

## International Human Rights

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This article reviews selected developments in international human rights law during 2011.<sup>1</sup>

### I. U.N. Human Rights Council and the Situation in Syria\*

In response to allegations that the government of Syria committed grave human rights violations against pro-democracy protesters in Syria since mid-March 2011, the UN Human Rights Council (HRC) acted quickly to investigate these alleged violations and has condemned the Syrian government. On April 29, 2011, the HRC held a Special Session on the human rights situation in Syria.<sup>2</sup> This Special Session was requested by the United States and sixteen member states of the HRC.<sup>3</sup> The UN Deputy High Commissioner for Human Rights stated that the “preponderance of information” that emerged from Syria since mid-March depicted “a widespread, persistent, and gross disregard for

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1. For developments during 2010, see Lawrence G. Albrecht et al., *International Human Rights*, 45 INT'L LAW. 381 (2010). For developments during 2009, see Dana Renee Bucy et al., *International Human Rights*, 44 INT'L LAW. 473 (2010).

\* Prepared by Christopher P. DeNicola, Esq.

2. Press Release, Human Rights Council, Human Rights Council Concludes Special Session on Syrian Arab Republic (May 2, 2011), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10974&LangID=E>.

3. Press Release, Human Rights Council, Human Rights Council to Hold 16th Special Session on 29 Apr. on the Situation of Human Rights in the Syrian Arab Republic (Apr. 27, 2011), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10964&LangID=E>.

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basic human rights by the Syrian military and security forces.”<sup>4</sup> The HRC then adopted Resolution S-16/1 requesting that the UN Office of the High Commissioner for Human Rights dispatch a fact-finding mission to Syria to investigate all alleged violations of human rights law.<sup>5</sup>

On June 15, 2011, the UN High Commissioner for Human Rights presented her preliminary report on Syria to the HRC and noted that while she had established a team to conduct a fact-finding mission in Syria,<sup>6</sup> no response had been received from the government to official requests for access.<sup>7</sup> Thus, the team gathered information from outside the country.<sup>8</sup>

On August 22 through 23, 2011, the HRC held a second Special Session on Syria,<sup>9</sup> at the request of the European Union and Poland.<sup>10</sup> At the opening of this session, it was found that the Syrian authorities’ actions could constitute crimes against humanity.<sup>11</sup> Subsequently, the HRC adopted Resolution S-17/1, which expressed “profound concern” and “strongly condemn[ed] the continued grave and systematic human rights violations by the Syrian authorities.”<sup>12</sup> Further, the HRC dispatched an independent international commission of inquiry to investigate all alleged violations of international human rights law since March 2011 in Syria.<sup>13</sup> The HRC directed this commission “to identify those responsible with a view to ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable.”<sup>14</sup>

On September 12, 2011, the President of the Human Rights Council appointed three high-level experts as members of this commission of inquiry.<sup>15</sup> The commission’s report was due by the end of November 2011, and the commission is to present an update to its report to the HRC in March 2012.<sup>16</sup>

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4. Statement by the Deputy High Comm’r for the Human Rights Council Special Session on Syria (Apr. 29, 2011), *available at* <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10968&LangID=E>.

5. Human Rights Council Res. S-16/1, ¶ 7, U.N. Doc. A/HRC/RES/S-16/1 (Apr. 29, 2011), *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/130/54/PDF/G1113054.pdf?OpenElement>.

6. Press Release, Human Rights Council, Council Hears Reports on Côte d’Ivoire and Syria, Holds General Debate on Human Rights Situations that Require Its Attention (June 15, 2011), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11159&LangID=E>.

7. *Id.*

8. *Id.*

9. Press Release, Human Rights Council, Human Rights Council Decides to Dispatch a Comm’n of Inquiry to Investigate Human Rights Violations in the Syrian Arab Republic (Aug. 23, 2011), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11326&LangID=E>.

10. Press Release, Human Rights Council, Human Rights Council Holds Special Session on the Situation of Human Rights in the Syrian Arab Republic (Aug. 18, 2011), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11314&LangID=E>.

11. Press Release, Human Rights Council, The Human Rights Council Concludes Its Second Special Session on the Situation of Human Rights in the Syrian Arab Republic (Aug. 23, 2011), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11328&LangID=E>.

12. Human Rights Council Res. S-17/1, ¶¶ 1–2, U.N. Doc. A/HRC/RES/S-17/1 (Aug. 23, 2011), *available at* <http://www.ohchr.org/documents/countries/SY/A.HRC.RES.S-17.1.pdf>.

13. *Id.* ¶ 12.

14. *Id.*

15. Human Rights Council, *President of Human Rights Council Appoints International Comm’n of Inquiry to Investigate Human Rights Violations in Syria* (Sept. 12, 2011), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11369&LangID=E>.

16. *Id.*

The HRC's rapid investigative and rhetorical response to the human rights situation in Syria demonstrates the entity's capacity to respond quickly to urgent human rights situations, in contrast with its predecessor, the UN Commission on Human Rights, which was widely perceived as ineffective.<sup>17</sup> In addition, some commentators argue that the HRC's increasing effectiveness is attributable to U.S. engagement with the entity, which began during the Obama administration.<sup>18</sup> Further, the HRC's response to the situation in Syria has shown that even when the UN Security Council cannot pass a resolution condemning a human rights violator due to vetoes from permanent members, the United Nations may still respond to such a situation through the HRC.<sup>19</sup>

## II. European Court of Human Rights\*

The European Court of Human Rights (ECtHR) handed down two decisions significant for their extension of the court's extraterritorial jurisdiction to non-member states.<sup>20</sup> Previously, the European Convention on Human Rights (ECHR) applied only to nations over which a member state "had effective control."<sup>21</sup> Both cases pertain to the British forces' conduct during their security operations in Iraq, actions that arguably do not constitute "effective control" over Iraq.<sup>22</sup> In both cases, the court concluded that jurisdiction existed over the United Kingdom's extraterritorial actions in Iraq, a non-member state.<sup>23</sup>

In *Al-Skeini v. United Kingdom*,<sup>24</sup> Iraqi nationals alleged that the British government failed to investigate the deaths of their six relatives resulting from the actions of the British armed forces in Iraq. As a preliminary issue, the court found that, because Britain conducted its security operations in Iraq when the deaths occurred and was exercising "all or some of the public powers" normally exercised by Iraq on the territory, extraterritorial jurisdiction existed pursuant to article 1 of the Convention requiring the United Kingdom to investigate the deaths.<sup>25</sup> The court further found that the United Kingdom violated article 2's "obligation to . . . safeguard life," where it failed to carry out an "effective official investigation" into five out of the six deaths.<sup>26</sup> The court stated that an effective

17. See *UN Human Rights Council: Build on Recent Successes*, HUMAN RIGHTS WATCH (Sept. 22, 2011), <http://www.hrw.org/news/2011/09/22/un-human-rights-council-build-recent-successes>; Editorial, *The Shame of the United Nations*, N.Y. TIMES (Feb. 26, 2006), [http://www.nytimes.com/2006/02/26/opinion/26sun2.html?\\_r=1&n=Top%2fOpinion%2fEditorials%20and%20Op%2dEd%2fEditorials&oref=slogin](http://www.nytimes.com/2006/02/26/opinion/26sun2.html?_r=1&n=Top%2fOpinion%2fEditorials%20and%20Op%2dEd%2fEditorials&oref=slogin).

