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The project to end genocide and crimes against humanity

The End of Amnesty in Uganda: Implications for LRA Defections

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Executive Summary

"The removal of amnesty for LRA rebels is likely to have a major impact on the LRA crisis" – Program officer, Gulu Support the Children Organization, or GUSCO, LRA reception center[1]

The Ugandan government's decision to end amnesty for fighters from the Lord's Resistance Army, or LRA, in May 2012 is causing significant upheaval in LRA-affected communities and creating major obstacles to finally ending the LRA. Former rebels fear that they will face prosecution and are certain that the removal of amnesty will discourage future defections and escapes from the LRA. In this paper, the Enough Project proposes a 3-part plan to achieve greater defections from the LRA while addressing the need for justice and truth-seeking.

Background

GULU, Uganda — Uganda's Amnesty Act was enacted in 2000 as a tool to end rebellions in Uganda by encouraging rebels to lay down their arms without the fear of prosecution for crimes committed during the fight against the government. The promise of amnesty and reintegration has played a vital role in motivating fighters to escape or defect from the Lord's Resistance Army.[2]

The Amnesty Act has three main functions: providing amnesty to rebels who renounce rebellion and give up their arms; facilitating an institutionalized resettlement and repatriation process; and providing reintegration support, including skills training for ex-combatants, and promoting reconciliation. The act also establishes an Amnesty Commission tasked with implementing the act and issuing certificates of amnesty. As of

May 2012, a total of 26,288 rebels from 29 different rebel groups had received amnesty. Of these, 12,971 are former combatants from the LRA.[3]

The act was renewed on May 25, 2012 for 12 months, but Part II of the act – the "Declaration of Amnesty" – was removed by the Minister of Internal Affairs, Hillary Onek, despite its overwhelming success in cutting down the number of LRA fighters. The minister has not publicly provided any rationale for ending amnesty, but the provision was reportedly removed largely in response to pressure from donor countries that claimed it is incompatible with norms of international justice.

The Amnesty Commission will now focus on the reintegration of rebels who have already received amnesty, though the commission recently announced that the process is stalled due to a lack of funds.[4]

> *"We used to hear [from LRA commanders] that if you return, you will be killed, but when I heard that amnesty is being given to people and that people who return home are not killed, then I got courage to escape." – Former LRA rebel*[5]

Many war victims and civil society groups in the region remain supportive of continued amnesty, while recognizing the need for a transitional justice process to heal the wounds of the LRA rebellion. This is manifested in the June 12th Communiqué, where 22 civil society groups from LRA-affected Congo, Central African Republic, South Sudan, and Uganda encourage the Ugandan government to reinstate the act and point out that the act is a crucial tool needed to end the war through defections.[6]

The removal of amnesty is likely to reduce the number of defectors from the LRA because current LRA commanders and fighters will fear escaping due to the fact that they can now face prosecution. The government has already started to open investigations against former senior LRA commander Caesar Acellam, who was reportedly captured by the Ugandan army in May, as well as other commanders. It remains unclear to what extent future returnees will be prosecuted by the government, but it is clear that amnesty is no longer an option.

It is essential that the Ugandan government halts investigations and prosecutions against former LRA rebels. Further, the government must ensure protection for returnees and facilitate their safe repatriation and reintegration. The Amnesty Commission should be given the funds and mandate to facilitate this process.

The Obama administration can play a key role in ensuring that no LRA combatants, other than the three senior leaders who are wanted by the International Criminal Court, will be prosecuted. The U.S. must also pressure the Ugandan government to put in place policies and funds to repatriate and reintegrate future returnees.

Based on interviews with over 60 individuals across northern Uganda and consultations with civil society groups from LRA-affected Congo, the Central African Republic, and South Sudan, the Enough Project proposes a 3-part plan to achieve greater defections from the LRA while ensuring that justice and truth-seeking needs are met:

1. The highest level of the Ugandan government, preferably President Museveni, must ensure and publicly clarify that former rebels will not be prosecuted and that they can return safely.

2. The government should put in place formalized truth-seeking and traditional reconciliation practices, with former combatants receiving amnesty in exchange for their participation. A multi-stakeholder commission with representatives from the government, civil society, legal experts, and traditional and religious leaders should be established to oversee the process.

