

# International Human Rights

EDITED BY: CLEVELAND FERGUSON, III,\* CHRISTINA HOLDER,\*\* AND  
LENORE F. HORTON\*\*\*

AUTHORED BY: LAWRENCE G. ALBRECHT, CHRISTINA HOLDER, BENJAMIN G.  
JOSELOFF, GLENN KATON, MARGARET LAWRYNOWICZ, DIANE POST, AND  
HANSDEEP SINGH

## I. United Nations Summit on the Millennium Development Goals

From September 20-22, 2010, world leaders convened at the United Nations in New York for a High-Level Plenary Meeting (“the 2010 MDG Summit”) to review progress and adopt an accelerated plan of action to achieve the Millennium Development Goals (“MDG”)s by 2015.<sup>1</sup> The MDGs are rooted in the Millennium Declaration adopted by 189 U.N. Member States in 2000.<sup>2</sup> In February 2010, in preparation for the 2010 MDG Summit, the U.N. Secretary-General, Ban Ki-Moon, issued *Keeping the Promise: A Forward-Looking Review to Promote an Agreed Action Agenda*,<sup>3</sup> a report summarizing MDG progress and proposing an agenda to achieve the goals in the next five years.<sup>4</sup> The report affirmed the role of human rights in achieving the MDGs, stating that “international human rights instruments must continue to provide the foundation for engagement, in

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\* Committee Editor and Vice Chair, ABA Section of International Law International Human Rights Committee, Professor of Law, Florida Coastal School of Law, Jacksonville, Florida.

\*\* Associate at Cadwalader, Wickersham & Taft LLP, assisted in editing.

\*\*\* Inaugural Fellow—L.L.M. Teaching Fellowship Program, Fordham University School of Law, also assisted in editing.

1. *Keeping the Promise: United to Achieve the Millennium Development Goals*, G.A. Res. 65/1, ¶¶ 1, 8, U.N. Doc. A/RES/65/1 (Sept. 22, 2010), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/512/60/PDF/N1051260.pdf?OpenElement>.

2. See U.N. Millennium Declaration, G.A. Res. 55/2, U.N. Doc. A/RES/55/2 (Sept. 8, 2000), available at <http://www.un.org/millennium/declaration/ares552e.pdf>.

3. See U.N. Secretary-General, *Keeping the Promise: A Forward-Looking Review to Promote an Agreed Action Agenda to Achieve the Millennium Development Goals by 2015: Rep. of the Secretary-General*, U.N. Doc. A/64/665 (Feb. 12, 2010) [hereinafter *Keeping the Promise: A Forward-Looking Review to Promote an Agreed Action Agenda*].

4. *Id.* ¶¶ 2-4, 7.

particular the key human rights principles of non-discrimination, meaningful participation and accountability.”<sup>5</sup>

According to the U.N. report, improving maternal health is the MDG for which the least progress has been made.<sup>6</sup> Inadequate progress has also been made in reducing the number of people living in extreme poverty in sub-Saharan Africa and Western Asia;<sup>7</sup> decreasing the proportion of the global population that is hungry and malnourished;<sup>8</sup> achieving universal primary school enrollment in sub-Saharan Africa and Southern Asia;<sup>9</sup> curbing gender disparities in secondary school enrollment;<sup>10</sup> reducing the rate of HIV infection;<sup>11</sup> and scaling up official development assistance to impoverished countries.<sup>12</sup>

The 2010 MDG Summit adopted the outcome document, *Keeping the Promise: United to Achieve the Millennium Development Goals*, which reaffirmed world leaders’ commitment to “making every effort to achieve the Millennium Development Goals by 2015”.<sup>13</sup> Previously, in June 2010, representatives of 335 civil society organizations (“CSO”s) convened in New York for informal hearings based on the Secretary-General’s February report.<sup>14</sup> The consultations yielded an outcome document summarizing general principles and specific proposals to accelerate MDG progress.<sup>15</sup> The outcome document urged world leaders to strengthen participatory MDG accountability frameworks “rooted in national and

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5. *Id.* ¶ 99. Other official inputs into the 2010 MDG Summit included *The Millennium Development Goals Report 2010* (the U.N.’s annual assessment of global progress toward the eight MDGs measured through twenty-one targets and sixty indicators) and *What Will It Take to Achieve the Millennium Development Goals?—An International Assessment* (a report prepared by the U.N. Development Program (UNDP) based on fifty country studies). See U.N. DEP’T OF INT’L & SOC. AFFAIRS, MILLENNIUM DEVELOPMENT GOALS REPORT 2010, at 74, U.N. Sales No. E.10.I.7 (2010), available at <http://www.un.org/millenniumgoals/pdf/MDG%20Report%202010%20En%20r15%20-low%20res%2020100615%20-.pdf>; U.N. DEVELOPMENT PROGRAMME, WHAT WILL IT TAKE TO ACHIEVE THE MILLENNIUM DEVELOPMENT GOALS?—AN INTERNATIONAL ASSESSMENT, at iv (2010), available at [http://content.undp.org/go/cms-service/stream/asset?asset\\_id=2620072](http://content.undp.org/go/cms-service/stream/asset?asset_id=2620072). Individual countries have also participated in MDG tracking by preparing national MDG progress reports. National and regional MDG reports are available on the UNDP website at *MDG Reports*, U.N. DEV. PROGRAMME, <http://www.undp.org/mdg/reports.shtml> (last visited Nov. 1, 2010). But, particularly in sub-Saharan Africa, the lack of quality data and delayed reporting have made measuring progress difficult. See, e.g., U.N. DEP’T OF INT’L & SOC. AFFAIRS, MILLENNIUM DEVELOPMENT GOALS REPORT 2010, *supra* note 5, at 7; *Keeping the Promise: A Forward-Looking Review to Promote an Agreed Action Agenda*, *supra* note 3, ¶ 58.

6. See *Keeping the Promise: A Forward-Looking Review to Promote an Agreed Action Agenda*, *supra* note 3, ¶¶ 30-32.

7. *Id.* ¶ 11. As of 2005, 1.4 billion people were living in extreme poverty, down from 1.8 billion in 1990.

8. *Id.* ¶ 12. The proportion of hungry people has been rising since 2004-2006. Over a billion people live in hunger, and more than two billion people are malnourished.

9. *Id.* ¶ 15. The UNDP estimates primary school enrollment in sub-Saharan Africa and Southern Asia to be seventy-one percent and ninety percent, respectively, translating into forty-six million children who are not enrolled in primary school in these regions. See *Millennium Development Goals: How Can We Track MDG Progress?*, U.N. DEV. PROGRAMME, <http://www.undp.org/mdg/progress.shtml> (last visited Jan. 27, 2011) [hereinafter *How Can We Track MDG Progress?*].