18. See, e.g., David Bosco, *Two Cheers for the Human Rights Council (and U.S. Diplomacy)*, FOREIGN POLICY (May 11, 2011), [http://bosco.foreignpolicy.com/posts/2011/05/10/two\\_cheers\\_for\\_the\\_human\\_rights\\_council\\_and\\_us\\_diplomacy](http://bosco.foreignpolicy.com/posts/2011/05/10/two_cheers_for_the_human_rights_council_and_us_diplomacy).

19. See Louis Charbonneau, *Russia, China Veto U.N. Resolution Condemning Syria*, REUTERS (Oct. 4, 2011), <http://www.reuters.com/article/2011/10/05/us-syria-un-idUSTRE7937M220111005>.

\* Prepared by Katarina Durcova.

20. See Matthew Lopas, *Two Decisions Expand Extraterritorial Jurisdiction of European Court*, HUMAN RIGHTS BRIEF (Oct. 24, 2011), <http://hrbrief.org/2011/10/two-decisions-expand-extraterritorial-jurisdiction-of-european-court/>.

21. *Bankovic v. Belgium* [GC] (dec.), App. No. 52207/99, ¶ 75, 44 Eur. H.R. Rep. SE5 (2007); see also *Al-Skeini v. United Kingdom*, App. No. 55721/07, 53 Eur. H.R. Rep. 18 (2011); see also Lopas, *supra* note 20.

22. See Lopas, *supra* note 20.

23. See *Al-Skeini*, 53 Eur. H.R. Rep. 18; *Al-Jedda v. United Kingdom*, App. No. 27021/08, 53 Eur. H.R. Rep. 23 (2011).

24. *Al-Skeini*, 53 Eur. H.R. Rep. 18.

25. *Id.* ¶ 135.

26. *Id.* ¶¶ 164–65.

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investigation is one “capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible.”<sup>27</sup> To ensure accountability, the investigation must be carried out by an independent investigator.<sup>28</sup> Although the court recognized that the British forces dealt with a difficult post-war security situation, as an occupying power it had a responsibility to investigate any failure of its soldiers to conform to the Rules of Engagement.<sup>29</sup> The court concluded that the United Kingdom violated article 2 by conducting only a chain of command review of the Iraqi nationals’ deaths.<sup>30</sup>

In *Al-Jedda v. United Kingdom*,<sup>31</sup> the court found that it had jurisdiction to consider British forces’ three-year internment, without trial, of a civilian in Iraq. Article 5(1) of ECHR authorizes deprivation of liberty only under specific circumstances requiring “a procedure prescribed by law.”<sup>32</sup> The British forces detained the applicant without judicial review “for imperative reasons of security in Iraq” based on undisclosed intelligence that he participated in the recruitment of terrorists outside of Iraq.<sup>33</sup> The U.K. government contended that there was no jurisdiction pursuant to article 5(1) because the applicant’s internment was not attributable to the United Kingdom, but rather to the United Nations. In the alternative, the government argued that the internment was legal pursuant to UN Security Council Resolution 1546, which “overrode” the United Kingdom’s obligations under the Convention.<sup>34</sup> The court rejected both contentions, explaining that the British forces occupied Iraq before any authorization by the UN existed and that a subsequent authorization did not result in the UN exerting control or authority over the executive decisions of the allied forces in Iraq at the time.<sup>35</sup> Moreover, solely British forces controlled the detention facility where the applicant was imprisoned.<sup>36</sup>

The court also rejected the United Kingdom’s argument that Resolution 1546 obligated the British forces to carry out “preventive detention” to ensure national security.<sup>37</sup> The applicant was detained for three years without an oral hearing and without indication that the British forces ever intended to bring criminal charges against him.<sup>38</sup> Pursuant to article 5, “the list of grounds of permissible detention . . . does not include internment or preventive detention where there is no intention to bring criminal charges within a reasonable time.”<sup>39</sup> The court concluded that Resolution 1546 did not supersede article 5 as it did not unequivocally intend to allow the forces in Iraq to contravene international human rights law, and thus the applicant’s internment was in violation of article 5.<sup>40</sup>

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27. *Id.* ¶ 166.

28. *Id.* ¶ 167.

29. *Id.* ¶¶ 170–72.

30. *Id.* ¶ 173.

31. *Al-Jedda*, 53 Eur. H.R. Rep. 23.

32. *Id.* ¶ 97.

33. *Id.* ¶ 11.

34. *Id.* ¶ 60.

35. *Id.* ¶ 80.

36. *Id.* ¶ 84.

37. *Id.* ¶ 101.

38. *Id.* ¶ 98.

39. *Id.* ¶ 101.

40. *Id.* ¶¶ 107, 110.

### III. Europe's Burqa Bans\*

In April 2011, France became the first European country to implement a ban on the wearing of head-to-toe Islamic coverings, such as the burqa, in public.<sup>41</sup> Belgium quickly followed and implemented its own ban in July 2011.<sup>42</sup> The Netherlands agreed to ban the full Islamic veil in September 2011.<sup>43</sup> Italy passed similar draft legislation in August 2011,<sup>44</sup> and Switzerland passed a motion called “masks off!” in September 2011.<sup>45</sup>

Although France may have been the first European country to ban the burqa, it is not the first in the world to implement a ban on Islamic veils. Turkey has had limited anti-veiling laws since 1981.<sup>46</sup> Additionally, the German state of Hesse passed a veil ban in February 2011.<sup>47</sup> This past year has also seen the rise of far-right, anti-multiculturalism parties such as the Netherlands Freedom Party, Norway's Progress Party, and Switzerland's People's Party, all of which advocate for bans on all Islamic coverings.

