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THE STATUS OF AMNESTY PROVISIONS IN SITUATIONS OF TRANSITION UNDER THE AFRICAN CHARTER:

THE OBITER DICTUM OF THE ACHPR IN *THOMAS KWOYELO V. UGANDA*

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Introduction

During its 62nd Ordinary Session, held in Nouakchott, the Islamic Republic of Mauritania, from 25 April to 9 July 2018, the African Commission on Human and Peoples' Rights handed down a landmark decision on a Communication, *Thomas Kwoyelo v. Uganda*.[1] As part of its consideration of the Communication, the Commission adopted an obiter dictum on the status of amnesties within the framework of the African Charter on Human and Peoples' Rights. As the Commission noted, the obiter dictum was adopted in order to enable it to pronounce itself on the question of the compatibility of amnesty provisions, adopted in times of transition, with the rights guaranteed in the African Charter.[2]

While there were previous instances in which the Commission encountered issues of amnesty, it had not expounded a fully-fledged authoritative opinion on the status of amnesty under the African Charter, particularly in contexts of transition from conflict to peace. As the Commission itself admitted, there was a "lack of clear guidance on ensuring compliance with the requirements of the African Charter when states resort to the use of amnesty as necessary means for pursuing the objectives of achieving peace and justice in times of transition from violence to peace."[3]

The Communication concerned a complaint lodged against Uganda on behalf of Thomas Kwoyelo, a former child soldier who was abducted by the Lord's Resistance Army in 1987

This paper presents a review of the Commission's analysis on the legal validity of amnesty provisions under the African Charter. It in particular examines how the obiter dictum advances the Commission's jurisprudence on amnesty and the parameters the Commission has set for evaluating amnesty provisions.

As background, the paper presents an overview of the Communication, outlining the facts of the case and the Commission's findings. It draws attention to the fact that while amnesty featured as a major part of the Kwoyelo case, the Commission was not called upon to pronounce itself on the legal validity of amnesties under the Charter. The paper then discusses amnesties and international human rights law in an attempt to situate the Commission's position in the broader international law context. It proceeds to analyze the obiter dictum, including the novel dimensions of the approach the Commission adopted and how this approach interfaces with the debate in international law on amnesty provisions. The paper concludes with suggestions on how the guidance in the obiter dictum can best be applied.

Background to the Communication

The Communication concerned a complaint lodged against Uganda on behalf of Thomas Kwoyelo, a former child soldier who, after being abducted by the Lord's Resistance Army (LRA) in 1987, became a member of the rebel group. The case arose from Kwoyelo's treatment by Ugandan authorities following his capture by the military in 2009. The allegations presented in the complaint include abduction, torture and inhumane treatment, breach of fair trial and deprivation of medical treatment. The dimension of the Communication that is of direct interest for this paper requested the African Commission to find the refusal by Ugandan authorities to grant Kwoyelo amnesty a violation of his right to equal protection under the law.

As presented in the complaint, Kwoyelo was captured after a battle between the Ugandan army and LRA combatants in the Democratic Republic of Congo (DRC). After being taken to Uganda, where he received medical care at a military hospital, Kwoyelo was arrested. Like other LRA fighters, he declared his renunciation of rebellion and applied to the Uganda Amnesty Commission for amnesty under the 2000 Amnesty Act. In March 2010, the Amnesty Commission forwarded Kwoyelo's application to the Director of Public Prosecutions (DPP) for consideration, with a recommendation that Kwoyelo benefit from the

1 African Commission on Human and Peoples' Rights, Communication 431/12 (2018), *Thomas Kwoyelo v. Uganda*.
2 Ibid., para. 294.
3 Ibid., para. 284.

amnesty process. The DPP instead charged Kwoyelo for various crimes, including violations of Uganda's 1964 Geneva Conventions Act.

While the case was pending before the International Crimes Division of the High Court of Uganda, Kwoyelo filed an application with the Constitutional Court of Uganda, contending that his trial was a violation of the right to equality before the law, as it was for acts that fall under the Amnesty Act. Despite the DPP's argument that it was barred from granting Kwoyelo amnesty due to the international nature of the crimes for which he was charged, the Constitutional Court not only affirmed the constitutionality of the Amnesty Act but also held that the DPP's refusal to grant Kwoyelo amnesty as per the recommendation of the Amnesty Commission constituted denial of his right to equality before the law. The Constitutional Court further ordered the termination of Kwoyelo's trial. The Court of Appeal, which the DPP approached for a stay of execution of the Constitutional Court decision, upheld the findings of the Constitutional Court.

