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## International Human Rights

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## International Human Rights

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## International Human Rights

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RYAN McCLURE, MARGARET SPICER, AND LEANN DANA STANICK

This article focuses on significant developments in human rights work, the newest resolutions enacted, and an update on jurisprudence in the capital punishment area from around the world.

### I. Human Trafficking and Migrant Smuggling

Human trafficking is on the rise globally,<sup>1</sup> with an estimated \$7 billion in annual profits.<sup>2</sup> The United Nations, International Organization for Migration (IOM),<sup>3</sup> and other international organizations have coordinated efforts to combat this complex problem by addressing the interrelated issue of migrant smuggling. For example, on October 18, 2014, designated as European Anti-Trafficking Day, a group of high-level human rights experts called for a global response to trafficking in persons and particularly noted the relationship between trafficking and migrant smuggling.<sup>4</sup> One of the most difficult aspects of addressing human trafficking is that thousands of people undertake the migration process in hopes of better lives, only to discover that the smugglers have misled them into perilous journeys or unsafe working conditions.<sup>5</sup> The IOM's Missing Migrants Project estimated that the number of migrants who died while in transit to Europe has increased each year.<sup>6</sup>

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\* Committee Editor and Vice Chair, ABA Section of International Law, International Human Rights Committee. Margaret Spicer (Human Trafficking and Migrant Smuggling); Leann Dana Stanick (International Criminal Tribunals); Ryan McClure and Jennifer L. Boger (United Nations Human Rights Council Update); and Lawrence G. Albrecht (Capital Punishment).

1. See *Poverty, Inequality, Discrimination—Let's Stop Human Trafficking at the Roots*, UNITED NATIONS HUM. RTS. (Oct. 18, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15182&LangID=E>. (estimating 800,000 people per year are trafficked not including intra-border).

2. *Human Trafficking a \$7-Bln Business along Main Routes: UN*, YAHOO NEWS (Oct. 6, 2014, 11:21 AM), <http://news.yahoo.com/human-trafficking-7-bln-business-along-main-routes-152120057.html>.

3. See generally *Counter-Trafficking*, INT'L ORG. FOR MIGRATION, <http://www.iom.int/cms/countertrafficking> (last visited Feb. 5, 2015).

4. See *Poverty, Inequality, Discrimination—Let's Stop Human Trafficking at the Roots*, *supra* note 1.

5. See *id.*

6. See, e.g., *IOM Says New Witnesses Provide Further Details of Mediterranean Shipwreck Tragedy*, INT'L ORG. FOR MIGRATION (Sept. 16, 2014), <http://www.iom.int/cms/en/sites/iom/home/news-and-views/press-brief>.

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The link between migrant smuggling and human trafficking creates the need for an integrated approach by international agencies, and state and local governments. Agencies like the IOM have started treating the trafficking-in-persons issue within the overall context of migration, and they have begun partnering with governmental institutions,<sup>7</sup> non-governmental organizations (NGOs), and other international organizations to implement strategies to address the issue.<sup>8</sup> For example, the Association of Southeast Asian Nations (ASEAN)-U.S. Seminar on Trafficking in Persons in October 2014 focused on addressing all forms trafficking, whether inter- or intra-state.<sup>9</sup> The seminar also supported the forthcoming finalization and adoption of the ASEAN Convention on Trafficking in Persons sometime in 2015.<sup>10</sup>

## II. International Criminal Tribunals

### A. INTERNATIONAL CRIMINAL COURT

Last year, the International Criminal Court (ICC or the Court), celebrated the tenth anniversary of the Rome Statute's entry into force.<sup>11</sup> The Office of the Prosecution is currently conducting preliminary investigations in a number of countries and recently announced the opening of a second investigation into the Central African Republic.<sup>12</sup>