These bans are controversial because many argue that they restrict women's rights to manifest their religion. A manifestation of a religion is the outward expression of religious belief (*forum externum*).<sup>48</sup> The HRC and the ECtHR consider clothing, such as Islamic head coverings, a manifestation of religion.<sup>49</sup> As provided by the International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention on the Rights of the Child, and the HRC, states can regulate religious manifestations when the regulation is “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”<sup>50</sup> When determining whether a limitation is necessary, the ECtHR has applied two principles: whether the measures taken were (1) justified and (2) proportionate.<sup>51</sup> The ECtHR recognizes that “[w]here questions concerning the relation-

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\* Prepared by Matthew V. Kerns, Esq.

41. Alyssa Newcomb, *France to Become First European Country to Ban Burqa*, ABC NEWS (Apr. 10, 2011), <http://abcnews.go.com/International/burqa-ban-effect-france/story?id=13344555>.

42. *Belgian Lawmakers Pass Burqa Ban*, BBC NEWS (Apr. 30, 2011), <http://news.bbc.co.uk/2/hi/8652861.stm>.

43. See Bruno Waterfield, *Netherlands to Ban the Burqa*, THE TELEGRAPH (Sept. 15, 2011), <http://www.telegraph.co.uk/news/worldnews/europe/netherlands/8765673/Netherlands-to-ban-the-burka.html>.

44. See Steven Faris, *In the Burqa Ban, Italy's Left and Right Find Something to Agree On*, TIME (Aug. 4, 2011), <http://www.time.com/time/world/article/0,8599,2086879,00.html>.

45. *Swiss Parliamentarians Vote for Burqa Ban*, NAHARNET (Sept. 28, 2011, 8:20 AM), <http://www.naharnet.com/stories/en/16049-swiss-parliamentarians-vote-for-burqa-ban>.

46. *Sahin v. Turkey*, App. No. 44774/98, 41 Eur. H.R. Rep. 8, ¶¶ 12, 33 (2005).

47. *Germany's First Burqa Ban Imposed by State of Hesse*, BBC NEWS EUROPE (Feb. 3, 2011), <http://www.bbc.co.uk/news/world-europe-12353626>.

48. *Dogru v. France*, App. No. 27058/05, 49 Eur. H.R. Rep. 8, ¶ 61 (2009); U.N. High Comm'r for Human Rights, *Gen. Comment No. 22: Art. 18 (Freedom of Thought, Conscience or Religion)*, ¶ 4, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (July 30, 1993) [hereinafter *Comment 22*].

49. See *Dahlab v. Switzerland*, App. No. 42393/98, 2001-V Eur. Ct. H.R. 449, ¶¶ 36-42 (2001); *Dogru*, 49 Eur. H.R. Rep. ¶ 64; *Sahin*, 41 Eur. H.R. Rep. ¶ 111; *Comment 22*, *supra* note 48, ¶ 4.

50. International Covenant on Civil and Political Rights art. 18(3), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; Convention on the Rights of the Child art. 14(3), Nov. 20, 1989, 1577 U.N.T.S. 3; *Comment 22*, *supra* note 48, ¶ 8.

51. *Sahin*, 41 Eur. H.R. Rep. ¶ 110; *Metro. Church of Bessarabia v. Moldova*, App. No. 45701/99, 35 Eur. H.R. Rep. 13, ¶¶ 119, 122 (2001); *Sunday Times v. United Kingdom* (No. 2), App. No. 13166/87, 14 Eur. H.R. Rep. 229, ¶ 50 (1991).

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ship between State and religions are at stake,” societies may widely differ and deference must be given to the state’s decision.<sup>52</sup>

In *Mann Singh v. France*, the ECtHR found that states could regulate religious clothing in order to protect public safety when the garment conceals the identity of the wearer.<sup>53</sup> Likewise, the ECtHR in *Dogru v. France* unanimously held that restricting the wearing of Islamic head coverings is proportional to the state’s need to promote an inclusive society.<sup>54</sup> But any restrictions on religion or expression must be directly related to the specific need on which the restriction is based.<sup>55</sup> Restrictions based on mere speculation violate religious freedom, as do restrictions applied in a discriminatory manner.<sup>56</sup>

The issue is further complicated when considering other basic human rights that intersect with the wearing of Islamic coverings. The ICCPR provides that all people have a right to the freedom of religion, which includes the non-derogable right to be free from discrimination based on religion.<sup>57</sup> Additionally, the HRC holds that, due to their vulnerable nature, ethnic and religious minorities warrant special protection to ensure their ability to freely profess and practice their own culture and religion.<sup>58</sup>

The HRC also found that freedom of religion not only protects the personal beliefs of an individual but also “encompasses the right to wear clothes or attire in public . . . in conformity with the individual’s faith or religion.”<sup>59</sup> The HRC, in a communication regarding *Hudoberganova v. Uzbekistan*, noted that restricting access to public services because of a religious practice, such as wearing religious clothing, is a coercive measure that violates a person’s right to religion as well as her right to social services.<sup>60</sup> The freedom of religion also coincides with the ICCPR’s rights to culture and the freedom of expression.<sup>61</sup> The right to culture includes the non-derogable right of parents to raise their children according to their religious, cultural, and philosophical convictions and the right of children to be raised within their native culture.<sup>62</sup> Likewise, the freedom of expression

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52. *Dogru*, 49 Eur. H.R. Rep. ¶ 63; *Sabin*, 41 Eur. H.R. Rep. ¶ 109.

53. See *Shingara Mann Singh v. France*, App. No. 24479/07 (Eur. Ct. H.R. 2008) at 7, available at <http://www.echr.coe.int> (French version only); see also *Araç v. Turkey*, App. No. 9907/02 (Eur. Ct. H.R. 2008) ¶ 9, available at <http://www.echr.coe.int>.

54. *Dogru*, 49 Eur. H.R. Rep. ¶¶ 76–77.

55. Special Rapporteur on Freedom of Religion or Belief, *Civil & Political Rights, Including the Question of Religious Intolerance*, Comm’n on H.R., ¶¶ 53–54, U.N. Doc. E/CN.4/2006/5 (Jan. 9, 2006) (by Asma Jahangir) [hereinafter *Civil & Political Rights Report*]; *Comment 22*, *supra* note 48, ¶ 8.

56. *Civil & Political Rights Report*, *supra* note 55, ¶¶ 53–54; *Comment 22*, *supra* note 48, ¶ 8.