Being unable to get satisfaction from the Ugandan legal system, Kwoyelo filed a Communication with the African Commission arguing that "the refusal of the Respondent State to grant the Victim amnesty as it did to over 24,000 other individuals amounts to a violation of his right to equal protection under the law,"[4] contrary to Article 3 of the African Charter.

The Findings of the Commission

In order to assess the allegation of a violation of the right to equal protection under the law, the African Commission examined the question of whether the Amnesty Act was applied differently in respect of Kwoyelo and whether such a differentiation was justified. While the applicants for Kwoyelo argued that "the granting of over 24,000 amnesty applications before and 274 more after the Victim's application was rejected including to persons who were holding higher command positions shows that he was selectively treated without any objective or reasonable explanation," the government of Uganda in its response argued that "the case of the Victim was different from all other applicants who were granted amnesty because he was charged with serious violations of human rights and the others were not." The Commission held that the fact that Kwoyelo was the only person whose application for amnesty was denied and that 274 other applicants were granted amnesty after Kwoyelo's application established a case of "difference in treatment."[5]

The African Commission examined the question of whether the Amnesty Act was applied differently in respect of Kwoyelo and whether such a differentiation was justified

With respect to whether the difference in treatment was justified, the Commission considered the arguments of the respondent state based on a two-level analysis. To the argument that the difference in treatment was justified on account of the requirement of prosecution of those suspected of committing the most serious crimes or human rights violations under the Juba Agreement on Accountability and Reconciliation and the Annexure thereto of June 2007 and February 2008, respectively, the Commission held that the signing of the Juba Agreement did not stop the eligibility of the applicant under the Amnesty Act. It also held that, without effecting corresponding and corollary amendments to the Amnesty Act, the Juba Agreement "is not sufficient and convincing legal ground to warrant differential treatment." It thus held that being charged with serious crimes was not a stated ground for the denial of amnesty under the Act.[6]

To the argument that Uganda's adoption in 2010 of the International Criminal Court (ICC) Act necessitated the prosecution of international crimes, barring the application of the Amnesty Act, the Commission held that, as the ICC Act came into effect months after Kwoyelo was declared eligible for amnesty, this "would be a retroactive application of the law, which is a

4 Ibid., para. 50.
5 Ibid.
6 Ibid., para. 180.

flagrant breach of the principle of legality."[7] It accordingly held that the justification that the state proffered for defending the legality of the difference in treatment was not reasonable.

The Commission concluded that "by interpreting and applying the provisions of the Amnesty Act differently without any reasonable justification or explanation, the Respondent State violated the right to equal protection of the law afforded to the Victim as provided under Article 3 of the Charter."[8]

The Commission was right in pursuing a two-level analysis. As is clear from the Commission's examination of the parties' submissions on Article 3 of the Charter, the two-level analysis principally involved technical review—existence of difference and justifiability of difference. The Commission did not engage in a review of whether the entitlement—in this case the amnesty—in respect of which a claim of unequal application of the law was invoked was deserved and legitimate under the African Charter.

The Commission concluded that "the Respondent State violated the right to equal protection of the law afforded to the Victim as provided under Article 3 of the Charter"

Some have asked whether the Commission should have engaged in an examination of that question,[9] but engaging in such an exercise would have been problematic for the Commission. The question before the Commission as framed in the submissions of the parties was whether the difference in the treatment of Kwoyelo was justifiable within the framework of the Amnesty Act. Understandably, the question of amnesty in the situation at hand was not confined to the case of Kwoyelo but implicated the entirety of Uganda's Amnesty Act. As this issue was not directly framed in the submission of the respondent state, the Commission can be excused for not engaging in the kind of exercise such a review would have required.

Despite the appropriateness of confining its review to the Amnesty Act based on the two-level analysis, the Commission did not deem it proper to end its examination with a determination on the existence or otherwise of a violation of Article 3 of the Charter. The Commission decided to address the question of the compatibility of the use of amnesty provisions with the obligation of states under the African Charter to ensure the protection of the Charter rights by bringing those engaged in the perpetration of violations to justice. The Commission sought to accomplish this by adopting an obiter dictum.

A discussion of amnesty provisions and international human rights law helps put the Commission's analysis in the broader international law and comparative context.