10. *Keeping the Promise: A Forward-Looking Review to Promote an Agreed Action Agenda*, *supra* note 3, ¶ 20.

11. *Id.* ¶¶ 25-26.

12. *Id.* ¶¶ 82-85; *How Can We Track MDG Progress?*, *supra* note 9.

13. *Keeping the Promise: United to Achieve the Millennium Development Goals*, *supra* note 1, ¶ 8.

14. See *Informal Interactive Hearings of the General Assembly With Representatives of Non-Governmental Organizations, Civil Society Organizations and the Private Sector: Advance Unedited Summary*, U.N., ¶¶ 1-3 (July 12, 2010), <http://www.un.org/ga/president/64/issues/mdg/summaryih120710.pdf>.

15. *Id.* ¶ 4.

international human rights mechanisms,” to monitor progress through disaggregated data capable of measuring the differential impact of development interventions on socially-excluded and marginalized groups,<sup>16</sup> and to perform a “gender and social exclusion based audit of the MDGs in full cooperation with civil society.”<sup>17</sup> Many CSOs have attributed the inability of the MDG framework to reduce poverty to its failure to integrate a human rights-based approach to development.<sup>18</sup> Some advocates have called for the creation of a new “Millennium Development Rights” framework that integrates development goals with human rights legal standards and accountability mechanisms, beginning in 2015.<sup>19</sup>

## II. Significant International Legal Developments Regarding Women’s Rights and Family Life\*

### A. BEST INTEREST OF THE CHILD AND FAMILY LIFE

The European Court of Human Rights (“ECtHR”) held that the protections in Article 8 of the European Convention on Human Rights (“ECHR”) regarding respect for family life could be harmonized with Article 13 of the Hague Convention on the Civil Aspects of International Child Abduction (“Hague Abduction Convention”) regarding the risks of returning an abducted child.<sup>20</sup>

In a Hague Abduction Convention case from South Africa,<sup>21</sup> a high court sitting in Johannesburg ordered the return of a child to his habitual residence of Ireland, and in doing so denied a father’s request for a report from a family advocate to support his contention that the child had adjusted well to his new home in South Africa.

In a merits report, the Inter-American Commission on Human Rights (“IACHR”) invoked the protection of the family to find the United States in violation of several international law provisions.<sup>22</sup>

In a case originating from the Ukraine, the ECtHR held that the annulment of an adoption, even where the adoptive parent is later named the child’s guardian, violates

16. *Id.* ¶ 11.

17. *Id.*

18. See, e.g., *From Promises to Delivery: Putting Human Rights at the Heart of the Millennium Development Goals*, AMNESTY INT’L, 15 (2010), <http://www.amnesty.org/en/library/info/IOR41/012/2010/en>; *The MDGs a Decade On: Keeping the Promise, Fulfilling Rights*, CTR. FOR ECON. & SOCIAL RIGHTS, Sept. 20, 2010, <http://www.cesr.org/article.php?id=918>.

19. See Ellen Dorsey, Mayra Gomez, Bret Thiele & Paul Nelson, *Falling Short of Our Goals: Transforming the Millennium Development Goals into Millennium Development Rights*, U. PITT, 1, <http://www.powher.pitt.edu/content.asp?id=1927> (last visited Apr. 1, 2011).

\* Prepared by Dianne Post. Ms. Post has represented clients on family law and women’s rights issues since 1976 and has primarily worked abroad since 1998.

20. See *Neulinger & Shuruk v. Switzerland*, App. No. 41615/07, Eur. Ct. H.R., Grand Chamber (July 6, 2010), available at <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (Type “Neulinger” into the “Case Title” box, then follow “Search” hyperlink, then follow the hyperlink on the first search result.).

21. See *Central Authority for the Republic of South Africa v. Iguwa*, 2010, No. 10/15111 (S. Afr.).

22. See *Smith v. United States*, Case 12.562, Inter-Am. C.H.R., Report No. 81/10, OEA/Ser.L./V/II.139, doc. 21, ¶ 13 (2010), available at <http://www.cidh.org/annualrep/2010eng/uspul2562en.doc>.

Article 8 of the ECHR.<sup>23</sup> In a case originating from Sweden, the ECtHR held that it was not a violation of Article 8 for domestic authorities to remove children from the home of their parents and temporarily prevent physical contact where one parent had sexually and physically abused them.<sup>24</sup>

#### B. VIOLENCE AGAINST WOMEN

In the Philippines,<sup>25</sup> the Executive Director of the Chamber of Commerce and Industry used the individual complaint process under the Optional Protocol to Committee on the Elimination of Discrimination against Women (“CEDAW”)<sup>26</sup> after it took more than eight years to prosecute through trial her alleged rapist, a former president of the Chamber. He was acquitted and the judge made negative statements about women and rape in general, including her belief that rape is easy to charge and hard to disprove.

In a trafficking case,<sup>27</sup> a father successfully brought an action before the ECtHR against Cyprus for lack of due diligence in protecting his daughter, lack of proper investigation, and lack of access to court in Cyprus. In a U.S. case involving trafficking,<sup>28</sup> a federal court found that a diplomat did not have immunity for his actions toward his private servants because employment of private servants is not an official act, irrespective of how it is treated in the Vienna Convention on Diplomatic Relations.

#### C. HEALTH CARE ISSUES

The Indian Supreme Court found that a woman’s right to life specifically includes rights to reproductive health.<sup>29</sup>

#### D. RIGHT TO MARRY UNDER THE ECHR

In a case originating from Austria, the ECtHR found that partnership acts providing gay couples with rights similar to heterosexual couples did not violate Article 12.<sup>30</sup> In a case originating from Poland, the ECtHR held that Article 12 barred states from prohibiting marriages designed to shield an abusive spouse from prosecution.<sup>31</sup>

23. See *Kurochkin v. Ukraine*, App. No. 42276/08, Eur. Ct. H.R. (May 20, 2010), available at <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (Type “Kurochkin” into the “Case Title” box, then follow “Search” hyperlink, then follow the hyperlink on the first search result).

24. See *Dolhamre v. Sweden*, App. No. 67/04, Eur. Ct. H.R. (June 8, 2010), available at <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (Type “Dolhamre” into the “Case Title” box, then follow “Search” hyperlink, then follow the hyperlink on the first search result).

25. See *Vertido v. The Philippines*, Comm’n No. 18/2008 (U.N. Comm. on the Elimination of Discrimination Against Women 2010).