57. ICCPR, *supra* note 50, arts. 2(1), 4(2), 26; see also *Comment 22*, *supra* note 48, ¶¶ 1, 4.

58. See *Comment 22*, *supra* note 48, ¶ 9.

59. H.R. Comm. Commc’n No. 931/2000, Views of the H.R. Comm. Under the Optional Protocol to the Int’l Covenant on Civil and Political Rights, 82d Sess., Oct. 18–Nov. 5, 2004, CCPR/C/82/D/931/2000, ¶ 6.2 (Jan. 18, 2005) [hereinafter *Commc’n No. 931/2000*]. See also *Civil & Political Rights Report*, *supra* note 55, ¶¶ 40, 44.

60. See *Commc’n No. 931/2000*, *supra* note 59, ¶ 6.2.

61. See U.N. High Comm’r for Human Rights, H.R. Comm. [CCPR], *Gen. Comment No. 23: Art. 27 (Rights of Minorities)*, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994); H.R. Comm. Commc’n No. 431/1990, Revised Decision on Admissibility, CCPR/C/50/D/431/1990, ¶¶ 6.4, 7.3–7.4 (Mar. 23, 1990) (finding road construction threatened rights of Finnish ethnic group to “enjoy their culture”).

62. See *Civil & Political Rights Report*, *supra* note 55, ¶¶ 52, 56; *Comment 22*, *supra* note 48, ¶ 8; Convention on the Rights of the Child, *supra* note 50, arts. 18(1), 29(1)(c); ICCPR, *supra* note 50, art. 18(4).

is not limited to the substance of ideas, but extends to the form in which ideas are conveyed, which can be an expression of personal, religious, or cultural identity.<sup>63</sup>

Since the first fines for violation of France's anti-veiling laws were imposed in September 2011, Hind Ahmas and Najate Naitali, the women convicted of violating the law, vowed to bring France's veiling ban before the ECtHR.<sup>64</sup> If the court does take the case on its merits, all of these issues will be relevant to the court's decision.

#### IV. Australian High Court Decision Halts Transfer Of Asylum Seekers To Malaysia\*

On May 7, 2011, the Australian Prime Minister, Julia Gillard, announced that Australia would ship 800 people arriving by boat on Australian shores to Malaysia for processing in exchange for accepting 4,000 refugees over four years.<sup>65</sup> The intent was to discourage the smuggling of people by removing the benefit of Australian legal protection, in turn making the dangerous journey to Australia less worth the risk. Asylum seekers would thereafter only be entitled to processing under Malaysian law, which does not include the protections afforded by the Convention relating to the Status of Refugees<sup>66</sup> (Convention) because Malaysia has yet to sign and ratify the Convention. Australia ratified the Convention on January 22, 1954.<sup>67</sup>

After the Malaysia deal—worth \$292 million (Australian dollars)—was signed on July 25,<sup>68</sup> the Refugee and Immigration Legal Center quickly challenged it on August 22, with hearings before a Full Bench of the High Court, Australia's highest judicial body.<sup>69</sup> The case, brought on behalf of the first group (forty-two people, including six minors) designated for transfer to Malaysia, questioned whether the Immigration Minister had legal authority to independently determine Malaysia was a safe country.<sup>70</sup>

At issue before the High Court was whether the Immigration Minister could make this determination independently under section 198A of the 1958 Australian Migration Act.

63. See *Lehideu v. France*, App. No. 24662/94, 30 Eur. H.R. Rep. 665, ¶¶ 52–53, 55 (1998); *News Verlags GmbH & Co.KG v. Austria*, App. No. 31457/96, 31 Eur. H.R. Rep. 8, ¶¶ 58–59 (2000) (discussing substance and form of newspaper publication).

64. Spiegel, *France's Burqa Ban: Two People Fined for Covering Faces*, ABC NEWS (Sept. 25, 2011), <http://abcnews.go.com/International/frances-burqa-ban-women-fined-covering-faces/story?id=14591682>.

\* Prepared by Sara Ramey, Esq.

65. *Gillard Reaches Asylum Agreement With Malaysia*, ABC NEWS (May 7, 2011, 5:18 PM), <http://www.abc.net.au/news/2011-05-07/gillard-reaches-asylum-agreement-with-malaysia/2708206>.

66. See generally Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 (signatories as of Jan. 20, 2012, 5:24 PM). For current list of signatories and parties to the Convention, see [http://treaties.un.org/pages/ViewDetailsII.aspx?&src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&lang=en](http://treaties.un.org/pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en).

67. *Id.*; see also Protocol related to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267. Australia signed the Protocol relating to the Status of Refugees on December 13, 1973. *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, UNHCR, <http://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>. The protocol extends the temporal and geographic reach of the Convention.

68. Liz Gooch, *Asian Refugees' Advocates Worry About Migrant Deal*, N.Y. TIMES (June 2, 2011), [http://www.nytimes.com/2011/06/03/world/asia/03iht-malaysia03.html?\\_r=2&pagewanted=print](http://www.nytimes.com/2011/06/03/world/asia/03iht-malaysia03.html?_r=2&pagewanted=print).

69. *Plaintiff M70/2011 v. Minister for Immigration and Citizenship* [2011] HCA 32 (Austl.).

70. There are two cases, one each for two Afghans claiming a credible fear of persecution, one 16 and one 24 years old.

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In essence, the court was being asked to determine what factors the Immigration Minister should consider in the exercise of this potentially broad authority and whether this decision was reviewable by the courts. In a six-to-one decision on August 31, the High Court found that the Immigration Minister's decision was reviewable by the courts and, in the case of Malaysia, that the Minister had reached an unsubstantiated and erroneous conclusion.

The Australian government had already signed a memorandum of understanding (MOU) with Papua New Guinea to reopen the Manus Island detention center for processing. In addition, Australia had been considering reopening the Nauru center. Although both are party to the Convention (Papua New Guinea since July 1986 and Nauru since September 2011), there is some question as to whether the courts will permit any offshore processing.