Amnesty and Human Rights Law

There is no established definition of amnesty under international law. The word "amnesty" comes from the ancient Greek word *amnestia*, meaning "forgetfulness." As the origin of the word suggests, when used in the context of peace processes or transitions, amnesty involves an act of letting certain wrongs be forgotten. The Commission observed in *Zimbabwe Human Rights NGO Forum v. Zimbabwe* that an "amnesty is granted to a group of people who commit political offences, e.g. during a civil war, during armed conflicts or during a domestic insurrection."[10] The granting of amnesty thus leads to the limitation or exclusion of the application of criminal prosecution.

Despite the lack of an established definition, amnesty is not without pedigree in international law. A case in

7 Ibid., para. 190.
8 Ibid., para. 195.
9 See Paul Bradfield, "Amnesty or No Amnesty? The African Commission Weighs in on the Kuwoyelo Case," Beyond the Hague, 11 October 2018, https://beyondthehague.com/2018/10/11/amnesty-or-no-amnesty-african-commission-weighs-in-on-the-kwoyelo-case (accessed 5 October 2020).
10 African Commission on Human and Peoples' Rights, Communication 245/02 (2006), *Zimbabwe Human Rights NGOs Forum v. Zimbabwe*, para. 196.

point is Article 6(5) of Additional Protocol II to the Geneva Conventions: "At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained." This is the provision the South African Constitutional Court relied on in affirming the legality of the amnesty clause under the Act establishing the South African Truth and Reconciliation Commission.[11]

This notwithstanding, various legal developments over the course of the past few decades have increasingly challenged the legality of amnesty under international law. It is now widely recognized that as a matter of principle states are expected to investigate and prosecute those responsible for serious international crimes and gross violations of human rights. Important sources of authority for such assertions are the specific obligations that a select number of human rights treaties impose on parties for investigation and prosecution. The 1949 Geneva Conventions enumerate acts described as "grave breaches" and impose a duty on its parties to prosecute perpetrators of such breaches, but these provisions apply only to international armed conflicts. The Genocide Convention imposes an affirmative duty on party states to criminalize genocide and to prosecute or extradite parties suspected of engaging in the perpetration of genocide. The Convention against Torture imposes obligations similar to the Genocide Conventions, although its definition of torture is confined to those committed by or with the consent of a public official.

As far as customary international law is concerned, the position on whether there is a complete ban on amnesties remains unsettled. There are international actors, including international tribunals, some states and human rights advocates, who hold that there is a customary norm of international law that bans amnesties. While there is general recognition that states are not completely free in terms of granting amnesty, it remains far from clear that international law, with the exception of specific treaty obligations, generally bans the use of amnesty in all its forms, including in relation to serious violations. This is particularly the case in contexts undergoing transition from war to peace. The Special Court for Sierra Leone noted that there is "no general obligation for States to refrain from amnesty laws on these *[jus cogens]* crimes."[12] States therefore do not "breach a customary international rule" in granting such amnesties.[13]

As far as customary international law is concerned, the position on whether there is a complete ban on amnesties remains unsettled

From a review of state practice, it emerges that the process of formation of a customary norm of international law banning the use of amnesties is incomplete. The Belfast Guidelines on Amnesty and Accountability, prepared by a group of international law scholars and practitioners, hold that "*opinio juris* from domestic and hybrid courts together with state practice on amnesties does not reflect an established, explicit and categorical customary prohibition of amnesties for international crimes."[14] The Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia, meanwhile, found that "state practice in relation to other serious international crimes is arguably insufficiently uniform to establish an absolute prohibition of amnesties in relation to them."[15] This finding was supported by the Trial Chamber's review of the adoption, scope and application of amnesties in conflict or post-conflict countries. The Trial Chamber found that the practice of 28 states over the past three decades encompassed the

11 *Azanian Peoples Organization v. President of the Republic of South Africa*, (4) SALR 671 (CC).
12 *Prosecutor v. Kallon and Kambara*, Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, Case Nos. SCSL-2004-15-AR72(E), SCSL-2004-16-AR72, para. 7.
13 Ibid.
14 Transitional Justice Institute, University of Ulster, *The Belfast Guidelines on Amnesty and Accountability*, 12.
15 *Nuon Chea et al.*, Decision on IENG Sary's Rule 89 Preliminary Objections, Case No. 002/19-09-2007-ECCC/TC, para. 54.

implementation of amnesty laws, of which 18 cover the crimes of genocide, crimes against humanity and grave breaches of the Geneva Conventions.

