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**UNITED STATES DEPLOYMENT OF MILITARY ADVISERS TO APPREHEND
MEMBERS OF THE LORD'S RESISTANCE ARMY:
QUESTIONS & ANSWERS**

WHO ARE THE LORD'S RESISTANCE ARMY?

The Lord's Resistance Army ("LRA") originated as a rebel force in Uganda in the 1980s.¹ Once active, the LRA, led by Joseph Kony, became an almost universally feared armed group that operated primarily in northern Uganda.² Kony is "a self-proclaimed prophet known for ordering village massacres, recruiting prepubescent soldiers, keeping harems of child brides, and mutilating opponents."³ In the past ten years the group has extended its reach into the remote border regions between southern Sudan, the Democratic Republic of Congo ("DRC"), and since 2008 into the Central African Republic ("CAR").⁴ During its history, the LRA has allegedly perpetrated a number of crimes including "massacres, summary executions, torture, rape, pillage, and forced labor."⁵ Additionally, the LRA regularly abducts and uses children in a number of roles, including "forcible training and use of children in combat operations," forced labor, and sexual servitude.⁶ Typically, the LRA compels children to comply through violence, threats of violence, and "mind control."⁷

**WHY IS THE UNITED STATES SENDING 100 MILITARY ADVISORS TO ASSIST IN
APPREHENDING MEMBERS OF THE LORD'S RESISTANCE ARMY? WHAT IS
THE OPERATION'S PURPOSE AND DURATION?**

The United States ("U.S.") Secretary of State has placed the LRA on the Terrorist Exclusion list and Joseph Kony is "designated as a 'specially designated global terrorist' pursuant to Executive

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¹ Shanker, Thom, "Armed U.S. Advisers to Help Fight African Renegade Group," New York Times, October 14, 2011, found at <http://www.nytimes.com/2011/10/15/world/africa/barack-obama-sending-100-armed-advisers-to-africa-to-help-fight-lords-resistance-army.html>.

² *Id.*

³ Report of the Secretary-General on the Lord's Resistance Army-affected areas pursuant to Security Council press statement, S/2011/693, November 4, 2011, at 3; Shanker, *supra* note 1.

⁴ Report of the Secretary-General on the Lord's Resistance Army-affected areas pursuant to Security Council press statement, S/2011/693, November 4, 2011, at 3; Shanker, *supra* note 1.

⁵ Shanker, *supra* note 1.

⁶ *Id.*; Report of the Secretary-General on the Lord's Resistance Army, *supra* note 3, at 11-12.

⁷ Human Rights Watch, Report: "Trail of Death," March 28, 2010; Report of the Secretary-General on the Lord's Resistance Army, *supra* note 3, at 11-12.

Order 13224.”⁸ Additionally, the US has “supported regional operations led by the Ugandan military to capture or kill LRA leaders” since 2008.⁹ After several unsuccessful regional and multilateral attempts to disarm and neutralize the LRA, policy-makers in the international community, and in the U.S., as well as several domestic and international non-governmental organizations (“NGOs”), have called for an increased U.S. effort to disarm and eliminate the LRA.¹⁰

In May 2010, the U.S. Congress enacted the *Lord’s Resistance Army Disarmament and Northern Uganda Recovery Act of 2009*, (“LRA Act”). The LRA Act’s purpose is “to support stabilization and lasting peace in northern Uganda and areas affected by the Lord’s Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the LRA and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.”¹¹ Specifically, the LRA Act authorizes and mandates the President to develop a strategy to support “viable multilateral efforts to mitigate and eliminate the threat to civilians and regional stability posed by the [LRA].”¹²

In response to international concerns, and as part of its obligation under the LRA Act, the Administration decided to take further steps to disarm and apprehend LRA members. Specifically, President Barack Obama deployed 100 special operations forces as military advisors to Uganda in order to assist regional forces to disarm and neutralize the LRA and to apprehend fugitive LRA members.¹³ On October 25, 2011, while testifying before the House Foreign Affairs Committee, the U.S. State Department’s Principal Deputy Assistant Secretary of the Bureau of African Affairs, Don Yamamoto, explained the following regarding the Administration’s implementation of the LRA Act’s mandate:

For over two decades, the Lord’s Resistance Army has terrorized innocent people across central Africa. The LRA has filled its ranks by abducting tens of thousands of children and forcing them to become child soldiers and sex slaves. In 2005 and 2006, the LRA moved from Uganda into the remote border region of the CAR, the DRC, and what is now the Republic of South Sudan. In that region, the LRA has continued to commit atrocities. The United Nations (“UN”) estimates that over 385,000 people are currently displaced across the region as a result of LRA activity. According to the UN, there have been over 250 attacks attributed to the LRA in this year alone.