Australia could amend the Migration Act to clearly state that the Immigration Minister has the authority to make these decisions. Indeed, the Labor government sought to have Parliament pass the necessary legislation to allow transfers of asylum seekers to Malaysia, but Ms. Gillard's efforts failed and, on October 13, she declared that the government would no longer seek to process people offshore.<sup>71</sup>

#### **V. Corporate Liability under the Alien Tort Claims Act\***

Recent cases in U.S. federal appellate courts have raised the issue of whether corporations can be liable under the Alien Tort Claims Act (ATCA),<sup>72</sup> a statute that permits non-U.S. citizens to bring civil lawsuits in U.S. courts for violations of the law of nations, as defined by customary international law, regardless of where the violation occurs. The only time that the U.S. Supreme Court has considered the scope of ATCA liability for violations of customary international law was in *Sosa v. Alvarez-Machain*, and the Court left open the issue of whether corporations are subject to liability under the statute.<sup>73</sup>

Following the Second Circuit's decision in *Kiobel v. Royal Dutch Petroleum Co.*<sup>74</sup> in 2010, which held that corporations could not be sued under the ATCA, the D.C. Circuit,<sup>75</sup> the Seventh Circuit,<sup>76</sup> and the Ninth Circuit<sup>77</sup> have all held that corporations can be liable under the ATCA. Based on this conflict among the U.S. federal appellate courts, on October 17, 2011, the Supreme Court agreed to hear *Kiobel*.<sup>78</sup> The Supreme Court will have

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71. Ben Packham & James Massola, *Government Abandons Plans for Offshore Processing of Asylum-Seekers*, THE AUSTRALIAN (Oct. 13, 2011, 7:18 PM), <http://www.theaustralian.com.au/national-affairs/government-abandons-plans-for-offshore-processing-of-asylum-seekers/story-fn59niix-1226166090308>.

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72. 28 U.S.C. § 1350 (2006).

73. See *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 n.20 (2004) ("A related consideration is whether international law extends the scope of liability for a violation of a given norm to the perpetrator being sued, if the defendant is a private actor such as a corporation or individual.").

74. *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 120 (2d Cir. 2010) (concluding that corporate liability is not recognized as a "specific, universal, and obligatory norm" of customary international law).

75. *Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 57 (D.C. Cir. 2011).

76. *Flomo v. Firestone Natural Rubber Co.*, 643 F.3d 1013, 1021 (7th Cir. 2011).

77. *Sarei v. Rio Tinto, PLC*, Nos. 02-56256, 02-56390, 09-56381, 2011 WL 5041927, at \* 25 (9th Cir. Oct. 25, 2011).

78. *Kiobel*, 132 S. Ct. 472 (2011) (mem.).

the chance to answer “whether corporations are immune from tort liability for violations of the law of nations such as torture, extrajudicial executions or genocide” or may instead “be sued in the same manner as any other private party defendant under the [ATCA] for such egregious violations.”<sup>79</sup>

A look at the cases provides some context for the differing views of the courts. On July 8, 2011, the D.C. Circuit Court of Appeals held in *Doe v. Exxon Mobil Corp.*<sup>80</sup> that corporations can be liable under the ATCA, reversing the lower court’s dismissal of a lawsuit brought by Indonesian villagers against Exxon Mobil Corporation and its subsidiaries alleging that Exxon’s security forces committed murder, torture, sexual assault, battery, and false imprisonment while operating a large natural-gas extraction and processing facility. The D.C. Circuit criticized the Second Circuit’s opinion in *Kiobel* for ignoring “the plain text, history, and purpose of the [ATCA].”<sup>81</sup> The text of the ATCA is broad and, as noted by the D.C. Circuit, “by its terms does not distinguish among classes of defendants.”<sup>82</sup> Therefore, the D.C. Circuit looked to the “historical context” of the statute, including the federal government’s interest in providing a remedy for and preventing violations of the law of nations and the accepted principle of corporate liability in U.S. tort law, which “suggest[ ] that the purpose of the [ATCA] supports the availability of corporate liability.”<sup>83</sup> Importantly, the D.C. Circuit criticized *Kiobel* for conflating a cause of action under the ATCA with the remedy for an ATCA violation. Although a norm of international law must be “specific, universal, and obligatory” to be actionable under the ATCA, as the Supreme Court discussed in *Sosa*,<sup>84</sup> according to the D.C. Circuit, “for purposes of affording a remedy . . . the law of the United States and not the law of nations must provide the rule of decision in an [ATCA] lawsuit.”<sup>85</sup>

Three days later, the Seventh Circuit similarly held in *Flomo v. Firestone Natural Rubber Co.*<sup>86</sup>—a case brought by Liberian children against Firestone and its affiliates for allegedly using hazardous child labor in its rubber plantation in Liberia—that corporations can be liable under the ATCA. The Seventh Circuit criticized the Second Circuit’s conclusion in *Kiobel* that no corporation has ever been prosecuted for violating customary international law, noting that “[a]t the end of the Second World War the allied powers dissolved German corporations,”<sup>87</sup> and that even if no corporation has ever been prosecuted, “[t]here is always a first time for litigation to enforce a norm.”<sup>88</sup> Similar to the D.C. Circuit, the Seventh Circuit emphasized “the distinction between a principle of [ ] law, which is a matter of substance, and the means of enforcing it, which is a matter of procedure or remedy.”<sup>89</sup>

79. *Kiobel*, No. 10-1491, 2011 WL 2326721, at \*i (June 6, 2011) (Petition for Writ of Certiorari).

80. *Doe*, 654 F.3d at 14–15, 57.

81. *Id.* at 54.

82. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 438 (1989).

83. *Doe*, 654 F.3d at 43.

84. *Sosa*, 542 U.S. at 732.

85. *Doe*, 654 F.3d at 42.

86. *Flomo*, 643 F.3d at 1015, 1021.

87. *Id.* at 1017.

88. *Id.*

89. *Id.* The Seventh Circuit nonetheless affirmed the district court judgment on other grounds, finding that employing child labor is not a violation of customary international law that is actionable under the ATCA. *See id.* at 1024–25.

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In October 2011, the Ninth Circuit also similarly held in *Sarei v. Rio Tinto, PLC* that “[t]here is no legitimate basis for [the argument] that the [ATCA] itself is a complete bar to corporate liability.”<sup>90</sup> Current and former residents of the island of Bougainville in Papua New Guinea brought the lawsuit against Rio Tinto for its alleged discriminatory hiring practices and the alleged environmental impacts of its mining operation, as well as Rio Tinto’s alleged complicity in war crimes and crimes against humanity committed by the army during a secessionist conflict. In reaching the conclusion that the ATCA does not bar corporate liability, the Ninth Circuit compared the text and legislative history of the ATCA with that of the Torture Victim Protection Act (TVPA),<sup>91</sup> a statute that permits civil lawsuits against individuals who, acting in an official capacity for a foreign nation, commit torture or extrajudicial killing.<sup>92</sup> The Ninth Circuit distinguished the ATCA from the TVPA because the TVPA permits recovery of damages from “an individual” and the legislative history of the TVPA demonstrates that Congress considered and rejected corporate liability; no similar language or legislative history exists for the ATCA.<sup>93</sup> In upholding corporate liability under the ATCA for genocide, the Ninth Circuit noted the recent trend toward recognizing corporate liability and relied on an International Court of Justice opinion concluding that amorphous groups, states, and private individuals can all violate the *jus cogens* norm prohibiting genocide.<sup>94</sup>

Given how significant the ATCA has been in human rights cases, the Supreme Court’s consideration of *Kiobel* is a major development. Victims of human rights abuses have increasingly used the ATCA in an effort to hold perpetrators of human rights abuses accountable in U.S. courts. The Supreme Court will soon decide whether corporations that commit human rights abuses can be liable under the statute.

