

United States Sends Military Forces to Central Africa to Aid in Combating the Lord's Resistance Army

In October 2011, the U.S. administration announced that a limited number of armed U.S. military personnel would be deployed to central Africa to assist national military forces in combating the Lord's Resistance Army (LRA) and its leader Joseph Kony.¹ The LRA originated as a Ugandan rebel force in the 1980s but has since become a violent cult-like group active in four countries. The group recruits soldiers by force and has committed thousands of murders, rapes, mutilations, and other crimes.² President Barack Obama wrote letters informing the U.S. Senate and House of Representatives of this action "consistent with" the War Powers Resolution.³ Obama's letters, set forth in part below, cite legislation enacted in 2010 as support for this action.

For more than two decades, the Lord's Resistance Army (LRA) has murdered, raped, and kidnapped tens of thousands of men, women, and children in central Africa. The LRA continues to commit atrocities across the Central African Republic, the Democratic Republic of the Congo, and South Sudan that have a disproportionate impact on regional security. Since 2008, the United States has supported regional military efforts to pursue the LRA and protect local communities. Even with some limited U.S. assistance, however, regional military efforts have thus far been unsuccessful in removing LRA leader Joseph Kony or his top commanders from the battlefield. In the Lord's Resistance Army Disarmament and Northern Uganda Recovery Act of 2009, Public Law 111-172, enacted May 24, 2010, the Congress also expressed support for increased, comprehensive U.S. efforts to help mitigate and eliminate the threat posed by the LRA to civilians and regional stability.

In furtherance of the Congress's stated policy, I have authorized a small number of combat equipped U.S. forces to deploy to central Africa to provide assistance to regional forces that are working toward the removal of Joseph Kony from the battlefield. I believe that deploying these U.S. Armed Forces furthers U.S. national security interests and foreign policy and will be a significant contribution toward counter LRA efforts in central Africa.

On October 12, the initial team of U.S. military personnel with appropriate combat equipment deployed to Uganda. During the next month, additional forces will deploy, including a second combat-equipped team and associated headquarters, communications, and logistics personnel. The total number of U.S. military personnel deploying for this mission is approximately 100. These forces will act as advisors to partner forces that have the goal of removing from the battlefield Joseph Kony and other senior leadership of the LRA. Our forces will provide information, advice, and assistance to select partner nation forces. Subject to the approval of each respective host nation, elements of these U.S. forces will deploy into Uganda, South Sudan, the Central African Republic, and the Democratic Republic of the Congo. The support provided by U.S. forces will enhance regional efforts against the LRA. However, although the U.S. forces are combat equipped, they will only be providing information, advice, and assistance to partner nation forces, and they will not

¹ Scott Wilson & Craig Whitlock, *U.S. Troops to Help Battle Uganda Militants*, WASH. POST, Oct. 15, 2011, at A8; Craig Whitlock & Greg Jaffe, *U.S. in Uganda, Focus on Hunt for Rebel Leader*, WASH. POST, Nov. 19, 2011, at A22. Kony has been indicted by the International Criminal Court.

² Thom Shanker & Rick Gladstone, *Armed U.S. Advisers to Help Fight African Renegade Group*, N.Y. TIMES, Oct. 15, 2011, at A9; Michael Gerson, *A Worthy Mission*, WASH. POST, Oct. 18, 2011, at A15.

³ 50 U.S.C. §§1541–1548.

themselves engage LRA forces unless necessary for self defense. All appropriate precautions have been taken to ensure the safety of U.S. military personnel during their deployment.

I have directed this deployment, which is in the national security and foreign policy interests of the United States, pursuant to my constitutional authority to conduct U.S. foreign relations and as Commander in Chief and Chief Executive. I am making this report as part of my efforts to keep the Congress fully informed, consistent with the War Powers Resolution (Public Law 93-148). I appreciate the support of the Congress in this action.⁴

BRIEF NOTES

Supreme Court Grants Certiorari in Alien Tort Statute and Torture Victim Protection Act Cases

In October 2011, the U.S. Supreme Court granted certiorari in two cases posing important questions about the potential liability of corporations and groups for human rights violations under the Alien Tort Statute (ATS)¹ and the Torture Victim Protection Act.² The Court will review the Second Circuit's controversial decision in *Kiobel v. Royal Dutch Petroleum* in which the Second Circuit held that there can be no corporate ATS liability.³ The Court will also hear *Mohamad v. Rajoub*, where the D.C. Circuit in March 2011 rejected in a claim alleging torture by officers of the Palestine Liberation Organization and the Palestinian Authority.⁴ The cases will be argued in tandem.⁵

In *Kiobel*, the questions presented are

1. Whether the issue of corporate civil tort liability under the Alien Tort Statute (ATS), 28 U.S.C. §1350, is a merits question, as it has been treated by all courts prior to the decision below, or an issue of subject matter jurisdiction, as the court of appeals held for the first time.
2. Whether corporations are immune from tort liability for violations of the law of nations such as torture, extrajudicial executions or genocide, as the court of appeals decisions provides, or if corporations may be sued in the same manner as any other private party defendant under the ATS for such egregious violations, as the Eleventh Circuit has explicitly held.⁶

In *Mohamad*, the question presented is whether the Torture Victim Protection Act "permits actions against defendants which are not natural persons."⁷

⁴ White House Press Release, Letter from the President to the Speaker of the House of Representatives and the President Pro Tempore of the Senate Regarding the Lord's Resistance Army (Oct. 14, 2011), at <http://www.whitehouse.gov/the-press-office/2011/10/14/letter-president-speaker-house-representatives-and-president-pro-tempore>.

¹ 28 U.S.C. §1350.

² 28 U.S.C. §1350, note 2(a).

³ *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2011); see John R. Crook, Contemporary Practice of the United States, 105 AJIL 122, 142 (2011); Chimène I. Keitner, *Kiobel v. Royal Dutch Petroleum: Another Round in the Fight over Corporate Liability Under the Alien Tort Statute*, ASIL INSIGHTS, Sept. 30, 2010.

⁴ *Mohamad v. Rajoub*, 634 F.3d 604, 608 (D.C. Cir. 2011) ("We reject the [plaintiffs'] argument because the structure of the TVPA confirms what the plain text of the statute shows: The Congress used the word 'individual' to denote only natural persons.").

⁵ Adam Liptak, *Two Human Rights Cases on Supreme Court Docket*, N.Y. TIMES, Oct. 18, 2011, at B1; Robert Barnes, *Supreme Court to Review Free-Speech Case*, WASH. POST, Oct. 18, 2011, at A2.

⁶ Available at <http://www.supremecourt.gov/qp/10-01491qp.pdf>.

⁷ Available at <http://www.supremecourt.gov/qp/11-00088qp.pdf>.