...

As reported to Congress in November 2010, [the U.S.’s] comprehensive strategy outlines four strategic objectives for ongoing U.S. support: (1) the increased

⁸ *Lord’s Resistance Army Disarmament and Northern Uganda Recovery Act of 2009*, 111th Cong., 2nd sess. Cong. S.1067. Washington, D.C.: U.S. G.P.O., 2010, Sec. 2(3).

⁹ Arieff, Alexis and Ploch, Lauren, “The Lord’s Resistance Army: The U.S. Response,” Congressional Research Service, R42094, November 21, 2011, summary; *see also* Report of the Secretary-General on the Lord’s Resistance Army, *supra* note 3, at 9.

¹⁰ Arieff & Ploch, *supra* note 9, at 1.

¹¹ *Lord’s Resistance Army Disarmament and Northern Uganda Recovery Act*, *supra* note 8, preamble.

¹² *Id.* at Sec. 4(a).

¹³ “U.S. sends special operation forces to Uganda,” Digital Journal, Oct. 15, 2011, at <http://digitaljournal.com/article/312830>.

protection of civilians, (2) the apprehension or removal of Joseph Kony and senior LRA commanders from the battlefield, (3) the promotion of defections from the LRA and support of disarmament, demobilization, and reintegration (“DDR”) of remaining LRA fighters, and (4) the provision of continued humanitarian relief to affected communities.¹⁴

According to another unnamed administration official, “[t]he 100 U.S. personnel whose deployment the president announced today are going to regional capitals and other areas to work with governments, their militaries, and the peacekeeping missions in order for these forces to counter the LRA threat and protect civilians”¹⁵ “This includes both military and non-military personnel, he added, stressing that these U.S. troops will be working to advise and assist regional efforts, not acting independently.”¹⁶

U.S. efforts also complement recent UN action, which has supported regional and international action against the LRA. On July 21, 2011, the UN Security Council condemned continued LRA attacks in the region and commended efforts by the CAR military and other regional militaries.¹⁷ The UN Security Council “also requested the UN Regional Office for Central Africa (‘UNOCA’) to engage with the AU [African Union] on issues related to countering the threat posed by the LRA.”¹⁸ On August 18, 2011, Abou Moussa, the Secretary-General’s Special Representative and head of UNOCA, briefed the Security Council on situations involving the LRA and presented the Secretary General’s report on the LRA on November 14, 2011.¹⁹ Following the UNOCA briefing, “the Council issued a presidential statement strongly condemning the LRA whilst commending the efforts undertaken by the CAR military in addressing this issue.”²⁰ Additionally, on September 29-30, 2011, the Defense Chiefs of the affected states met with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”) and the United States African Command (“AFRICOM”) in Kinshasa.²¹ At that meeting the parties recommended “close cooperation and coordination among the national security forces within a regional framework” and that the AU should assist in expediting this strategy.²² The Secretary-General is to submit a report on the status of the LRA and UNOCA by May 31, 2012.²³

¹⁴ Don Yamamoto, Principal Deputy Assistant Secretary, Bureau of African Affairs, US Department of State, Testimony Before the House Foreign Affairs Committee, Washington, DC, October 25, 2011, found at <http://www.state.gov/p/af/rls/rm/2011/176160.htm>.

¹⁵ Pellerin, Cheryl, “Obama Sends U.S. Forces to Help African Troops Confront Lord’s Resistance Army,” American Forces Press Service, found at U.S. Africa Command, <http://www.africom.mil/getArticle.asp?art=7334&lang=0>.

¹⁶ *Id.*

¹⁷ Security Council Report, Monthly Forecast, December 2011, found at www.securitycouncilreport.org, at 12, citing UN Security Council Press Release, July 21, 2011.