Notably, in March 2014, the Court found German Katanga, alleged commander of the Force de résistance patriotique en Ituri (FRPI), guilty of being an accessory to one count of crimes against humanity for murder and of four counts of war crimes for murder, attacking a civilian population, destruction of property, and pillaging, on the village of Bogoro in Ituri in the Democratic Republic of Congo (DRC).<sup>13</sup> On May 23, 2014, Katanga was sentenced to a total of twelve years imprisonment based on the Chamber's finding that Katanga contributed to the commission of the crimes by the Ngiti militia with knowledge of the common plan to target Bogoro.<sup>14</sup> Following this decision, the international community urged the Prosecutor of the ICC to continue investigations in the DRC, sending a clear warning to human rights abusers.<sup>15</sup>

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ing-notes/pbn-2014b/pbn-listing/iom-says-new-witnesses-provide-f.html (noting as many as 500 migrants involved).

7. See, e.g., *IOM Aids Prosecutor's Office to Combat Human Trafficking and Smuggling in Dominican Republic*, INT'L ORG. FOR MIGRATION (Oct. 28, 2014), <http://www.iom.int/cms/en/sites/iom/home/news-and-views/press-briefing-notes/pbn-2014b/pbn-listing/iom-iom-aids-prosecutors-office.html>.

8. See *id.*

9. See *ASEAN, US Tackle Human Trafficking at a Seminar in Myanmar*, ASS'N SOUTHEAST ASIAN NATIONS (Oct. 9, 2014), <http://www.asean.org/news/asean-secretariat-news/item/asean-us-tackle-human-trafficking-at-a-seminar-in-myanmar>.

10. See *id.*

11. See Richard Dicker, *ICC: The Court of Last Resort*, HUM. RTS. WATCH (June 29, 2012), <http://www.hrw.org/news/2012/06/29/icc-court-last-resort>.

12. See Memoranda, Prosecutor of the International Criminal Court, Situation in the Central African Republic II, Article 53(1) Report (Sept. 24, 2014), available at <http://www.icc-epi.int/iccdocs/otp/SAS-CARII-Art53-1-Executive-Summary-24Sept2014-Eng.pdf>.

13. See *Prosecutor v. Germain Katanga*, Case No. ICC-01/04-01/07, Judgement (Mar. 7, 2014), <http://www.icc-epi.int/iccdocs/doc/doc1744366.pdf> (Fr.).

14. See *id.*

15. See, e.g., *ICC: Congolese Rebel Leader Found Guilty*, HUM. RTS. WATCH (Mar. 7, 2014), <http://www.hrw.org/news/2014/03/07/icc-congolese-rebel-leader-found-guilty>.

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Accordingly, on June 9, 2014, the Pre-trial Chamber II unanimously confirmed charges against Congolese warlord Bosco Ntaganda.<sup>16</sup> The charges included thirteen counts of war crimes and five counts of crimes against humanity for crimes committed in Ituri Province, DRC.<sup>17</sup> The former alleged Deputy Chief of Staff and commander of operations of the Patriotic Forces for the Liberation of Congo voluntarily surrendered himself to the Court on March 22, 2013, and is now being specifically charged with murder, attempted murder, attacking civilians, rape, sexual slavery, pillaging, displacement of civilians, enlistment of child soldiers, and persecution, among other crimes.<sup>18</sup>

**B. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

This year marks the twentieth anniversary of the 1994 Rwandan Genocide against the Tutsis, which necessitated the establishment of the International Criminal Tribunal for Rwanda. Throughout the course of its existence, this international criminal tribunal has indicted ninety-three leading figures—sixty-one of which were convicted of genocide, crimes against humanity, or war crimes; fourteen which were acquitted at trial or on appeal; ten who have had their cases referred to national jurisdictions; and three more are held in reserve for trial.<sup>19</sup> Chief Prosecutor Justice Hassan B. Jallow is optimistic about the court's ability to prevent such atrocities from reoccurring but made it clear that nine fugitives remain at large and much justice needs to be done before the scheduled closure of the Court in 2015.<sup>20</sup>