3. The transitional justice policy for Uganda that is currently being developed should be holistic and include mechanisms to deal with crimes committed by all parties to conflicts in Uganda, including the Ugandan army and the government.

Overview of the Amnesty Act and Enough's Research in Northern Uganda

With the removal of the amnesty provision, no certificates of amnesty can be issued, and there is no protection from prosecution. People who defect or escape from the LRA will have to return home and be reintegrated on their own. Individuals, organizations, and the Ugandan government are now able to prosecute former rebels for any crimes allegedly committed. A civil servant from the Amnesty Commission told Enough about a recent returnee:

> *"Just last week I received a young boy who escaped in Congo. He told me that he feared what would happen once he returned to his village [in northern Uganda], now that there was no amnesty and no one to reintroduce him into the community. The only thing I could do was to give him my business card and tell him to call me in case of any problems. What kind of protection is that?"*[7]

Horrible crimes are indeed committed by the LRA, but the fact remains that the vast majority of the rebels are forcefully abducted, some at a very young age, and forced to commit the crimes. Thus a strict distinction between victim and perpetrator does not exist, hence limiting the ability of the legal system to deal with LRA crimes. Perpetrators are, in the vast majority of cases, also victims.

Furthermore, recent research documents widespread support for the Amnesty Act in LRA-affected areas. The Gulu-based Justice and Reconciliation Project found in their 2011 research that an overwhelming 98% of respondents across northern Uganda "thought that the amnesty law was still relevant and that it should not be abolished."[8] Research conducted by the Justice and Reconciliation Project in March 2012 also found general support among northerners for the renewal of the Amnesty Act.[9]

Main Research Findings:

- The vast majority of the 60 individuals who were interviewed support amnesty and the Amnesty Act.
- Removal of amnesty is creating fear of prosecution among current and former LRA combatants.
- The number of defections and returnees is likely to plummet as a result of the removal of amnesty.
- Reparation and reconciliation are more important than retributive justice.
- The transitional justice policy should include traditional justice methods and truth-telling.
- Those most responsible must be held accountable for their crimes, including the Ugandan army and government.
- People who joined rebellions voluntarily should be prosecuted, while those who were abducted should be forgiven, no matter their rank and the type of crimes that they committed.

This echoes findings of the Enough Project, which recently interviewed 60 people in northern Uganda on the reactions to the removal of amnesty, including civil society leaders, local communities, victims and former LRA combatants in Lira, Gulu, Kitgum, and Lamwo districts.

Support for Amnesty in Northern Uganda is Overwhelming

> *"The court system is there, but it won't work. Everyone who comes back has done something wrong. We need to reconcile and move on."- Victim who lost her son to the LRA*[10]

The widespread support for amnesty among local communities in northern Uganda is based on two main concepts. First, that the court system is insufficient because almost everyone has committed crimes and secondly, because of the key fact that most of the returnees were abducted. A victim explained to Enough, "I think they [the returnees] should be forgiven, because none of them went there willingly, they are all forcefully abducted.[11]

The notion of forgiveness and the importance of forceful abductions are also emphasized when people are asked about what should happen to Kony, the undisputed leader of the LRA, in the event that he is captured. A former LRA rebel explained:

> *"We cannot forgive Kony. He is the mastermind behind the LRA and the one responsible. He should be prosecuted."*[12]

The general sense seems to be that Kony and those who joined voluntarily should face justice, whereas other LRA rebels should be forgiven. Not an unconditional forgiveness, but a forgiveness based on truth-telling and open community dialogue. There continues to be a strong desire for a transitional justice process, which includes crimes committed by the army and the government, as well. Furthermore, people want to be compensated for their losses during the war.

Removal of Amnesty Will Open Investigations Against LRA Rebels

> *"How about those of us who have returned and have not yet received the amnesty card [certificate], won't things turn against us in the future? If possible we should also have the amnesty card. We were also abducted." – Former LRA rebel*[13]

The removal of amnesty has generated fear among former LRA combatants that they will be prosecuted for the crimes they committed during their time with the LRA. Those who did not receive an amnesty certificate fear that they will be subject to prosecution.