¹⁸ Security Council Report, Monthly Forecast, *supra* note 17, at 12.

¹⁹ *Id.* at 3, 12.

²⁰ *Id.* at 12.

²¹ Report of the Secretary-General on the Lord’s Resistance Army, *supra* note 3, at 24.

²² *Id.*

²³ Security Council Report, Monthly Forecast, *supra* note 17, at 3.

HAVE OTHER U.S. ADMINISTRATIONS MADE EFFORTS TO COMBAT THE LRA?

Yes. The Bush Administration, in December 2008, sent military personnel to assist the Ugandan military.²⁴ However, the mission was unsuccessful for several reasons, including various alleged miscommunications and failures by the Ugandan army, and that Kony may have been alerted to the attack prior to its launch and fled the area.²⁵ The attack, which has been described as a “disaster of epic proportions,” may have pushed the LRA to “spread even farther from Uganda and the [DRC], moving into the lawless frontiers of the [CAR] and back into Sudan.”²⁶

WHAT ARE THE EXPERIENCES OF LRA-ABDUCTED CHILDREN LIKE?

One 16-year-old girl testified to the cruelties she endured when a boy tried to escape:

One boy tried to escape, but he was caught. They made him eat a mouthful of red pepper, and five people were beating him. His hands were tied, and then they made us, the other new captives, kill him with a stick. I felt sick. I knew this boy from before. We were from the same village. I refused to kill him, and they told me they would shoot me. They pointed a gun at me, so I had to do it. The boy was asking me, “Why are you doing this?” I said I had no choice. After we killed him, they made us smear blood on our arms. I felt dizzy. They said we had to do this so we would not fear death, and so we would not try to escape.

-Susan, 16²⁷

In December 2009, the LRA abducted Eveline with three other children from her village.²⁸ She explained:

When we got to the chief's camp, I was given to be the wife of an LRA named Nyogo. I was his servant and wife. He was very mean and aggressive, especially on days when he had to kill people. When they brought people to the camp, they wouldn't free the adults because they were afraid they might show the camp to the soldiers. That's why they made us kill them. I can't remember how many people I killed in total - one day four people, another day three people. They tied the victims' hands behind their backs and also tied a cord around their legs and sometimes around their neck. They would force the person to lie on the ground, with their face to the ground. Then if the LRA wanted us to kill them, they would give us a piece of wood and tell us to hit them on the head.²⁹

- Eveline, a 12-year-old girl from Botolegi village (Bas Uele District, northern Congo):

A more recent 2010 report by Human Rights Watch documents several other testimonies of former LRA child soldiers. For example, an 11-year-old boy described his experiences:

After they captured me, they told me they wanted me to be a soldier. When I protested and told them that I was too young, they stabbed me under my eyes with

²⁴ Bavier, Joe, “Obama’s Other War,” Dec. 24, 2010, <http://pulitzercenter.org/articles/obamas-other-war-can-barack-obama-really-defeat-central-africas-worst-guerrilla-warlord>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ “The Scars of Death: Children Abducted by the Lord’s Resistance Army in Uganda,” Human Rights Watch Report, 1997.

²⁸ The names of victims have been changed.

²⁹ “Congo/Central African Republic: LRA Victims Appeal to Obama,” Human Rights Watch, Nov. 11, 2010.

a bayonet. Then they took me to their camp. While I was there, they gave military training to all the children. We were in teams, and each team had to come in at certain times for training, and to kill people. They treated their victims like animals and told us, ‘When you kill someone, it’s like killing an animal.’³⁰

IN WHAT TYPES OF CRIMES ARE THE LRA IMPLICATED?