On June 30, 2014, the Appeals Chamber affirmed in part the Trial Chamber's conviction of Augustin Bizimungu, the appointed commander of military operations for Ruhengeri Sector, who was later promoted to the rank of major general and appointed Chief of Staff of the Rwandan army.<sup>21</sup> The Court affirmed Bizimungu's convictions of genocide, extermination, murder, and rape as crimes against humanity; and his convictions of murder and rape as serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II based on attacks at various locations.<sup>22</sup> But the Appeals Chamber found that the Trial Chamber erroneously assessed the evidence of killings and rapes at multiple locations and reversed his convictions as to those events.<sup>23</sup> Additionally, the Appeals Chamber reversed the convictions based on the Trial Chamber's faulty rulings on

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16. See Prosecutor v. Bosco Ntaganda, Case No. ICC-01/04-02/06, Decision on the Charges of the Prosecutor against Bosco Ntaganda (June 9, 2014), <http://www.icc-cpi.int/iccdocs/doc/doc1783301.pdf>.

17. See *id.*

18. See *id.*

19. Statement by Justice Hassan B. Jallow, Prosecutor UN-ICTR & UN-MICT to the United Nations Security Council, UNITED NATIONS INT'L CRIM. TRIBUNAL FOR RWANDA (June 5, 2014), <http://unictr.org/en/news/statement-justice-hassan-b-jallow-prosecutor-un-ictr-un-mict-united-nations-security-council>.

20. See *id.*; see also Statement by Justice Hassan B. Jallow, Chief Prosecutor, ICTR & MICT on the Commemoration of the 20th Anniversary of the Rwandan Genocide, UNITED NATIONS INT'L CRIM. TRIBUNAL FOR RWANDA (Apr. 10, 2014), <http://www.unictr.org/en/news/statement-justice-hassan-b-jallow-chief-prosecutor-ictr-mict-commemoration-20th-anniversary>.

21. See Press Release, International Criminal Tribunal for Rwanda, Appeals Chamber Delivers Judgement in the Bizimungu Case, ICTR/INFO-9-2-755.EN (June 30, 2014), <http://www.unictr.org/en/news/appeals-chamber-delivers-judgement-bizimungu-case>.

22. See Prosecutor v. Bizimungu, Case No. ICTR-00-56B-A, *Judgement* (June 30, 2014).

23. See *id.*

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his exercise of superior responsibility over the *Interahamwe*.<sup>24</sup> In light of the serious nature of the remaining convictions, however, the Court affirmed Bizimungu's thirty-year prison sentence.<sup>25</sup>

In other cases, the Appeals Chamber reversed the convictions of Augustin Ndindiliyimana and François-Xavier Nzuwonemeye, and partially reversed the sentence of Innocent Sagahutu, reducing his sentence from twenty to fifteen years imprisonment in the *Military II* case.<sup>26</sup> The Court found that the Trial Chamber erred in concluding that Ndindiliyimana exercised effective control over the gendarmes who participated in certain attacks, and the Court noted the Prosecution's concession that no evidence supported Ndindiliyimana's conviction for murder as a crime against humanity.<sup>27</sup> Furthermore, the Appeals Chamber held that Sagahutu was not criminally responsible for ordering the killings of two UNAIR peacekeepers, Nzuwonemeye was not responsible as a superior, and neither Appellants were criminally responsible for the killing of Prime Minister Agathe Uwilingiyimana.<sup>28</sup> The Appeals Chamber also delivered judgments in the rulings concerning Édouard Karemera and Matthieu Ngirumpatse, Idephonse Nizeyimana, and Calixte Nzabonimana, reducing Nizeyimana's sentence to thirty-five years and affirming life sentences for the three other men.<sup>29</sup>

C. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Since its commencement in 1993, the International Criminal Tribunal for the Former Yugoslavia (ICTY or the Tribunal) has concluded trial proceedings against 141 persons for serious violations of international humanitarian law and has indicted a total of 161 persons.<sup>30</sup> The ICTY is currently concluding the crux of its remaining appellate cases and is expected to come to a close fairly soon. In President Theodor Meron's presentation of the twenty-first annual report to the UN General Assembly, he stated that fewer than ten trials and appeals remain unfinished.<sup>31</sup> He further shared that according to current forecasts, by the end of 2015, only one—the appeal of the Mladic and Prlic et al. case—will be ongoing.<sup>32</sup>