## VI. Capital Punishment\*

### A. THE UNITED STATES

In 2011, the U.S. Supreme Court addressed a multitude of death penalty cases, several of which drew wide international attention. In *Davis v. Humphrey*,<sup>95</sup> the Supreme Court denied Troy Davis’ final application for a stay of execution. Mr. Davis was soon thereafter executed by the State of Georgia. Mr. Davis’ claim of “actual innocence,” supported by the retraction of several witness’ testimonies together with minimal physical evidence,

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90. *Sarei*, 2011 WL 5041927, at \*7.

91. 28 U.S.C. § 1350 (historical note on Torture Victim Protection) (“An individual who, under actual or apparent authority, or color of law, of any foreign nation—(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or (2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual’s legal representative, or to any person who may be a claimant in an action for wrongful death.”).

92. *Sarei*, 2011 WL 5041927, at \*6.

93. *Id.*

94. *Id.* at 19–20 (“Congress . . . could hardly have fathomed the array of international institutions that impose liability on states and non-state actors alike in modern times.”).

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

95. *Davis v. Humphrey*, 132 S. Ct. 69 (2011). See *In re Davis*, 130 S. Ct. 1 (2009) (allowing Mr. Davis to proceed with his claim of “actual innocence”).

drew international legal and political attention.<sup>96</sup> The UN Office of the High Commissioner for Human Rights expressed strong regret over his execution and asserted that his execution may violate the ICCPR and other international law.<sup>97</sup>

The Supreme Court also addressed an internationally controversial death penalty case from Texas. In *Buck v. Thaler*,<sup>98</sup> the Supreme Court granted the application for stay of execution pending disposition of the petition for a writ of certiorari filed by Duane Buck, whose racially charged case drew wide attention to administration of the death penalty in Texas.<sup>99</sup> Mr. Buck was found guilty of murdering his ex-girlfriend in 1995; however, his capital punishment sentence, dependent on evidence of “future dangerousness,” was supported by the testimony of a psychologist who asserted that Mr. Buck’s “future dangerousness” was more likely because he is African-American.<sup>100</sup>

In *Garcia v. Texas*,<sup>101</sup> the Supreme Court again addressed complex international law and federalism issues arising under the Vienna Convention on Consular Relations and its prior decisions in *Medellin v. Texas*,<sup>102</sup> which limited the foreign policy power of the President to intervene in Texas execution proceedings. Consequently, the Supreme Court (in a 5-to-4 decision) denied a stay of execution for Humberto Leal Garcia, a Mexican citizen, who also argued that it was a violation of due process to execute him while Congress was considering legislation to implement the International Court of Justice’s *Avena* decision,<sup>103</sup> concerning U.S. obligations under the Vienna Convention. Garcia was then executed despite widespread outrage in the international human rights community.<sup>104</sup>

In *Valle v. Florida*,<sup>105</sup> the Supreme Court rejected three separate appeals to stay the execution of Manuel Valle, a Cuban national, who argued that his thirty-three years on death row constituted cruel and unusual punishment. Further, he asserted that a signifi-

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96. See, e.g., *An Indefensible Punishment*, N.Y. TIMES, Sept. 25, 2011 at A24, available at <http://www.nytimes.com/2011/09/26/opinion/an-indefensible-punishment.html>; Scott Sayare, *In Europe, A Chorus of Outrage Over a U.S. Execution*, N.Y. TIMES, Sept. 23, 2011, at A13, available at <http://www.nytimes.com/2011/09/23/world/europe/davis-execution-leads-to-chorus-of-outrage-in-europe.html>; E.J. Dionne, *Only conservatives can end the death penalty*, WASH. POST, Sept. 26, 2011, at 13A, available at [http://www.washingtonpost.com/opinions/only-conservatives-can-end-the-death-penalty/2011/09/25/gIQABMLGxK\\_story.html](http://www.washingtonpost.com/opinions/only-conservatives-can-end-the-death-penalty/2011/09/25/gIQABMLGxK_story.html).

97. *U.N. Human Rights Office Voices Profound Regret After Execution of U.S. Man*, UN NEWS CENTRE, (Sept. 23, 2011), <http://www.un.org/apps/news/story.asp?NewsID=39719>.

98. *Buck v. Thaler*, 132 S. Ct. 69 (2011).

99. See, e.g., Ed Pilkington, *Rick Perry in the Spotlight as Texas Sets to Work on Controversial Executions*, GUARDIAN (Sept. 13, 2011), <http://www.guardian.co.uk/world/2011/sep/13/rick-perry-texas-death-penalty>.

100. *Id.*; see also David D. Dow, *Death Penalty, Still Racist and Arbitrary*, N.Y. TIMES, July, 2011, at A17, available at <http://www.nytimes.com/2011/07/09/opinion/09dow.html>.

101. *Garcia v. Texas*, 564 U.S. — 131 S. Ct. 2866 (2011) (per curiam).

102. *Medellin v. Texas*, 552 U.S. 491, 532 (2008) (Medellin I); *Medellin v. Texas*, 554 U.S. 759, 760 (2008) (per curiam) (Medellin II).

103. *Avena & Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 12 (Mar. 31), available at <http://www.icj-cij.org/docket/files/128/8190.pdf>.

104. See, e.g., Michael Gnaczyk, *Texas Governor Defends Mexican’s Execution*, ABC NEWS (July 8, 2011), <http://abcnews.go.com/US/wireStory?id=14024854#TxAuZh8vdk>.

105. *Valle v. Florida*, 564 U.S. —, 132 S. Ct. 74 (2011); see Adam Liptak, *Lifelong Death Sentences*, N.Y. TIMES (Oct. 31, 2011), <http://www.nytimes.com/2011/11/01/us/death-row-inmates-wait-years-before-execution.html> (discussing Justice Breyer’s dissent and relevant international law).