Members of the LRA are implicated in numerous war crimes and crimes against humanity. In 2010, the U.S. Congress found that “[f]or over [two] decades, the Government of Uganda engaged in an armed conflict with the [LRA] in northern Uganda that led to the internal displacement of more than 2,000,000 Ugandans from their homes.”³¹ In addition, Congress found that “[t]he members of the [LRA] used brutal tactics in northern Uganda, including mutilating, abducting and forcing individuals into sexual servitude and forcing a large number of children and youth in Uganda, estimated by the Survey for War Affected Youth to be over 66,000, to fight as part of the rebel force.”³² As recently as 2006, each night over 40,000 children sought refuge from “LRA raids by commuting from their rural homes to urban centers, where they sleep on streets or in bus parks, church grounds, and local factories.”³³

However, it is the LRA’s treatment and use of children once abducted that is particularly grievous. “Aside from receiving military training, children are abused and often used as laborers, sex slaves, or human shields in combat. They are forced to take part in atrocities against their own communities or in the killings of other disobedient children, further isolating the survivors from society and binding them to the LRA.”³⁴

Overall, more than two million people “almost ninety percent of the population of Uganda’s three main Acholi provinces, have abandoned their homes in exchange for shelter in crowded camps for internally displaced persons. These ‘protected villages,’ which often lack food, clean water, sanitation, and medicine, are safeguarded by local militias or the Ugandan national army (the United People’s Defense Forces, or ‘UPDF’).”³⁵ However, there is little protection for civilians in these displacement camps and the LRA continues to murder, rape, and abduct civilians.³⁶ Still worse, while seeking protection and shelter in the displacement camps, undisciplined UPDF soldiers have reportedly mistreated civilians as well.³⁷

HAS THE ICC ISSUED WARRANTS AGAINST HIGH LEVEL LRA MEMBERS?

Yes, on October 13, 2005, the ICC Pre-Trial Chamber II unsealed arrest warrants against five senior leaders of the LRA: Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and

³⁰ Lee, Briana, “U.S. Support Against the LRA Spotlights Group’s Brutal History,” <http://www.pbs.org/wnet/need-to-know/uncategorized/u-s-support-against-the-lra-spotlights-groups-brutal-history/12070/>.

³¹ *Lord’s Resistance Army Disarmament and Northern Uganda Recovery Act*, *supra* note 8, Sec. 2(1).

³² *Id.* at Sec. 2(2).

³³ Moy, H. Abigail, *The International Criminal Court’s Arrest Warrants and Uganda’s Lord’s Resistance Army: Renewing the Debate Over Amnesty and Complementarity*, 19 HARVARD HUMAN RIGHTS J. 267, 268 (2006), available at, <http://www.law.harvard.edu/students/orgs/hrj/iss19/moy.shtml>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

Raska Lukwiya, for crimes against humanity and war crimes committed in Uganda since July 2002.³⁸ The ICC warrants cover the following crimes:

Joseph Kony:

- 12 counts of crimes against humanity for murder, enslavement, sexual enslavement, rape, and inhumane acts of inflicting serious bodily injury and suffering;
- 21 counts of war crimes for murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, pillage, rape, and forced enlisting of children.

Vincent Otti:

- 11 counts of crimes against humanity for murder, sexual enslavement, and inhumane acts of inflicting serious bodily injury and suffering;
- 21 counts of war crimes for rape, intentionally directing an attack against a civilian population, forced enlisting of children, cruel treatment of civilians, pillaging, and murder.

Okot Odhiambo:

- 2 counts of crimes against humanity for murder and enslavement;
- 8 counts of war crimes for murder, intentionally directing an attack against a civilian population, pillage, and forced enlisting of children.

Dominic Ongwen:

- 3 counts of crimes against humanity for murder, enslavement, and inhumane acts of inflicting serious bodily injury and suffering;
- 4 counts of war crimes for murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, and pillage.³⁹

These warrants have been outstanding for over six years. The ICC originally issued sealed warrants on July 8, 2005 and amended those warrants on September 27, 2005.⁴⁰ It then unsealed the warrants on October 13, 2005. On July 11, 2007, the ICC withdrew the arrest warrant against rebel commander Raska Lukwiya after he was killed in August 2006.⁴¹ Vincent Otti is also reportedly deceased; however, the ICC has not withdrawn the warrant against him.⁴² Kony, Odhiambo, and Ongwen remain at large.

³⁸ Warrant of Arrest Unsealed Against Five LRA Commanders, International Criminal Court, Press Release, ICC-CPI-20051014-110.

³⁹ *Id.*

⁴⁰ Report of the Secretary-General on the Lord's Resistance Army, *supra* note 3, at 4.