Various international law scholars point out that no conclusive evidence of an international custom prohibiting amnesty altogether has emerged.[16] Based on contextual considerations particular to transitional societies, Priscilla Hayner argues that "where many thousands of people may have committed serious war crimes, no one reasonably expects that all can be prosecuted."[17] Expounding on this point, she holds that, "ultimately, basic practical constraints have dictated that the obligations set out in human rights treaties have not been and often cannot be read strictly, in the context of a transition from war to peace and after widespread atrocities."[18]

After reviewing the work of regional human rights bodies and international courts on the subject, Charles P. Trumbull IV concludes that

> these international court decisions may suggest an emerging international norm that demands accountability. They do not, however, establish that all amnesties for serious human rights abuses are illegal under international law, or that states have an international obligation to prosecute violations of international law. Indeed, international courts have shown a willingness to allow states to decide how to hold perpetrators accountable, and how to provide appropriate redress for the victims.[19]

As observed in *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, states have obligations under international human rights law to ensure that victims of violations of human rights are afforded remedy. This obligation demands that states do not take actions that make it impossible for victims to have their violations remedied. It is interesting to note that what the African Commission found objectionable in Kwoyelo's case was not amnesty per se, but the fact that the particular law in question "foreclosed any available avenue for the alleged abuses to be *investigated*, and *prevented* victims of crimes and alleged human rights violations *from seeking effective remedy and compensation*."[20] The Commission further stated that the "granting of amnesty to absolve perpetrators of human rights violations from accountability violates the right of victims to an effective remedy."[21] It is also worth noting that in this particular case the African Commission did not engage with the question of the room available for limitations on these obligations in the context of a transition from war to peace.

There is not a general and absolute ban on amnesties as long as such amnesties do not absolve perpetrators from accountability altogether or inhibit victims from having access to remedy

There are three points that emerge from these legal opinions of the Commission. First, the obligation of states principally consists of holding perpetrators accountable, which may take forms other than criminal prosecution and punishment. This obligation bars states from relieving perpetrators of all forms of accountability. Second, the obligation of states also precludes them from blocking victims from getting *any form of remedy* for the violations they suffered. Third, the implication of these legal positions under the African Charter is that there is not, as such, a general and absolute ban on amnesties as long as such amnesties do not absolve perpetrators from accountability altogether or inhibit victims from having access to remedy.

16 John Dugard, "Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?" *Leiden Journal of International Law* 12(4) (1999): 1001–1015; Charles P. Trumbull IV, "Giving Amnesties a Second Chance," *Berkeley Journal of International Law* 25(2) (2017): 283–245.
17 Priscilla Hayner, *The Peacemaker's Paradox: Pursuing Justice in the Shadow of Conflict* (London: Routledge, 2018), 121.
18 Ibid., 122.
19 Trumbull, supra n 16 at 301.
20 ACHPR, Communication 431/12, para. 211 (emphasis added).
21 Ibid., para. 215.

The lack of customary international law banning the use of amnesties does not imply, however, that all forms of amnesty are acceptable and legal under international law. Most important, while there are differences over the complete ban of amnesties in their entirety under international law, there is little, if any, dispute that international custom bans blanket or unconditional amnesties. In South Africa, for example, amnesty from prosecution was provided for "acts, omissions, and offenses associated with political objectives and committed in the course of the conflicts of the past," but only after the accused had made a full disclosure to the Truth and Reconciliation Commission.[22] This is what is called conditional amnesty. It is conditional to the extent that the amnesty depends on full disclosure and hence some measure of accountability and acceptance of responsibility. It is not conditional insofar as the nature of the act is concerned.

Uganda's Amnesty Act, which has bearing on the Kwoyelo case, stipulates:

3.1. An Amnesty is declared in respect of any Ugandan who has at any time since the 26th day of January, 1986 engaged in or is engaging in war or armed rebellion against the government of the Republic of Uganda.

3.2. A person referred to under subsection (1) shall not be prosecuted or subjected to any form of punishment for the participation in the war or rebellion for any crime committed in the course of the war or armed rebellion.[23]

These provisions give general amnesty to rebels whereby no offences are excluded and all forms of insurgency are covered. There are no requirements on perpetrators other than renouncing armed rebellion. This is an example of unconditional amnesty.