26. For the current status of the Optional Protocol to CEDAW, see Cleveland Ferguson, ed., *International Human Rights*, 44 INT’L LAW 473, 475-76 (2010).

27. See *Rantsev v. Cyprus & Russia*, App. No. 25965/04, Eur. Ct. H.R. (Jan. 7, 2010).

28. See *Swarna v. Al-Awadi*, 622 F.3d 123 (2d Cir. 2010).

29. See *Mandal v. Deen Dayal Harinagar Hosp. & Ors.*, (2010) W.P.(C) 8853/2008 (Delhi) (India).

30. See *Schalk & Kopf v. Austria*, App. No. 30141/04, Eur. Ct. H.R. (June 24, 2010), request to Grand Chamber pending.

31. See *Frasik v. Poland*, App. No. 22933/02, Eur. Ct. H.R. (Jan. 5, 2010).

### III. European Union: Impact of Airport Security Regulations on Sikhs\*

On April 29, 2010, Commission Regulation (EU) No. 185/2010 (“EU Regulation”) concerning airport screening procedures came into force and immediately became “binding in its entirety and directly applicable in all Member States.”<sup>32</sup> These procedures could be construed as requiring physical pat-downs of turbans or their removal altogether. Upon implementation of this regulation, Sikhs<sup>33</sup> in many EU Member States objected to the screening procedures as humiliating and undignified because of the way screening operators treated their article of faith (the turban). The treatment of the Sikh turban at some European airports<sup>34</sup> has raised objections on whether the EU Regulation unfairly restricts the freedom of movement of many Sikhs who fly into, out of, and within EU Member States.<sup>35</sup> The main provisions of the regulation are Articles 4.1.1.2.–4.1.1.5. These EU Procedures, specifically 4.1.1.2, depart from previous rules that made metal detection the primary form of screening.<sup>36</sup>

Under the new EU Regulations, hand pat-downs are part of the primary screening process; previously, pat-downs were used as a secondary screening method for individuals who triggered an alarm. After the EU Regulation came into force, the United Kingdom reverted to its pre-existing screening policies under EU Regulation Provision 4.1.1.7, which states that “[t]he appropriate authority may create categories of passengers that, for objective reasons, shall be subject to special screening procedures or may be exempted from screening.”<sup>37</sup> After substantial advocacy by Sikh civil rights organizations, Secretary of State, Rt. Hon Philip Hammond, directed all UK airports to revert to screening procedures in place before April 29, 2010,<sup>38</sup> until a long term solution could be reached with the Sikh community.<sup>39</sup>

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\* Prepared by Hansdeep Singh, Senior Staff Attorney, United Sikhs.

32. Commission Regulation 185/2010, Laying Down Detailed Measures for the Implementation of the Common Basic Standards on Aviation Security, 2010 O.J. (L 55) 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:055:0001:0055:EN:PDF>.

33. Sikhism is a revealed, monotheistic, and egalitarian faith that originated over 500 years ago in Northern India and parts of current-day Pakistan. Sikhs are often known by their distinctive articles of faith, the most observable is the *dastaar* (turban).

34. Dil Nejiyyar, *Sikh Concerns Delay Hand Search Plans at UK Airports*, BBC, June 30, 2010, [http://news.bbc.co.uk/2/hi/uk\\_news/8776146.stm](http://news.bbc.co.uk/2/hi/uk_news/8776146.stm) (Sikh refused to fly from Barcelona because screeners asked for the removal of his turban; incidents have also been reported in France and Italy.).

35. See *id.* (Vinder Singh, a British National, fell victim to the new Regulations while traveling through Spain. Singh was forced to find alternative travel arrangements after he refused to remove his turban for inspection despite allowing a hand search, even when metal detectors were not alarmed); *Letter to Prime Minister Manmohan Singh regarding Polish Airports' Turban Incidents*, UNITED SIKHS, Sept. 6, 2010, <http://www.unitedsikhs.org/PressReleases/Final%20letter%20to%20Indian%20PM%20from%20UNITED%20SIKHS%20and%20Central%20Gurdwara%20London.pdf>.

36. See Commission Regulation 185/2010, at 4.1.1.2-4.1.1.5.

37. *Id.* at 4.1.1.7.

38. See *U-Turn on 'Humiliating' Turban Airport Security Searches for Sikhs*, DAILY MAIL (U.K.), July 1, 2010, <http://www.dailymail.co.uk/news/article-1291119/U-turn-humiliating-turban-airport-security-searches-sikhs.html#ixzz0xdmTJhfV>.

39. See *Sikhs Move Closer to Agreement on Airport Security Procedures That Will Fully Respect the Sikh Turban*, SIKH FED'N (U.K.), July 1, 2010, [http://www.sikhfederation.com/index.php?option=com\\_content&view=article&id=164:sikhs-move-closer-to-agreement-on-airport-security-procedures-that-will-fully-respect-the-sikh-turban&catid=35:news](http://www.sikhfederation.com/index.php?option=com_content&view=article&id=164:sikhs-move-closer-to-agreement-on-airport-security-procedures-that-will-fully-respect-the-sikh-turban&catid=35:news).

It remains to be seen whether the EU Regulation causes discriminatory or disparate treatment of religious minorities with religious head coverings, specifically Sikhs, in a manner that violates the International Covenant on Civil and Political Rights (“ICCPR”) or the Charter of Fundamental Rights for the European Union (“EU Charter”) by creating impermissible barriers to the free movement of persons.

#### A. PROPOSED ALTERNATE SCREENING MECHANISMS

On June 15 2010, the final *Communication from the Commission to the European Parliament and the Council on the Use of Security Scanners at EU Airports* (“Report”) was released.<sup>40</sup> The Report addressed several issues that hindered the uniform implementation of the scanners. One option is the Automatic Threat Recognition (“ATR”), which can assist the screener in identifying hazardous materials and objects.<sup>41</sup>

Similar to the EU, the United States is seeking to harmonize its screening technology by rolling out Advanced Imaging Technology (“AIT”), comparable to body scanners being used at European airports. AIT met with harsh criticism from civil rights advocates and general societal concern over privacy.<sup>42</sup> But, for some in the Sikh community, the new Transportation Security Agency (“TSA”) policies single out Sikh turbans for two additional levels of screening.<sup>43</sup>

### IV. U.S. Citizen Placed on Target List\*

In April 2010, media sources reported that the Obama administration had authorized the targeted killing of Anwar Al-Aulaqi, an American citizen living in Yemen.<sup>44</sup> Aulaqi is a leader of al-Qaeda in the Arabian Peninsula (“AQAP”), a Yemen-based terrorist group that has claimed responsibility for numerous attacks against American targets.<sup>45</sup> Aulaqi, who was born in New Mexico, is reportedly the first American ever placed on a CIA/Defense Department target list, and his inclusion required the approval of the National

40. *Communication from the Commission to the European Parliament and the Council on the Use of Security Scanners at EU Airports*, COM (2010) 311 final (June 15, 2010), available at [ec.europa.eu/transport/air/security/doc/com2010\\_311\\_security\\_scanners\\_en.pdf](http://ec.europa.eu/transport/air/security/doc/com2010_311_security_scanners_en.pdf).