⁴¹ Pre-Trial Chamber II, No. ICC-02/04-01 /05-248 of 11 July 2007; Report of the Secretary-General on the Lord's Resistance Army, *supra* note 3, at 4.

⁴² Mwakugu, Noel "Obituary: LRA Deputy Vincent Otti," BBC News, Jan. 23, 2008, <http://news.bbc.co.uk/2/hi/africa/7083311.stm>; Report of the Secretary-General on the Lord's Resistance Army, *supra* note 3, at 4.

HAVE THE LRA CONTINUED TO COMMIT CRIMES AFTER THE ICC ISSUED ITS WARRANTS?

Yes. The LRA has continued to attack civilians and commit atrocities across the border regions of the CAR, the DRC, and Southern Sudan as early as 2005.⁴³ During 2008, LRA forces outside Uganda are “believed to have abducted hundreds of people, including children, and to have committed a number of other human rights abuses, including unlawful killings, in the [DRC], Southern Sudan and the [CAR].”⁴⁴ “The UN estimates that over 385,000 people are currently displaced across the region as a result of LRA activity.”⁴⁵ And, as noted above, “according to the UN, there have been over 250 attacks attributed to the LRA in [2011] alone.”⁴⁶

From May 16–27, 2011, a UN interdepartmental evaluation mission visited the CAR, the DRC, Southern Sudan and Uganda to evaluate the current situation regarding the LRA.⁴⁷ The Mission determined that the LRA has splintered into several smaller, autonomous, yet “highly mobile” groups that continue to attack civilians with impunity.⁴⁸ While not posing a serious threat to individual states’ national security, these groups are a serious threat transnationally in the Central African region and continue to wreak havoc and incur high humanitarian costs that could potentially lead to destabilization, particularly considering the limited military capacities of the affected states.⁴⁹ The Mission also noted “a proliferation of ‘copycat’ attacks by unknown armed groups or criminals,” and a “discrepancy in the assessment by the LRA-affected countries of the threat posed by this armed group, which suggests a lack of coordination among those countries.”⁵⁰

WOULD THE U.S. NEED TO TAKE CUSTODY OF, OR TRANSFER, ANY LRA MEMBERS AGAINST WHOM ICC WARRANTS HAVE BEEN ISSUED TO THE HAGUE?

No. U.S. military advisors are working in conjunction with regional armed forces from the DRC, the CAR, and Uganda, which are all States Parties to the Rome Statute. U.S. military advisors are not directed to engage with the LRA directly and are deployed only to provide support and training to the States Parties’ armed forces that are participating in the effort.⁵¹ However, in the event that U.S. military advisors do take custody of LRA members against whom ICC warrants have been issued, they could turn those LRA members over to a

⁴³ Yamamoto, *supra* note 14.

⁴⁴ Uganda: Amnesty International Annual Report 2009, found at <http://www.amnesty.org/en/region/uganda/report-2009>.

⁴⁵ Yamamoto, *supra* note 14.

⁴⁶ Yamamoto, *supra* note 14.

⁴⁷ Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, S/2011/616, October 24, 2011, at 22.

⁴⁸ *Id.* at 22; Report of the Secretary-General on the Lord’s Resistance Army, *supra* note 3, at 7.

⁴⁹ Report of the Secretary-General on the United Nations Organization Stabilization Mission, *supra* note 47, at 22; Report of the Secretary-General on the Lord’s Resistance Army, *supra* note 3, at 9, 60.

⁵⁰ Report of the Secretary-General on the United Nations Organization Stabilization Mission, *supra* note 47, at 22; Report of the Secretary-General on the Lord’s Resistance Army, *supra* note 3, at 13.

⁵¹ 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, October 14, 2011, found at All Africa, <http://allafrica.com/stories/201110150150.html>.

participating State Party's military, who in turn would be obligated to transfer custody to the ICC.⁵²

COULD UGANDA DOMESTICALLY PROSECUTE LRA MEMBERS AGAINST WHOM THERE ARE NO ICC WARRANTS FOR WAR CRIMES AND/OR CRIMES AGAINST HUMANITY?