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cant risk of Danish manufacturer, Lundbeck, protested fiercely to Governor Rick Scott against its misuse.<sup>106</sup>

The Supreme Court also considered ineffective assistance of counsel claims in death penalty cases. On October 4, 2011, the Court heard arguments in *Maples v. Thomas*.<sup>107</sup> At issue was ineffective assistance of trial counsel in this capital case. Mr. Maples' pro bono appellate attorneys missed an appellate review deadline for his state habeas claims due to a mailroom fiasco.<sup>108</sup> On September 20, 2011, the Supreme Court issued stay of execution pending disposition of the petition for certiorari in another ineffective assistance of trial and appellate counsel case, *Foster v. Texas*.<sup>109</sup> This case challenged the legality of phenobarbital as a lethal injection drug.

The Supreme Court also issued two decisions, *Harrington v. Richter* and *Premo v. Moore*.<sup>110</sup> Both further restricted inadequate assistance of counsel claims under *Strickland v. Washington*<sup>111</sup> in the context of federal habeas proceedings with respect to claims previously adjudicated on the merits in state courts under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).<sup>112</sup> The Supreme Court issued another highly complex opinion addressing a *Strickland* claim in the context of the AEDPA in *Cullen v. Pinholster*,<sup>113</sup> and held that federal courts are restricted to the state court records when reviewing claims adjudicated on the merits in state courts. The Supreme Court reserved the issue of how to distinguish between a claim previously exhausted in state court from a claim transformed by new evidence into a new claim filed in federal court.

A case involving jurisdiction was also in issue. An AEDPA case addressed a *Batson v. Kentucky*<sup>114</sup> claim in which two of three potential black jurors had been struck and the prosecutor offered race-neutral explanations. In *Felkner v. Jackson*,<sup>115</sup> the Supreme Court held that, under the AEDPA, evaluation of the prosecutor's credibility determination by the trial court is entitled to great deference and must be sustained unless clearly erroneous.

In *Bobby v. Mitts*,<sup>116</sup> the Supreme Court addressed jury instructions in the death penalty phase of trial and held that they were proper under the *Beck v. Alabama*<sup>117</sup> and *Smith v.*

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106. See Ed Pilkington, *Florida Execution to Go Ahead after U.S. Supreme Court Refuses Appeals*, GUARDIAN (Sept. 28, 2011), <http://www.guardian.co.uk/world/2011/sep/28/execution-death-penalty-florida>.

107. *Maples v. Thomas*, 132 S. Ct. 912, No. 10-63, 2012 WL 125438, at \*1 (2012).

108. See *A Dreadful Missed Deadline*, N.Y. TIMES, Oct. 5, 2011, <http://www.nytimes.com/2011/10/05/opinion/a-missed-deadline-and-a-death-sentence.html>; Robert Barnes, *Supreme Court Confronts Case of Death Row Inmate Whose Lawyers Quit His Case*, WASH. POST (Sept. 29, 2011), [http://www.washingtonpost.com/politics/supreme-court-confronts-case-of-death-row-inmate-whose-lawyers-quit-his-case/2011/09/26/gIQAncoS8K\\_story.html](http://www.washingtonpost.com/politics/supreme-court-confronts-case-of-death-row-inmate-whose-lawyers-quit-his-case/2011/09/26/gIQAncoS8K_story.html); Mark Walsh, *Lawyers on the Docket: Court Term Kicks Off with a Look at Legal Representation*, A.B.A.J., Oct. 1, 2011, available at [http://www.abajournal.com/magazine/article/lawyers\\_on\\_the\\_docket\\_court\\_term\\_kicks\\_off\\_with\\_a\\_look/](http://www.abajournal.com/magazine/article/lawyers_on_the_docket_court_term_kicks_off_with_a_look/).

109. *Foster v. Texas*, 564 U.S. —, 132 S. Ct. 69 (2011); see *Texas: Third Stay of Execution*, N.Y. TIMES (Sept. 21, 2011), <http://www.nytimes.com/2011/09/21/us/cleve-foster-is-granted-third-stay-of-execution.html>.

110. *Harrington v. Richter*, 131 S. Ct. 770 (2011); *Premo v. Moore*, 131 S. Ct. 733 (2011).

111. *Strickland v. Washington*, 466 U.S. 668 (1984).

112. 28 U.S.C. § 2254(d)(1) (1996).

113. *Cullen v. Pinholster*, 131 S. Ct. 1388 (2011).

114. *Batson v. Kentucky*, 476 U.S. 79 (1986).

115. *Felkner v. Jackson*, 131 S. Ct. 1305 (2011) (per curiam).

116. *Bobby v. Mitts*, 131 S. Ct. 1762 (2011) (per curiam).

117. *Beck v. Alabama*, 447 U.S. 625 (1980) (holding that a jury may not impose the death penalty when the jury was not permitted to consider a verdict of guilt in a non-capital included offense).

*Spisak*<sup>118</sup> decisions because no risk of an unwarranted capital sentence exists in penalty phase instructions which otherwise are not in violation of clearly established federal law.

In *Skinner v. Switzer*,<sup>119</sup> the Supreme Court held that a Texas death row inmate may bring a 42 U.S.C. §1983 civil rights due process claim seeking DNA testing independent of a habeas petition when the claim does not violate *Heck v. Humphrey*<sup>120</sup> principles. Success in Mr. Skinner's DNA suit would not inherently and necessarily imply the invalidity of his conviction.

#### B. CHINA

China continued its widespread practice of annually executing an unknown number of prisoners for a wide array of criminal offenses and its policy of state secrecy regarding execution statistics; however, judicial review procedures in capital cases have become more formal and institutionalized.<sup>121</sup>

#### C. NORTH KOREA

Satellite images and firsthand accounts from former jailers and inmates support estimates that North Korea's political prison camps may hold 200,000 inmates for whom punishment may involve execution or witnessing the execution of fellow prisoners.<sup>122</sup>

#### D. MIDDLE EAST

Iran expanded its widespread practice of public executions by hanging, which was condemned by UN High Commissioner for Human Rights Navi Pillay, Amnesty International, and other human rights groups.<sup>123</sup> Among those hanged in 2011 were two juveniles, Kurdish activists, at least twenty-six other human rights and political activists, and persons convicted of drug trafficking, rape, and religious crimes.<sup>124</sup>

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118. *Smith v. Spisak*, 130 S. Ct. 676 (2010) (upholding jury instruction on "mental defect" mitigation as consistent with federal law).

119. *Skinner v. Switzer*, 131 S. Ct. 1289, 1292 (2011).

120. *Heck v. Humphrey*, 512 U.S. 477, 487 (1994) (section 1983 claim not available because any relief would impliedly invalidate the underlying conviction).