41. *Id.* ¶ 57.

42. “See-Through” Body Scanners, AM. CIVIL LIBERTIES UNION, June 3, 2008, <http://www.aclu.org/technology-and-liberty/see-through-body-scanners>.

43. Letter from United Sikhs, Sikh Coalition, and Saldef to author (Oct. 2010), <http://unitedsikhs.org/rtt/pdf/Letter%20to%20TSA%20Administrator%20Mr.%20Pistole%20-%20Joint%20TSA%20Letter%20from%20Sikh%20Civil%20Rights%20Organizations.pdf>. At a meeting with personnel from TSA and the DOJ Office of Civil Rights, each Sikh civil rights organization was informed that Sikh turbans would be identified as anomalies per se by the AIT machines and subject Sikhs to three levels of screening: (1) AIT; (2) Explosive Trace Detection (ETD); and (3) metal detecting hand wand.

\* Benjamin G. Joseloff, a New York attorney and former postdoctoral fellow at Stanford Law School’s Afghanistan Legal Education Project.

44. See Greg Miller, *Muslim Cleric is First U.S. Citizen on List of Those CIA is Allowed to Kill*, WASH. POST, Apr. 7, 2010, at A8; Scott Shane, *U.S. Approves Targeted Killing of Radical Muslim Cleric Tied to Domestic Terror Suspects*, N.Y. TIMES, Apr. 7, 2010, at A12.

45. See Unclassified Declaration in Support of Formal Claim of State Secrets Privilege for Defendants at ¶¶ 13-17, *Al-Aulaqi v. Obama*, Civ. A. No. 10-cv-1469 (D.D.C. Sept. 24, 2010), available at <http://ccrjustice.org/files/15%282%29-Al-Aulaqi%20Public%20DNI%20Clapper%20Decl-09-25-10.pdf>.

Security Council.<sup>46</sup> Aulahi has already been the target of numerous unsuccessful drone and air strikes.<sup>47</sup>

In July 2010, Aulahi's father, Dr. Nasser al-Aulahi, retained the Center for Constitutional Rights ("CCR") and the American Civil Liberties Union ("ACLU") to represent his son *pro bono*.<sup>48</sup> On August 30, 2010, CCR and the ACLU filed suit for Dr. Aulahi—on his own behalf as well as his son's—against President Obama, CIA Director Leon Panetta, and Defense Secretary Robert Gates. Through declaratory judgment, the lawsuit sought to define narrowly the circumstances under which the government can engage in targeted killing and to publicize the criteria the government uses to target a U.S. citizen.<sup>49</sup> The suit sought a preliminary injunction preventing the government from killing Aulahi, unless he was found to present "a concrete, specific, and imminent threat to life or physical safety, and there are no means other than lethal force that could reasonably be employed to neutralize the threat."<sup>50</sup> The case is based on protections afforded by the U.S. Constitution and international law.<sup>51</sup>

On September 25, 2010, the government moved to dismiss the case on justiciability grounds. It argued that Dr. Aulahi lacked standing to assert claims on behalf of his son, that the case raised non-justiciable political questions, that the court should exercise its equitable discretion not to grant the relief sought, and that the state secrets privilege precluded litigation of Dr. Aulahi's claims. The government also claimed that the President may use necessary and appropriate force against AQAP leaders under the Authorization for Use of Military Force against Terrorists ("AUMF")<sup>52</sup> and Article 51 of the U.N. Charter.<sup>53</sup> Retired military officers, the VFW, and non-profit organizations with national security interests joined the government as *amici curiae* in urging the court to dismiss the suit as non-justiciable.<sup>54</sup>

46. See Miller, *supra* note 44; Shane, *supra* note 44.

47. See Dina Temple-Raston, *U.S. Turns Up Heat on Internet Imam Awlaki*, NPR, July 29, 2010, <http://www.npr.org/templates/story/story.php?storyId=128831726>.

48. See Plaintiff's Complaint for Declaratory and Injunctive Relief at ¶ 2, *ACLU v. Geithner*, Civ. A. No. 10-cv-01303 (D.D.C. Aug. 3, 2010), available at <http://ccrjustice.org/files/2-OFACComplaintFinal%20-%20stamped.pdf>.

49. See Plaintiff's Complaint for Declaratory and Injunctive Relief at ¶ 6, *Al-Aulahi v. Obama*, Civ. A. No. 10-cv-1469 (D.D.C. Aug. 30, 2010), available at <http://ccrjustice.org/files/Al-Aulahi%20v.%20Obama%20Complaint.pdf>.

50. Memorandum in Support of Plaintiff's Motion for a Preliminary Injunction at 40, *Al-Aulahi v. Obama*, Civ. A. No. 10-cv-1469 (D.D.C. Aug. 30, 2010), available at <http://ccrjustice.org/files/PI%20Motion.pdf>.

51. *Id.* at 2.

52. See Opposition to Plaintiff's Motion for Preliminary Injunction and Memorandum in Support of Defendants' Motion to Dismiss at 8-9, *Al-Aulahi v. Obama*, Civ. A. No. 10-cv-1469 (D.D.C. Sept. 24, 2010), available at [http://ccrjustice.org/files/15%281%29-Al-Aulahi%20USG%20PI%20Opp%20&%20MTD%20Brief\\_09-25-10.pdf](http://ccrjustice.org/files/15%281%29-Al-Aulahi%20USG%20PI%20Opp%20&%20MTD%20Brief_09-25-10.pdf).

53. See *id.*

54. See Brief of The Veterans of Foreign Wars of the United States as Amicus Curiae in Support of Defendants and Dismissal, at 2, *Al-Aulahi v. Obama*, Civ. A. No. 10-cv-1469 (D.D.C. Oct. 1, 2010), available at [http://ccrjustice.org/files/Amicus\\_Curiae\\_Brief\\_of\\_VFW.pdf](http://ccrjustice.org/files/Amicus_Curiae_Brief_of_VFW.pdf). See also Brief of Jack Klump, *et al.*, as Amici Curiae in Support of Defendants' Motion to Dismiss, at 8, *Al-Aulahi v. Obama*, Civ. A. No. 10-cv-1469 (D.D.C. Oct. 4, 2010), available at <http://ccrjustice.org/files/Al-Aulahi%20v.%20Obama-%20Klump,%20et%20al%20Amicus.pdf>.