It is clear from the foregoing that there has been a distinct narrowing in the overall permissibility of amnesties under international human rights law. However, state practice indicates a continued willingness to utilize amnesty provisions. Even the jurisprudence of regional and international courts tends to limit the application of amnesties without rejecting the acceptability of amnesties entirely.

Analysis of the Commission's Obiter Dictum

As noted earlier, the African Commission did not wish to end its consideration of the Communication with a determination of whether Kwoyelo was discriminated against in terms of the application of the Amnesty Act. Underscoring the necessity of clarifying the question of amnesty, the Commission opined that it "deems it fitting that it pronounces itself on this issue given the lack of clear guidance on ensuring compliance with the requirements of the African Charter when states resort to the use of amnesty as necessary means for pursuing the objectives of achieving peace and justice in times of transition from violence to peace."[24] It went on to explain that addressing the issue of amnesty via an obiter dictum was "necessitated by the position that the Commission took herein above in finding violation of Article 3 of the Charter in the application of amnesty, which, unless it is read carefully, may be wrongly interpreted as sanctioning blanket amnesty."[25]

It is clear from the foregoing that there has been a distinct narrowing in the overall permissibility of amnesties under international human rights law

In the obiter dictum, the Commission presented its position methodically. Unlike in previous cases the Commission addressed, in this case there is clear consideration of the context of transition from conflict to peace. The Commission started by noting the recent emergence of international norms laying down rules regulating the use of amnesties. It in particular noted "rules of international law aiming at giving force to human rights and IHL [international humanitarian

22 Constitution of the Republic of South Africa (1993), Chapter 16, National Unity and Reconciliation.
23 Uganda Amnesty Act (2000).
24 ACHPR, Communication 431/12, para. 284.
25 Ibid., para. 284.

law] principles prescribe the conditions that should be met when societies have to have recourse to amnesties as a necessary means of ending the continuation of armed violence and the violations that inevitably accompany such violence."[26] In so doing, the Commission signaled that what justifies amnesties is the necessity of ending armed conflict and hence fulfilling the right to peace under Article 23 of the African Charter. Importantly, the Commission noted that the use of amnesties can advance human rights in helping to end the violations that result from the continuation of conflict.

The next point the Commission addressed was what amnesties constitute and their legal implications. It observed that amnesties could be considered "legal measures that are used in transitional processes, often as part of peace settlements, to limit or preclude the application of criminal processes and, in some cases, civil actions against certain individuals or categories of individuals for violent actions committed in contravention of applicable human rights and IHL rules."[27] It also noted that amnesties could be adopted as unilateral acts of the state or as part of a peace settlement that is given a force of law.

The Commission further elaborated the important distinction that needs to be made between blanket amnesties and conditional amnesties

One issue that clearly weighed on the Commission's elaboration of its position on the compatibility of amnesties with the African Charter is its focus on the context of transition from peace to conflict. This specific attention to transition is indeed one of the factors that sets the Commission's treatment of amnesties in the obiter dictum apart from its earlier pronouncements. This is not surprising given the fact that many countries on the continent have been affected by violent conflicts and accompanying gross violations. The Commission thus noted that "typically, these are not normal or ordinary circumstances. Rather, they are characterized [by] lack of political and socio-economic stability, weak or dysfunctional institutions and diminished security."[28] The upshot of this recognition of the extraordinary nature of contexts of transition from conflict is that it demands the Commission to apply a standard different from what it applies in normal situations in its assessments of compatibility with the African Charter.

The Commission further elaborated the important distinction that needs to be made between blanket amnesties and conditional amnesties. After noting that blanket or unconditional amnesties relieve perpetrators of all responsibility without the need to meet any conditions, it held that on account of their effect of excluding any form of accountability and hence enabling impunity, "blanket amnesties are incompatible with human rights and IHL rules."[29] What is interesting is not simply the Commission's clear rejection of blanket amnesties but also its rather restricted conceptualization of conditional amnesties. Accordingly, the Commission held that "conditional amnesties are those that usually offer relief from criminal conviction or criminal prosecution altogether for defined category of actors and on meeting certain preconditions including full disclosure of what they know about the conducts covered by the amnesty and acknowledgement of responsibility."[30]

It is clear from the Commission's conception of conditional amnesties—and interesting to note—that its views focus on criminal prosecution or conviction, hence suggesting that conditional amnesties do not preclude accountability altogether. Indeed, other forms of accountability measures include investigation and being identified for responsibility, truth telling and hence accepting responsibility and facing certain limitations such as serving community service, being responsible for paying compensation or being excluded from serving in public office.