Even those who have already received amnesty might not be safe anymore. The Director of Public Prosecutions, or DPP, has written to the Amnesty Commission asking to get access to the files of LRA combatants who have been granted amnesty. A civil servant with the commission told Enough:

> *"We are a little bit worried, because the DPP has approached the commission and says that he wants certain investigations. So we don't know how to go about it. We don't want to appear as if we are obstructing the work of the DPP. So we have asked for guidance from the minister on how to handle this.*[14]

Enough learned that the DPP already has a list of at least 10 former LRA commanders and local politicians that they are planning to open investigations against and possibly prosecute. Several sources confirm that the DPP has initiated preliminary investigations on the ground in northern Uganda, starting in mid-June. Allegedly, some of those being investigated have already received amnesty.[15]

Among the list of commanders and leaders that the DPP wants to open an investigation against is Caesar Acellam, the top LRA commander who was reportedly captured by the Ugandan army in the Central African Republic in May. Many of the people Enough interviewed want Acellam to be granted amnesty. Some emphasized the positive effect that having him communicate with LRA currently in the bush via radio programming would have on promoting defections. A victim with bullet wounds from an LRA attack told Enough:

> *"Even Acellam should be forgiven; he was also acting under command. Prosecution is like adding fire on fire."*[16]

Removal of Amnesty is Likely to Reduce the Number of Defections from the LRA

> *"Once the rebels learn that they are liable to face justice or the courts of law they will get discouraged. Amnesty has been a very good instrument to facilitate their return."– Program Officer, GUSCO reception center*[17]

The LRA remains a highly capable rebel force, operating in the remote border area between South Sudan, the Central African Republic and the Democratic Republic of Congo. Current estimates put the number of armed LRA fighters around 300, accompanied by another 800 to 1200 people, consisting of women, recent abductees, and children, including those who were born in the bush.

A combination of increased military pressure and a surge in initiatives encouraging LRA combatants to come home--through radio programs, leaflets and secured surrender locations--carries the most promising prospects of ending the LRA within the foreseeable future. However, the removal of amnesty has seriously hampered efforts to increase defections from the LRA.

Individuals who spoke with the Enough Project were emphatic that the discontinuation of amnesty in Uganda will engender fear of prosecution among LRA fighters currently in the bush and will therefore greatly discourage defections. Several former LRA rebels told Enough that the promise of protection and a secure way back to their community with the help of amnesty, was a decisive factor in their decision to defect from the LRA. A former rebel explained:

> *"There are many people who have remained in the bush. If they hear that amnesty has been removed, I know that will bring fear to their hearts. This thing [amnesty] should continue."*

Amnesty was Removed Due to Internal and International Pressure

The Minister of Internal Affairs has not made any public statement about the rationale for the discontinuation of amnesty, but people with intimate knowledge of the process suggest that it is due to internal and international pressure.

Internal pressure is largely driven by high profile judges and the DPP through the Uganda Coalition on the International Criminal Court, or UCICC, which was founded in 2004 by Human Rights Network-Uganda.

The Ugandan government, as part of the 2006 Juba Peace Agreement on Accountability and Reconciliation also established the War Crimes Division, renamed the International Crimes Division, to investigate war crimes and crimes against humanity that occurred

in Uganda, thereby complying with the Geneva Conventions. The first case was against former mid-level LRA commander Thomas Kwoyelo, who is charged for war crimes, despite the fact that he was granted amnesty. The appeal in his case is pending review by the Supreme Court, the highest court in Uganda, which is currently non-functional because all of the seven judges are yet to be appointed.[18]

One civil servant from the Justice Law and Order Sector, or JLOS, told the Enough Project:

> *"Amnesty was removed because it was contradictory to international law and due to pressure from donor countries who argue that the act has promoted impunity by giving amnesty to perpetrators."*[19]

The act has been under review for the last 12 months by JLOS, a government institution that is promoting the rule of law and currently drafting a Transitional Justice Policy for Uganda. The policy is due to be finalized within the next year and is likely to replace the Amnesty Act. The latest report from JLOS emphasizes the need for traditional justice mechanisms to deal with community-based conflicts and recognizes the importance of truth-telling and reparation.[20]

Conclusion

The removal of amnesty was premature given that a strictly legal process is insufficient to navigate the blurred lines between perpetrator and victim in the LRA conflict, wherein most crimes are committed under coercion.