Yes, in theory. Uganda set up the International Crimes Division of the High Court of Uganda in 2009 as part of an effort "to implement the 2008 Juba peace agreements between the Ugandan government and the LRA."⁵³ The International Crimes Division has jurisdiction over "genocide, crimes against humanity, war crimes, terrorism, human trafficking, piracy and any other international crime defined in Uganda's Penal Code Act, the 1964 Geneva Conventions Act, the 2010 International Criminal Court Act ('ICCA'), or any other [Ugandan] criminal law."⁵⁴ The ICCA defines war crimes and crimes against humanity and codifies them into Uganda's domestic law, allowing Uganda to prosecute such crimes outside of their ordinary criminal code.⁵⁵ However, there is a question as to whether the ICCA would apply retroactively to crimes committed before its enactment in 2010 because ICCA lacks a specific provision to that effect.⁵⁶ Uganda's Directorate of Public Prosecutions ("DPP") suggested there would not be retroactive application, which would "severely restrict" prosecuting crimes "committed during most of the conflict in northern Uganda."⁵⁷

Another possible obstacle to domestic prosecution is the Ugandan Amnesty Act ("the UAA"). The UAA, passed in 2000, "effectively guarantees that any individual who either escaped or was captured and subsequently renounced rebellion can be granted reprieve from any prosecution."⁵⁸ In 2011, Uganda attempted to try its first former LRA member for crimes committed during the insurgency.⁵⁹ Former senior LRA commander Col. Thomas Kwoyelo, against whom there was no ICC warrant, was brought before Uganda's International Crimes Division.⁶⁰ However, Col. Kwoyelo's attorneys claimed that he had renounced the LRA and thus should be given a reprieve from prosecution as other former LRA members have been granted.⁶¹ Citing the UAA, his attorneys raised preliminary objections before trial arguing that Col. Kwoyelo had both applied for amnesty and renounced the LRA, as required by the UAA.⁶²

⁵² Rome Statute of the International Criminal Court ("Rome Statute"), available at <http://untreaty.un.org/cod/icc/statute/romefra.htm>, art. 59.

⁵³ "Update on the trial of Thomas Kwoyelo, former LRA combatant," Human Rights Watch, July 12, 2011, found at <http://www.hrw.org/news/2011/07/12/update-trial-thomas-kwoyelo-former-lra-combatant>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Kersten, Mark, "Conflicting Impulses: The Debate on Amnesties in the Case of Uganda's Thomas Kwoyelo and Beyond," *Opinio Juris*, September 27, 2011, at <http://opiniojuris.org/2011/09/27/conflicting-impulses-the-debate-on-amnesties-in-the-case-of-ugandas-thomas-kwoyelo-and-beyond/>.

⁵⁹ "Update on the trial of Thomas Kwoyelo, former LRA combatant," *supra* note 53.

⁶⁰ *Id.*

⁶¹ *Id.*; Report of the Secretary-General on the Lord's Resistance Army, *supra* note 3, at 27.

⁶² Kersten, Mark, *supra* note 58. See also Mallinder, Louise, "Uganda at a Crossroads: Narrowing the Amnesty?," Working Paper No. 1, from *Beyond Legalism: Amnesties, Transition, and Conflict Transformation*, Institute of Criminology and Criminal Justice, Queen's University, Belfast (2009) at 24 (under a 2006 amendment of the UAA, the Minister of Internal Affairs has the authority to declare individuals ineligible for amnesty under the UAA; however, the Minister has not declared any individuals ineligible).

Pursuant to Col. Kwoyelo's preliminary objections, the matter was referred to Uganda's Constitutional Court and the court upheld application of the UAA to Col. Thomas Kwoyelo.⁶³ The court ruled that the DPP's refusal to grant amnesty to Kwoyelo violated his right to equal treatment before the law.⁶⁴ Moreover, the Constitutional Court saw no conflict in granting amnesty under the UAA and Uganda's international obligations to the ICC. Specifically, the court noted that neither it nor the DPP had found "any uniform international standards or practices which prohibit[ed] states from granting amnesty" to persons pursuant to properly enacted legislation.⁶⁵ It ordered the case returned to the Ugandan High Court's International Crimes Division and dismissed.⁶⁶