On October 8, 2010, CCR and the ACLU replied to the government's brief.<sup>55</sup> Analyzing the government's arguments, the organizations wrote:

The government has clothed its bid for unchecked authority in the doctrinal language of standing, justiciability, equity, and secrecy, but the upshot of its arguments is that the executive, which must obtain judicial approval to monitor a U.S. citizen's communications or search his briefcase, may execute that citizen without any obligation to justify its actions to a court or to the public.<sup>56</sup>

*Al-Aulaqi v. Obama*, Civ. A. No. 10-cv-1469 (JDB), is pending before the U.S. District Court for the District of Columbia.

## V. Alien Tort Statute Update\*

There have been more significant decisions on the Alien Tort Statute ("ATS") during 2009-2010 than any other period since the statute's enactment in 1789. Even the Supreme Court delved into the statute, finding that an individual defendant cannot be immune from ATS liability pursuant to the Foreign Sovereign Immunities Act ("FSIA").<sup>57</sup> An individual is not a "foreign state" within the meaning of the FSIA, even if the individual was acting in an "official capacity" when carrying out the acts alleged.<sup>58</sup> Several federal courts of appeals also decided significant ATS cases.

In *Abdullahi v. Pfizer, Inc.*,<sup>59</sup> Nigerian children and their guardians sued Pfizer, Inc., alleging that Pfizer violated a customary international law norm prohibiting involuntary medical experimentation on humans when it tested an experimental antibiotic on children in Nigeria without their consent or knowledge. In addition to describing how nonconsensual medical experimentation on humans violates the law of nations within the meaning of the Alien Tort Statute, the court also provided a broader framework for conducting such analysis. The analysis focused on three factors. First, only violations of a norm of customary international law to which states universally subscribe, known as "universality," should be recognized.<sup>60</sup> Second, courts must only enforce those customary international law norms that are no less definite in content than the historical paradigms familiar when the ATS was enacted, known as "specificity."<sup>61</sup> This is not to say that the norms themselves must be the same as those in existence in 1789, but that they must be as definite and discernible as those recognized at that time, such as offenses against ambassadors, violations of the right to safe passage, and individual actions arising out of piracy. Third, courts must find that nations of the world have demonstrated "by means of express international accords" that the wrong is of mutual concern.<sup>62</sup> Each of those three considera-

55. See Reply Memorandum in Support of Plaintiff's Motion for a Preliminary Injunction and in Opposition to Defendants' Motion to Dismiss, *Al-Aulaqi v. Obama*, Civ. A. No. 10-cv-1469 (D.D.C. Oct. 8, 2010), available at <http://ccrjustice.org/files/Reply%20Brief%2010-08-2010.pdf>.

56. *Id.* at 1.

\* Prepared by Glenn Katon, American Civil Liberties Union of Florida.

57. *Samantar v. Yousuf*, 130 S. Ct. 2278, 2289 (2010).

58. *Id.*

59. *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163 (2d Cir. 2009), cert. denied, 130 S. Ct. 3541 (2010).

60. *Id.* at 177.

61. *Id.* at 184.

62. *Id.* at 185.



tions led the Second Circuit to conclude that medical experimentation on nonconsenting human beings violates the laws of nations in a manner that provides jurisdiction under the ATS.

In *Presbyterian Church Of Sudan v. Talisman Energy, Inc.*,<sup>63</sup> Sudanese plaintiffs alleged that Talisman Energy conspired with the Government of the Sudan in carrying human rights violations, including genocide, torture, war crimes, and crimes against humanity,<sup>64</sup> asserting that Talisman knew that the infrastructure it helped build to extract and transport oil was being used by the government to commit human rights violations.

The court found that the underlying torts of genocide, torture, war crimes, and crimes against humanity are actionable under the Alien Tort Statute but held that Plaintiffs' conspiracy and aiding and abetting theories were not universally recognized under international law in connection with those torts.<sup>65</sup> In particular, the court held that liability for aiding and abetting under international law arises only when the defendant provides practical assistance to the principal with the purpose of facilitating the violation of the law.<sup>66</sup> The court distinguished Talisman's knowledge of the government's violations from the purpose of facilitating them, finding that the record lacked evidence of any such purpose.

In *Estate of Amergi v. Palestinian Authority*,<sup>67</sup> the family and estate of an Israeli citizen murdered by an agent of the Palestinian Authority and the Palestine Liberation Organization sued the agent, the two entities, and Yasir Arafat, who controlled both entities. As to the plaintiffs' ATS claims, the court held that a single killing by non-state<sup>68</sup> actors did not confer jurisdiction under the statute.<sup>69</sup> The court further held that acts of terrorism are not cognizable under the ATS and that, even if the murder violated the Geneva Conventions, not all such violations constitute a violation of the law of nations under the statute.<sup>70</sup>

Perhaps the most significant of all recent ATS cases, *Kiobel v. Royal Dutch Petroleum Co.*,<sup>71</sup> held that corporations are not liable under the statute. Nigerian plaintiffs brought claims against petroleum companies, asserting that the corporations aided and abetted the Nigerian government in carrying out human rights violations. On appeal from the district court's dismissal, the Second Circuit majority opinion determined that, under customary international law, tort liability does not extend to corporations.<sup>72</sup> Federal courts do not, therefore, have jurisdiction to consider such claims.<sup>73</sup> The dissent asserted that the majority erroneously conflated customary international *criminal* law with tort law and that, in so

63. *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244 (2d Cir. 2009), *cert. denied*, 131 S. Ct. 79, 131 S. Ct. 122 (2010).

64. *Id.* at 251.

65. *Id.* at 257, 259.

66. *Id.* at 263.

67. *Estate of Amergi v. Palestinian Auth.*, 611 F.3d 1350 (11th Cir. 2010).

68. The killing took place in 2002 before the formation of the Palestinian government in the Gaza Strip and West Bank in 2006.

69. *Estate of Amergi*, 611 F.3d at 1353.

70. *Id.* at 1355.

71. *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010) (as of Nov. 24, 2010, plaintiffs' petition for rehearing en banc remains pending).

72. *Id.* at 118, 147.