26 Ibid., para. 285.
27 Ibid., para. 286.
28 Ibid., para. 287.
29 Ibid., para. 288.
30 Ibid.

To back up its position vis-à-vis conditional amnesties, which the Commission considers not to be necessarily incompatible with the African Charter, the Commission referred to international human rights treaties, the jurisprudence of regional bodies and its own jurisprudence under Paragraphs 289–292. Although this was done in rather broad-brush fashion, the reference to the broader international jurisprudential discussion on the subject largely represents an accurate depiction of where international law stands. It is thus consistent with the discussion in the preceding section on amnesties and international human rights law.

After methodically building the foundation for its views, the Commission presented its conclusions on the question of when amnesties could or could not be compatible with the African Charter. It held that it is its considered view "that blanket or unconditional amnesties that prevent investigations (particularly of those acts amounting to most serious crimes referred to in Article 4(h) of the AU Constitutive Act) are not consistent with the provisions of the African Charter."[31] It went on to state that "African states in transition from conflict to peace should at all times and under any circumstances desist from taking policy, legal or executive/administrative measures that in fact or in effect grant blanket amnesties, as that would be a flagrant violation of international law."

The African Commission's obiter dictum recognised the frequent unavoidability and even necessity of the use of amnesties in contexts of transition from conflict to peace

In a novel formulation, the Commission identified the procedural and substantive requirements that should be met when societies in transition "resort to amnesties as necessary measures for ending violence and continuing violations and achieving peace and justice."[32] Procedurally, the Commission held that "amnesties should be formulated with the participation of affected communities including victim groups."[33] It has to be recalled that it is with the request and active participation of northern Ugandan communities affected by LRA violence that the Ugandan Amnesty Act was formulated and adopted. According to the Commission, the requirement is that "amnesties should not totally exclude the right of victims for remedy, particularly remedies taking the form of getting the truth and reparations. They should also facilitate a measure of reconciliation with perpetrators acknowledging responsibility and victims getting a hearing about and receiving acknowledgment for the violations they suffered."[34] It emerges from this that while the Commission considers that the use of conditional amnesties may not be incompatible with the African Charter, its endorsement of conditional amnesties is highly conditional and restrictive.

Conclusion

The great contribution of the African Commission's obiter dictum in this case is in its wise recognition of the frequent unavoidability and even necessity of the use of amnesties in contexts of transition from conflict to peace. In so doing, the Commission avoided a dogmatic and total rejection of the use of amnesties. The African Commission does not encourage amnesties—indeed, it frowns upon them. Yet, it does not either ban them. It considers that amnesty could be a necessary evil, the better of two evils, that can be used as a last resort and a necessary measure under defined conditions.

It thus emerges from the analysis of the obiter dictum that there are three considerations for determining the compatibility of amnesties in transitional contexts with human rights obligations:

- Whether the amnesty measures are necessary and proportionate to the objectives being pursued;
- Whether victims and others affected by the conflict have been given the opportunity to have a say in the formulation of the amnesty measures; and

31 Ibid., para. 293.
32 Ibid.
33 Ibid.
34 Ibid.

- Whether the amnesty measures preclude any measure of redress or remedy for victims and accountability for perpetrators.

The African Commission's recognition of the possible use of amnesties in transitional contexts is dictated not only by practical considerations but also, importantly, by the human rights considerations of the right to peace and ending the occurrence of violations. Most significantly, conditional amnesties as conceptualized by the Commission are endorsed without violating the requirements of accountability and the right of victims to remedy. The Commission seems to suggest that the limitations that may arise from the use of conditional amnesties on the requirement of ensuring accountability and the right of victims to remedy are necessary and legitimate within the framework of the African Charter and the particular conditions prevailing in transitions from conflict to peace. Its introduction of the procedural and substantive requirements that should be met for conditional amnesties to be compatible with the African Charter is a novel approach in international human rights law.

ABOUT THE CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION

The Centre for the Study of Violence and Reconciliation (CSVR) is a non-governmental organisation which envisions societies that are peaceful, equal and free from violence. CSVR aims to understand and prevent violence, heal its effects and build sustainable peace at the community, national and regional levels. We do this through collaboration with and learning from the lived and diverse experiences of communities affected by violence and conflict to inform innovative interventions, generate knowledge, shape public discourse, influence policy, hold states accountable and promote gender equality, social cohesion and active citizenship.

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