There is, however, ample authority that at least certain war crimes should not be amnestied, particularly if there exists a state obligation to prosecute them.⁶⁷ While there is debate as to whether there is an international law prohibition against amnesties, with some scholars arguing that an express, customary, prohibition has not yet crystallized, the law is certainly moving in that direction.⁶⁸ Additionally, the UN Secretary-General has urged Uganda to amend the UAA to bring it in line with international standards.⁶⁹ Even if Uganda does recognize such amnesties, it is possible that the ICC could issue warrants against additional individuals purportedly covered by the amnesty, where the individuals' crimes rise to sufficient levels of gravity. A state's domestic law does not bind the ICC and only the ICC may decide whether a case is admissible

⁶³ Ugandan LRA Rebel Thomas Kwoyelo Granted Amnesty, BBC, September 22, 2011 found at <http://www.bbc.co.uk/news/world-africa-15019883>; Report of the Secretary-General on the Lord's Resistance Army, *supra* note 3, at 26.

⁶⁴ Uganda Law Society Newsletter, Issue 6, September 2011; Report of the Secretary-General on the Lord's Resistance Army, *supra* note 3, at 26.

⁶⁵ *Thomas Kwoyelo alias Latoni V Uganda* (Const. Pet.No. 036 Of 2011(reference)), [2011] UGCC 10 (22 September 2011), The Republic of Uganda, In the Constitutional Court of Uganda, Holden at Kampala, found at <http://www.ulii.org/ug/cases/UGCC/2011/10.html>.

⁶⁶ *Id.*

⁶⁷ Legal scholars have divergent opinions on whether states may grant amnesty domestically to alleged perpetrators of war crimes, and certainly question the wisdom of doing so. *See, e.g.,* Kersten, *supra* note 58 (discussing the contested nature of granting amnesty for certain international crimes); *see also* U.N. Secretary General, Guidance Note of the Secretary General: United Nations Approach to the Transitional Justice, 10 (March 2010), available at www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf (stating that the UN will not endorse peace agreements with provisions that provide amnesties for genocide, war crimes, crimes against humanity, and gross violations of human rights and further suggesting that the UN should insist that all future peace agreements do not contain amnesty provisions); Coalition for the International Criminal Court, Uganda: Latest Statements, News, and Reports, October 10, 2011, found at <http://www.iccnw.org/?mod=newsdetail&news=4828> (compiling members' reports on the Kwoyelo trial and Constitutional court ruling); "Uganda: Court's decision a setback for accountability for crimes committed in northern Uganda conflict," Amnesty International, Public Statement, AI Index: AFR 59/015/2011, September 23, 2011, found at <http://www.amnesty.org/en/library/asset/AFR59/015/2011/en/93159d77-dbec-4950-a239-8dcfcd19c98a/afr590152011en.html> (arguing that the "Ugandan government should revoke any amnesty applicable to crimes under international law and not impose amnesties, immunities, statutes of limitations and pardons for crimes under international law").

⁶⁸ Kate Allan, *Prosecution and Peace: A Role for Amnesty Before the ICC?*, 39 DENV. J. INT'L L. & POL'Y 239, (Spring 2011) (citing John Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?*, 12 LEIDEN J. INT'L L. 1001, 1003 (1999) and Leila Nadya Sadat, *Exile, Amnesty and International Law*, 81 NOTRE DAME L. REV. 955, 1018 (2006).

⁶⁹ Report of the Secretary-General on the Lord's Resistance Army, *supra* note 3, at 69.

before it.⁷⁰ Thus, the ICC could issue additional warrants, and the cases would remain admissible before the ICC, if the ICC were to find, pursuant to the Rome Statute article 17, that Uganda was either unwilling or unable to prosecute them.⁷¹

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⁷⁰ Holmes Pitner, Barrett, "Uganda: Future of War Crimes Trials in Question: Granting of amnesty for alleged rebel commander may jeopardise other cases," ACR Issue 304, October 11, 2011, found at <http://iwpr.net/report-news/uganda-future-war-crimes-trials-question>.

⁷¹ Rome Statute, art. 17; Holmes Pitner, Barrett, "Uganda: Future of War Crimes Trials in Question, *supra* note 70.