73. *Id.* at 120, 149.

doing, it delivered “a substantial blow to international law and its undertaking to protect fundamental human rights.”<sup>74</sup>

In a case involving a narrow but important issue, the U.S. Court of Appeals for the Ninth Circuit held that the Death on the High Seas Act preempts the ATS for survival claims but not for wrongful death claims.<sup>75</sup>

## VI. Capital Punishment\*

### A. THE UNITED STATES

The 2009-10 U.S. Supreme Court term witnessed an unprecedented number of death penalty cases and addressed several ineffective assistance of counsel claims.<sup>76</sup> In *Wood v. Allen*,<sup>77</sup> the Supreme Court, in an opinion authored by Justice Sonya Sotomayor, upheld an Eleventh Circuit decision rejecting a Sixth Amendment claim involving a defense counsel’s strategic decision not to investigate and present evidence of mental retardation during the trial’s penalty phase where the counsel held a reasonable concern that potential medical expert testimony would be against the defendant’s best interests. In *Sears v. Upton*,<sup>78</sup> the Supreme Court remanded a *Strickland* challenge because the Georgia Supreme Court failed to apply the correct Sixth Amendment prejudice inquiry for evaluating counsel’s limited investigation of potentially mitigating evidence concerning significant childhood and family mental and psychological impairments. In *Jefferson v. Upton*,<sup>79</sup> the Supreme Court vacated and remanded a *habeas* proceeding in which the defendant claimed constitutionally inadequate representation because counsel failed to investigate the relevance of a traumatic childhood head injury. On November 9, 2010, the Supreme Court heard oral argument in *Cullen v. Pinholster*,<sup>80</sup> in which the Ninth Circuit had overturned a 1984 death sentence because counsel had not presented evidence of mental illness during the trial’s penalty phase.

Jury selection and instructions, sometimes coupled with ineffective representation claims, remain a central focus of the Supreme Court’s death penalty jurisprudence. In *Smith v. Spisak*,<sup>81</sup> the Supreme Court reversed the Sixth Circuit and upheld the state court’s jury instructions on “mental defect” mitigation as not “contrary to, or . . . an unreasonable application of clearly established Federal law. . . .”<sup>82</sup> The jury instructions directed the jury to find unanimously that each of the aggravating factors outweighed any mitigating circumstances but did not address whether the jury had to determine unanimously the existence of each mitigation factor. Citing *Spisak*, the Supreme Court vacated

74. *Id.* at 149, 151.

75. *Bowoto v. Chevron Corp.*, 621 F.3d 1116, 1124-26 (9th Cir. 2010).

\* Prepared by Lawrence G. Albrecht, President of First, Albrecht & Blondis, s.c.

76. *See Strickland v. Washington*, 466 U.S. 668 (1984) (analyzing the right to effective counsel under the Sixth Amendment).

77. *Wood v. Allen*, 130 S. Ct. 841 (2010).

78. *Sears v. Upton*, 130 S. Ct. 3259 (2010) (per curiam).

79. *Jefferson v. Upton*, 130 S. Ct. 2217 (2010) (per curiam).

80. *Cullen v. Pinholster*, No. 09-1088 (U.S. argued Nov. 9, 2010).

81. *Smith v. Spisak*, 130 S. Ct. 676, 679 (2010); *see* Lawrence G. Albrecht, *International Human Rights*, 44 INT’L LAW. 473, 481 (2010).

82. 28 U.S.C. § 2254(d)(1) (2011).

a Third Circuit decision in *Beard v. Abu-Jamal*.<sup>83</sup> In *Thaler v. Haynes*,<sup>84</sup> the Supreme Court reversed the Fifth Circuit and held that appropriate deference must be given on remand to the second trial judge's decision that a prospective juror had not been excluded because of race.<sup>85</sup>

The Supreme Court addressed trial court dignity and fairness issues in *Wellons v. Hall*,<sup>86</sup> reversing the Eleventh Circuit's denial of a federal habeas claim and ordering merits review under *Cone* of the defendant's claims of improper jury communications.<sup>87</sup>

*Magwood v. Patterson*<sup>88</sup> analyzed complex principles of statutory interpretation under the Antiterrorism and Effective Death Penalty Act of 1996. The Supreme Court reversed the Eleventh Circuit and held that, because the habeas claim challenged a new judgment (although the second death sentence) for the first time, it was not a second or successive challenge otherwise barred under the "one opportunity" rule, even though the initial death sentence could have been challenged.

In *Graham v. Florida*,<sup>89</sup> the Supreme Court held that the Eighth Amendment to the U.S. Constitution bars sentencing juveniles to life in prison without parole for non-homicide crimes under punishment proportionality standards. In doing so, the Court analyzed death penalty cases that applied categorical prohibition rules. Justice Kennedy's opinion continued a recent trend of the Supreme Court's examining and citing relevant international law in the death penalty decisions.<sup>90</sup>

In a significant development, the American Law Institute—which is comprised of over 4,000 judges, lawyers, and academics and which greatly influenced the legal framework of the capital justice system reinstated in *Gregg v. Georgia*<sup>91</sup>—abandoned its model death penalty law because of intractable structural and pragmatic obstacles to the administration of the death penalty.<sup>92</sup> Supreme Court Justice John Paul Stevens, who retired in 2010, stated that the one vote he particularly regretted during his 35-year tenure was his 1976

83. *Beard v. Abu-Jamal*, 130 S. Ct. 1134 (2010).

84. *Thaler v. Haynes*, 130 S. Ct. 1171 (2010) (per curiam).

85. See *Batson v. Kentucky*, 476 U.S. 79 (1986) (discussing challenges to prospective juror dismissals because of race).

86. *Wellons v. Hall*, 130 S. Ct. 727 (2010) (per curiam).

87. See *Cone v. Bell*, 129 S. Ct. 1769 (2009) (discussing availability of federal habeas merits review notwithstanding asserted state court procedural rejection of the claim).

88. *Magwood v. Patterson*, 130 S. Ct. 2788, 2789 (2010).

89. *Graham v. Florida*, 130 S. Ct. 2011 (2010).

90. See *Roper v. Simmons*, 543 U.S. 551 (2005) (barring death penalty for mentally retarded offenders); see also Editorial, *A New Standard of Decency*, N.Y. TIMES, May 18, 2010, at A26, available at <http://www.nytimes.com/2010/05/18/opinion/18tue1.html>. In 2010, the American Bar Association presented a teleconference entitled "The Status of the Death Penalty Worldwide." Materials are available at <http://www.abanet.org/cle>. The American Bar Association also presented a program entitled "The Influence of International Law and Opinion in U.S. Death Penalty Cases," available at <http://new.abanet.org/deathpenalty/representationproject>.

91. *Gregg v. Georgia*, 428 U.S. 153 (1976).