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24. *See id.*

25. *Id.*

26. Augustin Ndindiliyimana v. Prosecutor, Case No. ICTR-00-56-A, *Judgement* (Feb. 11, 2014), <http://unictr.org/sites/unictr.org/files/case-documents/ictr-00-56/appeals-chamber-judgements/en/140211.pdf>; *see also* Press Release, International Criminal Tribunal for Rwanda, Appeals Chamber Delivers Judgement in Military II Case, ICTR/INFO-9-2-752.EN (Feb. 11, 2014), <http://www.unictr.org/en/news/appeals-chamber-delivers-judgement-military-ii-case>.

27. *See id.* ¶¶ 61, 81.

28. *See id.* ¶¶ 312, 323, 388.

29. Press Release, International Criminal Tribunal for Rwanda, ICTR Appeals Chamber Delivers Judgements in Three Cases, ICTR/INFO-9-2-759.EN (Sept. 29, 2014), <http://www.unictr.org/en/news/ictr-appeals-chamber-delivers-judgements-three-cases>.

30. Press Release, International Criminal Tribunal for the Former Yugoslavia, Mladic Prosecution Allowed to Reopen Its Case-in-Chief to Present Evidence from Tomašica Mass Grave, CS /PR1611e (Oct. 23, 2014), <http://www.icty.org/sid/11561>.

31. Press Release, International Criminal Tribunal for the Former Yugoslavia, President Meron's Address before the United Nations General Assembly, CS /PR1610e (Oct. 14, 2014), <http://www.icty.org/sid/11556>.

32. *Id.*

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On January 27, 2014, the Appeals Chamber issued a judgment reducing the sentence of Nikola Sainović from twenty-two to eighteen years, Streten Lukić from twenty-two to twenty years, and Vladimir Lazarević from fifteen to fourteen years.<sup>33</sup> Nebojsa Pavoković's twenty-two year sentence was affirmed. These senior Serbian officials held offices as Deputy Prime Minister of the FRY (Sainović), Commander of the 3rd Army of the Army of Yugoslavia (Pavoković), Commander of the VJ Priština Corps (Lazarević), and head of the Serbian Ministry of the Interior (MUP) staff (Lukić) in Priština while Kosovo Albanians were killed, forcibly displaced, assaulted, and suffered the intentional destruction of their mosques.<sup>34</sup> While affirming some charges, the Appeals Chamber vacated the convictions of all four Appellants with regard to crimes of deportation and other inhuman acts. The Court found that those specific instances were not pled in the indictment and therefore led to prejudice and impairment of the defendants' ability to prepare for trial. The Appeals Judges further held that the defendants were not necessarily behind displacement efforts and named an assortment of grounds for disagreeing with the Trial Chamber's findings.<sup>35</sup>

Markedly, President Meron granted the early release of two high-level political figures this year. Ranko Češić, a member of the Bosnian Serb Territorial Defense and member of the Intervention Platoon of the Bosnian Serb Police Reserve Corps, was granted early release due to demonstrated signs of rehabilitation and cooperation with the Office of the Prosecutor.<sup>36</sup> Češić had been charged with murder, humiliating and degrading treatment, rape, and other forms of sexual assault.<sup>37</sup> Likewise, Meron granted the early release of Dario Kordić, a leading political figure of the Bosnian Croat community who was convicted of murder, unlawful attacks on civilians, inhuman treatment, and persecutions on political, racial or religious grounds, in addition to other charges.<sup>38</sup> Kordić was also released on grounds of demonstrated signs of rehabilitation and cooperation with the Office of the Prosecution.<sup>39</sup>

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33. Press Release, International Criminal Tribunal for the Former Yugoslavia, Convictions for Kosovo Crimes Upheld for Four Senior Serbian Officials, MS/CS/1594e (Jan. 23, 2014), <http://www.icty.org/sid/11443>.

