes unsuitable individuals, while also promoting traditional and other forms of accountability and reconciliation. These are consistent with Ugandan values and obligations.

Under section 2A of the Act, the Minister of Internal Affairs can, with the approval of Parliament, exclude any individual from benefiting from the amnesty who is deemed to be an inappropriate beneficiary. This provision, removes the charge that Uganda has adopted a blanket amnesty. However, this section has been neglected.

In other respects too, the full potential of the Amnesty Act has simply not been utilised. Despite the existence of provisions requiring the Amnesty Commission to promote mechanisms of reconciliation and dialogue in the conflict-affected areas, which could include acts of acknowledgement, individual reconciliation and reparation, the Act thus remains grossly underused.

The Amnesty Act, Juba Agreements and Transitional Justice goals

Moreover, the Juba Agreements on Accountability and Reconciliation, which set out an elaborate framework for addressing the past, do not require the revocation of the amnesty, only its modification. This is because the Agreements recognised the necessity of an amnesty for promoting truth-telling and other acts of reparation, in the case of children the Juba Agreements are explicit that they require amnesty.

If Uganda is to remain compliant with the Juba Agreements, which it signed in the presence of representatives of several States, including some now suffering the effects of Uganda's rebellions, it should preserve the amnesty process, until it is replaced with other appropriate legislation.

In the meantime, the Amnesty Act should now be used as the basis for strengthening accountability and reconciliation processes, including acknowledgement, truth-telling, and individual reparations. This would promote the Juba Agreements, and serve the broader goals of transitional justice in Uganda and the region.

The failure to utilize the provisions of the Amnesty Act to exclude individuals or to advance broader transitional justice goals is therefore an implementation failing and not a fault with the substance of the Act.

Revocation of the Amnesty is premature and harmful

In conclusion, the decision to remove the amnesty provisions in Uganda is premature and legally unnecessary, and will set back the cause of peace, reconciliation and accountability not only for Uganda but neighbouring countries.

Uganda's amnesty law has already made an immense contribution to the cause of stability and recovery in Uganda. Since its enactment in 2000, over 26,000 individuals, from over 25 armed groups, have abandoned insurgency, and been reintegrated into society. Reporters continue to seek the amnesty. Whilst improvements can be made in its implementation, this Act needs to remain available as a successful example of African approaches to addressing conflict.

For the sake of peace, reconciliation and stability in Uganda and for the region, the amnesty law should therefore be reinstated in full.

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