92. See *Message from ALI Director Lance Liebman*, AM. L. INST., Oct. 23, 2009, [http://www.ali.org/\\_news/10232009.htm](http://www.ali.org/_news/10232009.htm); see also Adam Liptak, *Group Gives Up Death Penalty Work*, N.Y. TIMES, Jan. 5, 2010, at A11, available at <http://www.nytimes.com/2010/01/05/us/05bar.html>; Michael Traynor, Opinion, *The Death Penalty—It's Unworkable*, L.A. TIMES, Feb. 4, 2010, <http://articles.latimes.com/2010/feb/04/opinion/la-oe-traynor4-2010feb04>.

vote in *Gregg* because the death penalty's significant expansion thereafter and pragmatic administrative concerns were not foreseeable or predictable.<sup>93</sup>

## B. AROUND THE WORLD

China continued to execute more people annually than the rest of the world combined, although precise statistics remain a state secret despite mandated review and approval by the Supreme Court in each capital case.<sup>94</sup> The expansive sweep of death penalty offenses, including economic crimes, and the relatively weak role of defense counsel were the focus of a Chinese legal delegation that established expert relations with the ABA Rule of Law Initiative regarding representation in capital cases.<sup>95</sup>

In Japan, over one hundred inmates remain on death row.<sup>96</sup> In North Korea, execution is common for a wide array of crimes, including circulating "harmful" information such as religious materials.<sup>97</sup> The South Korean Constitutional Court ruled (5-4) that the death penalty, authorized in the criminal code for over 100 crimes and corporate offenses, did not violate "human dignity and worth" protected by the constitution.<sup>98</sup>

In Mongolia, President Tsakhia Elbegdorj informed Parliament that he will pardon all death row inmates because of the world-wide trend towards abolition and because of concerns that innocent people had been executed under the country's harsh criminal justice system modeled on the former Soviet Union's sentencing regime.<sup>99</sup>

Iran continued to utilize secret judicial proceedings in capital cases, which resulted in mass hangings at the Vakil Abad prison in Mashad; for example, there were reports that sixty-eight inmates were hung on August 18, 2010.<sup>100</sup> Iran also continued to impose the death penalty for "enmity against God" and other religious crimes, and condemned to death several protesters who sought to celebrate the banned "Feast of Fire" that has Zoro-

93. Interview by Nina Totenberg with John Paul Stevens, Retired Supreme Court Justice (Oct. 4, 2010), available at <http://www.npr.org/templates/transcript/transcript.php?storyId=130198344>.

94. *Death Sentences and Executions in 2009*, AMNESTY INT'L, at 12 (2010), <http://www.amnesty.org/en/library/asset/ACT50/001/2010/en/17348b70-3fc7-40b2-a258-af92778c73e5/act500012010en.pdf>; Mark McDonald, *China Said to Execute Thousands in '09*, N.Y. TIMES, Mar. 31, 2010, at A8, available at <http://www.nytimes.com/2010/03/31/world/asia/31execute.html>.

95. *Chinese Delegation Studies Death Penalty Representation During U.S. Visit*, ABA, Sept. 2010, [http://www.abanet.org/rol/news/news\\_china\\_us\\_study\\_tour\\_death\\_penalty\\_representation\\_1010.shtml](http://www.abanet.org/rol/news/news_china_us_study_tour_death_penalty_representation_1010.shtml).

96. Hiroko Tabuchi, *Japan Gives Journalists a Tour of Its Execution Chambers*, N.Y. TIMES, Aug. 28, 2010, at A7, available at <http://www.nytimes.com/2010/08/28/world/asia/28tokyo.html>.

97. See *Death Sentences and Executions in 2009*, supra note 94, at 15. See also Choe Sang-Hun, *N. Korea is Said to Execute Finance Chief*, N.Y. TIMES, Mar. 19, 2010, <http://www.nytimes.com/2010/03/19/world/asia/19korea.html>.

98. Constitutional Court [Const. Ct.], 2008Hun-Ka23, Feb. 25, 2010, available at <http://english.court.go.kr>; see also *A Matter of Life and Death*, ECONOMIST, Mar. 27, 2010, at 50, available at <http://www.economist.com/node/15769791>; *South Korea Death Penalty Abolition Set Back By Constitutional Court Ruling*, AMNESTY INT'L, Feb. 25, 2010, <http://www.amnesty.org/en/news-and-updates/south-korea-death-penalty-abolition-set-back-constitutional-court-ruling-2010-02-25>.

99. See Jane McCartney, *Mongolia to Abolish the Death Penalty*, Jan. 15, 2010, TIMES (U.K.), <http://www.timesonline.co.uk/tol/news/world/asia/article6989156.ece>.

100. See *IRAN: Stoning Against a Backdrop of Multiple Hangings*, INT'L FED'N HUMAN RIGHTS, Aug. 27, 2010, <http://www.fidh.org/IRAN-Stoning-against-a-backdrop-of-expeditive>; Robert F. Worth, *Crime (Sex) and Punishment (Stoning)*, N.Y. TIMES, Aug. 22, 2010, at WK1, available at <http://www.nytimes.com/2010/08/22/weekinreview/22worth.html>.

astrian roots.<sup>101</sup> After widespread international protests, the sentence of death by stoning imposed on Sakineh Mohammadi Ashtiani for adultery was lifted, although she remained subject to death by hanging.<sup>102</sup>

The Taliban began imposing Sharia law for social crimes in areas it controls in northern Afghanistan and stoned to death a young couple who had eloped.<sup>103</sup> Iraq executes prisoners for, *inter alia*, terrorism, state security offenses or prior Baath regime crimes. Ali Hassan al-Majid, who ordered gas attacks on Kurdish villages in 1988 and mass killings in crushing a Shiite uprising in southern Iraq in 1991, was hung with vivid depictions of his execution broadcast on Iraq State Television.<sup>104</sup> Tareq Aziz, former international representative of Saddam Hussein's regime, and two other Baath party officials were sentenced to be hanged for persecution of Islamic parties.<sup>105</sup>

The Indian legal system continues to tolerate so-called "honor killing" carried out by *khap panchayat*, unelected taboo-enforcing councils that carry out extra-judicial executions for "crimes" such as *gotra*, or marrying within the same Hindu clan, which is deemed incest.<sup>106</sup> India's cabinet approved expansion of the death penalty to include hijacking airplanes and related conspiracy.<sup>107</sup>

In Saudi Arabia the planned beheading of a Lebanese man, Ali Sibati, for "witchcraft" due to psychic predictions made from his home in Beirut on an Arab satellite channel drew international condemnation. Saudi Arabia routinely imposes death sentences on those convicted of sorcery, witchcraft, black magic, and fortune-telling.<sup>108</sup>

In Kenya, the Court of Appeals issued a landmark unanimous decision in *Mutiso v. Republic*,<sup>109</sup> holding that mandatory imposition of the death penalty is unconstitutional and violates the right to life because mitigating evidence is prohibited. Hundreds of prisoners

101. See Nazila Fathi, *Iran Plans to Execute 6 Arrested in Protests*, N.Y. TIMES, Mar. 16, 2010, at A10, available at <http://www.nytimes.com/2010/03/16/world/middleeast/16iran.html>.