The majority of civil society, local communities, victims, and former LRA combatants in northern Uganda want amnesty to continue and to be granted to LRA rebels. Former LRA combatants, even those who have already received amnesty, fear that that they will be prosecuted. Recent statements from the DPP indicate that this is indeed a possible scenario, especially for higher ranking LRA commanders. Many people the Enough Project spoke with, including former LRA fighters, also believe that the removal of amnesty will discourage current LRA combatants from leaving the group.

Communities across northern Uganda continue to desire a holistic and culturally sensitive transitional justice process, which include truth-telling from all parties to the conflict, including the Ugandan army and government. The current position of the DPP to prosecute a limited number of high-profile rebels will remain insufficient to heal the wounds of the LRA crisis.

It is now up to the U.S. government to engage with the Ugandan government to ensure that no former LRA combatants – aside from those wanted by the ICC – are prosecuted and that Kampala puts in place formalized truth-seeking and traditional reconciliation practices, with former combatants receiving amnesty in exchange for their participation.

Endnotes

1 Interview, northern Uganda, June 1-8, 2012.

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3 Numbers were provided by the Amnesty Commission

4 "UGANDA: Lack of funding stalls ex-combatants reintegration," IRIN News, June 18, 2012. Available at, http://www.irinnews.org/report/95672/UGANDA-Lack-of-funding-stalls-ex-combatants-reintegration

5 Interview with former LRA rebel, northern Uganda, June 1-8, 2012.

6 "Communiqué of Traditional and Religious Leaders, Civil Society and other Organizations concerning Amnesty," June 2012. Available at, http://www.enoughproject.org/files/Communique%20Amnesty%20Act%20June%202012.pdf

7 Interview with civil servant from the Amnesty Commission, Kampala, Uganda, June 10-12, 2012.

8 Justice & Reconciliation Project, "To pardon or to Punish? Current perceptions and opinions on Ugandan's amnesty in Acholi land," 2011. Available at, http://justiceandreconciliation.com/wp-content/uploads/2011/12/JRP_Brief_Amnesty-Dec-20111.pdf

9 Justice and Reconciliation Project, "Who Forgives Whom? Northern Uganda's Grassroots Views on the Amnesty Act," June 2012. Available at, http://justiceandreconciliation.com/wp-content/uploads/2012/06/JRP-Amnesty-Policy-Brief-FINAL1.pdf

10 Interview with female victim of the LRA, northern Uganda, June 1-8, 2012.

11 Interview with female returnee, northern Uganda, June 1-8, 2012.

12 Interview with former LRA rebel, northern Uganda, June 1-8, 2012.

13 Interview with former LRA rebel, northern Uganda, June 1-8, 2012.

14 Interview with civil servant from the Amnesty Commission, Kampala, Uganda, June 10-12, 2012.

15 Confidential interview with international consultant and civil society leader, Uganda, June 10-12, 2012. "State is ready to begin proceedings against Maj Gen Acellam," Acholi Times, June 18, 2012. Available at, http://www.acholitimes.com/index.php/8-acholi-news/508-state-is-ready-to-begin-proceedings-against-maj-gen-acellam-dpp

16 Interview with LRA victim, Gulu, Northern Uganda, June 1-8, 2012.

17 Interview with program officer, GUSCO Reception Centre, northern Uganda, June 1-8, 2012.

18 Further information about the Kwoyelo case can be found at, http://www.ucicc.org/index.php/icd/about-kwoyelo and http://www.enoughproject.org/blogs/ugandan-court-orders-amnesty-lra-commander-kwoyelo-appeal-pends

19 Interview with civil servant working for The Justice Law and Order Sector, Kampala, Uganda, June 10-12, 2012.

20 JLOS, "Report on the Study on Traditional Justice, Truth Telling and National Reconciliation," 2012. Available at, http://jlos.go.ug/page.php?p=curnews&id=90