34. See Prosecutor v. Šainović, Case No. IT-05-87-A, Judgement (Int'l Crim. Trib. for the Former Yugoslavia Jan. 23, 2014), <http://www.icty.org/x/cases/milutinovic/acjug/en/140123.pdf>; see also Press Release, Vlastimir Đorđević's Responsibility for Crimes in Kosovo Confirmed on Appeal, MS/CS/1595e (Jan. 27, 2014), <http://www.icty.org/sid/11445> (reducing the sentence of Vlastimir Đorđević).

35. See Prosecutor v. Šainović, Case No. IT-05-87-A, Judgement (Int'l Crim. Trib. for the Former Yugoslavia Jan. 23, 2014), <http://www.icty.org/x/cases/milutinovic/acjug/en/140123.pdf>.

36. See Prosecutor v. Ranko Češić, Case No. MICT-14-66-ES, Public Redacted Version of the 30 April 2014 Decision of the President on the Early Release of Ranko Češić (May 28, 2014), <http://unmict.org/sites/default/files/casedocuments/mict-14-66/president%E2%80%99s-decisions/en/140528.pdf>.

37. See Prosecutor v. Ranko Češić, Case No. IT-95-10/1-S, Sentencing Judgement (Int'l Crim. Trib. for the Former Yugoslavia Mar. 11, 2004), <http://www.icty.org/x/cases/cesic/tjug/en/ces-tj040311e.pdf>.

38. See Prosecutor v. Dario Kordić, Case No. MICT-14-68-ES, Public Redacted Version of the 21 May 2014 Decision of the President on the Early Release of Dario Kordić (June 6, 2014), <http://unmict.org/sites/default/files/casedocuments/mict-14-68/president%E2%80%99s-decisions/en/140606.pdf>.

39. See *id.*

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### III. United Nations Human Rights Council Update

In 2014, the United Nations Human Rights Council (UNHRC or the Council) held its twenty-fifth, twenty-sixth, and twenty-seventh sessions. It also held special sessions on the situation of human rights,<sup>40</sup> with forty-three countries undergoing the Universal Periodic Review process.

#### A. COUNTRY SPECIFIC RESOLUTIONS

Over the course of the year, the UNHRC adopted a number of resolutions that expressed concern over the human rights situations in several countries. The countries addressed in these resolutions include the following: Sri Lanka, the Syrian Arab Republic, the Islamic Republic of Iran, the Democratic People's Republic of Korea, Myanmar, the Occupied Palestinian Territory (including East Jerusalem and the Occupied Syrian Golan), Guinea, the Republic of Mali, Libya, Eritrea, Belarus, Ukraine, South Sudan, Côte d'Ivoire, Yemen, the Democratic Republic of the Congo, the Central African Republic, and Sudan. A few are highlighted here.

##### 1. *Sri Lanka*

In response to the grave violations of human rights that occurred during the Sri Lankan civil war, the UNHRC called upon Sri Lanka to end continuing incidents of human rights violations and abuses, to conduct an independent investigation into violations of international human rights law and international humanitarian law, to release the results of its investigations into alleged violations by security forces, and to hold accountable those responsible for violations.<sup>41</sup>

##### 2. *The Syrian Arab Republic*

The UNHRC has continued to monitor the situation in the Syrian Arab Republic. The Council demanded that Syrian authorities fully cooperate with the Commission of Inquiry on the Syrian Arab Republic and called upon all groups in the country to refrain from retaliation and violence.<sup>42</sup>

##### 3. *Myanmar*

The UNHRC welcomed the positive developments in Myanmar and the government's commitment to political and economic reform, democratization, national reconciliation, and the promotion and protection of human rights. But the Council also expressed its concern about the remaining human rights violations and abuses in Myanmar, including

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40. See Human Rights Council Res. S-20/1, U.N. Doc. A/HRC/RES/S-20/1 (Jan. 21, 2014); Human Rights Council Res. S-21/1, U.N. Doc. A/HRC/RES/S-21 (July 24, 2014); Human Rights Council Res. S-22/1, U.N. Doc. A/HRC/RES/S-22/1 (Sep. 3, 2014).