121. See AMNESTY INTERNATIONAL, CHINA – AMNESTY INTERNATIONAL REPORT 2010, available at <http://www.amnesty.org/en/region/china/report-2010#section-29-8>.

122. See Mark McDonald, *North Korean Prison Camps Massive and Growing*, N.Y. TIMES (May 4, 2011), <http://www.nytimes.com/2011/05/05/world/asia/05korea.html>; Tania Branigan, *North Korea Holds 200,000 Political Prisoners, Says Amnesty*, GUARDIAN (May 4, 2011), <http://www.guardian.co.uk/world/2011/may/04/north-korea-political-prisoners-amnesty>.

123. See CNN Wire Staff, *Execution Rate in Iran Alarms U.N. Human Rights Chief*, CNN WORLD (Feb. 3, 2011), [http://articles.cnn.com/2011-02-03/world/iran.executions\\_1\\_halt-executions-iranian-authority](http://articles.cnn.com/2011-02-03/world/iran.executions_1_halt-executions-iranian-authority); *Iran Steps Up Rate of Public Executions*, ALERTNET (Apr. 27, 2011), <http://www.trust.org/alertnet/news/iran-steps-up-rate-of-public-executions—amnesty>.

124. See Saeed Kamali Dehghan, *Iran Public Execution Outrages Human Rights Groups*, GUARDIAN (July 22, 2011), <http://www.guardian.co.uk/world/2011/jul/22/iran-public-execution-human-rights>; Nazila Fathi, *Kurds Stage Strike in Iran to Protest Executions of Activists*, N.Y. TIMES (May 13, 2010), <http://www.nytimes.com/2010/05/14/world/middleeast/14iran.html>.

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Throughout the Muslim world, public support for the death penalty for those who leave Islam remains very high, including over seventy percent support in Pakistan and over eighty percent support in Egypt.<sup>125</sup> In Pakistan, Aasia Bibi became the first Christian woman to be sentenced to death for blasphemy; however, at least ten Pakistani men have been killed while awaiting trial on blasphemy charges since 1990.<sup>126</sup> Saudi Arabia also executed a Sudanese man for the crime of “sorcery,” which is apostasy in Islam.<sup>127</sup>

In Saudi Arabia, the Shura Council, the appointed legislative body, drafted proposals for the significant expansion of the death penalty for vaguely defined terrorism and public security offenses.<sup>128</sup> Following Ramadan in 2011, executions in Saudi Arabia increased and included the public beheading of eight Bangladeshi migrant workers in Riyadh for alleged murder.<sup>129</sup>

Capital punishment by hanging in India, codified during British rule, remains arbitrarily imposed, often by local unelected bodies beyond the control of the national government; however, efforts to abolish the death penalty have gained support among retired judges and other prominent members of the legal community.<sup>130</sup>

In Afghanistan, Christian converts faced widespread persecution and death sentences for apostasy imposed both by local prosecutors and by extra-judicial officials under Sharia law.<sup>131</sup> The government of President Hamid Karzai carried out the first hangings since the end of Taliban rule a decade ago.<sup>132</sup> The public stoning deaths of a young couple who had tried to elope—ordered by the Taliban in the Kunduz village of Mullah Quli and widely shown on Afghan television—did not result in any criminal charges by Afghan government authorities.<sup>133</sup>

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125. See *Dreaming of a Caliphate*, ECONOMIST (Aug. 6, 2011), <http://www.economist.com/node/21525400>.

126. See Declan Walsh, *Pakistan Supporters Fear for Safety of Aasia Bibi After Taseer Killing*, GUARDIAN (Jan. 6, 2011), <http://www.guardian.co.uk/world/2011/jan/06/aasia-bibi-salmaan-taseer-assassination>.

127. See *Dying Out*, ECONOMIST (Sept. 24, 2011), <http://www.economist.com/node/21530098>.

128. See *Nothing Liberal Yet*, ECONOMIST (July 30, 2011), <http://www.economist.com/node/21524853>.

129. See *Saudi Arabia Executes Eight Bangladeshi Nationals*, AMNESTY INT’L (Oct. 7, 2011), <http://www.amnesty.org/en/news-and-updates/saudi-arabia-executes-eight-bangladeshi-nationals-2011-10-07>.

130. See Jim Yardley and Hari Kumat, *With 1.2 Billion People, India Seeks a Good Hangman*, N.Y. TIMES (June 13, 2011), <http://www.nytimes.com/2011/06/14/world/asia/14india.html?pagewanted=all>; Jim Yardley, *Unelected Councils in India Run Villages With Stern Hand*, N.Y. TIMES (June 4, 2011), <http://www.nytimes.com/2011/06/05/world/asia/05india.html?pagewanted=all>; *Fatally Flawed*, ECONOMIST (Oct. 1, 2011), <http://www.economist.com/node/21531041>.

131. See Ray Rivera, *Afghan Rights Fall Short For Christian Converts*, N.Y. TIMES (Feb. 5, 2011), <http://www.nytimes.com/2011/02/06/world/asia/06mussa.html?pagewanted=all>.

132. See Sayed Salahuddin & Pamela Constable, *Afghan Mass Killers First to be Hanged by Karzai Government*, WASH. POST (June 20, 2011), [http://www.washingtonpost.com/world/afghan-mass-killers-first-to-be-hanged-by-karzai-government/2011/06/20/AGq8gwcH\\_story.html](http://www.washingtonpost.com/world/afghan-mass-killers-first-to-be-hanged-by-karzai-government/2011/06/20/AGq8gwcH_story.html).

133. See Rod Nordland, *Afghan Stoning Video Rekindles Outcry*, N.Y. TIMES (Jan. 31, 2011), <http://www.nytimes.com/2011/02/01/world/asia/01stoning.html>.

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E. AFRICA

In Ivory Coast, the UN reported widespread extra-judicial executions in 2011 in the aftermath of ongoing post-election civil unrest.<sup>134</sup> Benin abolished the death penalty in August 2011.<sup>135</sup> Gabon also abolished the death penalty.<sup>136</sup>

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134. See *Ivory Coast Conflict: U.N. Says 26 Executed in a Month*, BBC NEWS AFRICA (Aug. 11, 2011), <http://www.bbc.co.uk/news/world-africa-14495336?print=true>.

135. See *Dying Out*, *supra* note 127.

136. See AMNESTY INTERNATIONAL, THE DEATH PENALTY IN 2010, *available at* <http://www.amnesty.org/en/death-penalty/death-sentences-and-executions-in-2010>.

SPRING 2012

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