102. See Thomas Erdbrink, *Iran Arrests 2 Foreign Reporters Trying to Interview Woman Who Could be Stoned*, WASH. POST, Oct. 11, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/11/AR2010101103438.html>; Thomas Erdbrink, *An Adulteress Could In Theory Be Stoned, Iran Prosecutor Says*, WASH. POST, Sept. 27, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/27/AR2010092703642.html>; *Iran Lifts Sentence of Stoning for Woman*, N.Y. TIMES, Sept. 9, 2010, at A6, available at <http://www.nytimes.com/2010/09/09/world/middleeast/09stoning.html>. In a bizarre development which included photo publication in THE TIMES OF LONDON of a woman misidentified as Ms. Ashtiani (wearing earrings and possibly lipstick but not a chador), Ms. Ashtiani was separately sentenced to 99 lashes. See Ravi Somaiya, *Iranian Woman Said to Be Lashed Over Photo*, N.Y. TIMES, Sept. 6, 2010, at A4, available at <http://www.nytimes.com/2010/09/06/world/middleeast/06iran.html>.

103. See Rod Nordland, *In Bold Display, Taliban Order Stoning Deaths*, N.Y. TIMES, Aug. 17, 2010, at A1, available at <http://www.nytimes.com/2010/09/06/world/middleeast/06iran.html>.

104. See Nada Bakri, *Hussein Aide 'Chemical Ali' Executed for His Role in the Killing of 180,000 Kurds*, N.Y. TIMES, Jan. 26, 2010, at A9, available at <http://www.nytimes.com/2010/01/26/world/middleeast/26execute.html>.

105. See Jack Healy, *Tariq Aziz, Ex-Aide to Hussein, Receives Death Penalty in Iraq*, N.Y. TIMES, Oct. 27, 2010, at A4, available at <http://www.nytimes.com/2010/10/27/world/middleeast/27iraq.html>.

106. *A Disgrace to the Village*, ECONOMIST, Apr. 17, 2010, at 48, available at <http://www.economist.com/node/15912850>.

107. See Hijacking Laws Changed to Include Death Penalty, WALL STREET J., Mar. 20-21, 2010, at A11.

108. See Michael Slackman, *TV Mystic Lingers in Saudi Jail*, N.Y. TIMES, Apr. 25, 2010, at A8, available at <http://www.nytimes.com/2010/04/25/world/middleeast/25saudi.html>.

109. *Mutiso v. Republic*, (2010); see also *Hundreds Saved From The Death Penalty in Kenya—Court Rules Mandatory Death Penalty For Murder Unconstitutional*, July 30, 2010, available at <http://theonlinecitizen.com/2010/08/mandatory-death-penalty-unconstitutional-kenya-court-of-appeal/>; *High Court in Kenya Rules*

facing execution will be given new sentencing hearings under reformed procedural rules. The court also ruled that holding a person on death row for longer than three years was unconstitutional.

In Uganda lawmakers are considering legislation that would permit the death penalty for “aggravated homosexuality” following the introduction of the Anti-Homosexuality Bill of 2009.<sup>110</sup>

Finally, a milestone was reached in Europe as no executions have taken place there since 2008.<sup>111</sup>

## VII. Update On The Special Court For Sierra Leone Trial Of Former Liberian President Charles Taylor\*

In 2010, the trial of former President Charles Ghankay Taylor of Liberia continued in Trial Chamber II of The Special Court for Sierra Leone (the Special Court).<sup>112</sup> The trial gained increased media attention when the prosecution petitioned the Special Court on May 20, 2010, to re-open its case by permitting it to call three additional witnesses to testify: Naomi Campbell, Carole White, and Mia Farrow.<sup>113</sup> On October 22, 2010, the Special Court announced its anticipated timeline for the conclusion of the trial at a Status Conference in The Hague.<sup>114</sup> At the conference, the Special Court ordered the defense to conclude its case before November 12, 2010.<sup>115</sup> Final oral arguments are scheduled to conclude on February 11, 2011, after which the Special Court will determine the time needed for deliberations.<sup>116</sup>

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*Hundreds of Death Sentences Unconstitutional*, DEATH PENALTY INFO. CTR., July 30, 2010, <http://www.deathpenaltyinfo.org/high-court-kenya-rules-hundreds-death-sentences-unconstitutional>.

110. See Jeffrey Gittleman, *After U.S. Evangelicals Visit, Uganda Considers Death for Gays*, N.Y. TIMES, Jan. 4, 2010, at A7, available at <http://www.nytimes.com/2010/01/04/world/africa/04uganda.html>; Nsubuga, *The Fear of Being Gay and Ugandan* (2010), GUARDIAN, Oct. 22, 2010, <http://www.guardian.co.uk/commentisfree/2010/oct/22/being-gay-in-uganda/>.

111. See *International Studies: Only 18 Countries Carried Out Executions in 2009*, DEATH PENALTY INFO. CTR., Mar. 31, 2010, <http://www.deathpenaltyinfo.org/international-studies-only-18-countries-carried-out-executions-2009>; see also Andrew Hammel, *ENDING THE DEATH PENALTY: THE EUROPEAN EXPERIENCE IN GLOBAL PERSPECTIVE* (2010).

112. Statute of the Special Court for Sierra Leone, art. 1(1) (2000), available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=uCInd1MJJeW%3D&>.

113. *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-T, Decision on Public with Confidential Annexes A and B Prosecution Motion to Call Three Additional Witnesses, June 29, 2010, ¶ 1, available at <http://www.sc-sl.org/CASES/ProsecutorsCharlesTaylor/TrialChamberDecisions/tabid/159/Default.aspx>.

114. *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-T, Order Setting a Date for the Closure of the Defense Case and Dates for Filing of Final Trial Briefs and the Presentation of Closing Arguments, Oct. 22, 2010, 30744, 30745, available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=Fqr7U0U8DTY%3d&tabid=159>.

115. *Id.*

116. *Id.* at 30745.