41. See Human Rights Council Res. 25/1, U.N. Doc. A/HRC/RES/25/1 (Apr. 9, 2014).

42. See Human Rights Council Res. 25/23, U.N. Doc. A/HRC/RES/25/23 (Apr. 9, 2014); Human Rights Council Res. 26/23, U.N. Doc. A/HRC/RES/26/23 (July 17, 2014); Human Rights Council Res. 27/16, U.N. Doc. A/HRC/RES/27/16 (Oct. 3, 2014).



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instances of arbitrary arrest and detention; forced displacement; rape and sexual violence; torture; cruel, inhumane and degrading treatment; and arbitrary deprivation of property.<sup>43</sup>

4. *Ukraine*

In response to escalating tensions in Eastern Ukraine, the UNHRC called upon the government to continue its reform efforts aimed at strengthening human rights protections of all citizens, the rule of law, and democracy.<sup>44</sup> In particular, the Council highlighted the importance of protecting the human rights of residents of the Autonomous Republic of Crimea and the city of Sevastopol.

5. *Yemen*

The UNHRC called upon the Yemeni government to release persons arbitrarily detained and to end the practice of unlawful detention of persons.<sup>45</sup> It also called upon the international community to provide financial support for the Yemen humanitarian response plan of 2014.

6. *Sudan*

The UNHRC commended the government of Sudan for reinforcing human rights education at the basic and secondary levels and for its efforts in combating human trafficking.<sup>46</sup> The Council, however, expressed serious concern over the excessive use of force in response to demonstrations in September 2013 and in March 2014 and called upon the government to establish an independent inquiry into those matters.

B. TRENDS AND NOTEWORTHY RESOLUTIONS

1. *Children*

The UNHRC adopted two resolutions focused on the rights of the child. To effectuate access to justice, in resolution 25/6,<sup>47</sup> the Council called upon States to ensure that national legal systems provide access and effective remedies to children for violations of their rights. In resolution 25/10, it issued a global call to make the invisible visible and also advocated for the rights of children.<sup>48</sup>

The Council passed two children's rights resolutions to address concerns over the more than 6.3 million children under five years of age that die each year.<sup>49</sup> In response, the Council called upon States to adopt a human-rights-based approach to reduce and eliminate preventable mortality and morbidity of children. In resolution 27/15,<sup>50</sup> the UNHRC

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43. See Human Rights Council Res. 25/26, U.N. Doc. A/HRC/RES/25/26 (Apr. 15, 2014).

44. See Human Rights Council Res. 26/30, U.N. Doc. A/HRC/RES/26/30 (July 15, 2014).

45. See Human Rights Council Res. 27/19, U.N. Doc. A/HRC/RES/27/19 (Oct. 3, 2014).

46. See Human Rights Council Res. 27/29, U.N. Doc. A/HRC/RES/27/29 (Oct. 7, 2014).

47. Human Rights Council Res. 25/6, U.N. Doc. A/HRC/RES/25/6 (Apr. 14, 2014).

48. Human Rights Council Res. 25/10, U.N. Doc. A/HRC/RES/25/10 (Apr. 14, 2014).

49. See Human Rights Council Res. 27/14, U.N. Doc. A/HRC/RES/27/14 (Oct. 2, 2014).

50. Human Rights Council Res. 27/15, U.N. Doc. A/HRC/RES/27/15 (Oct. 3, 2014).

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encouraged States to promote recreational and play activities that benefit the growth and development of children.

2. *Environment*

The UNHRC recognized that international human rights law sets out certain procedural and substantive obligations and urged States to comply with these obligations when developing and implementing their environmental policies.<sup>51</sup>

The UNHRC reiterated its concern that adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of all human rights and that the effects of climate change will be felt most acutely by individuals and communities around the world that are already in vulnerable situations.<sup>52</sup>

3. *Business*

The UNHRC addressed the issue of illicit business practices, corruption, and human trafficking.<sup>53</sup> It called upon States to accede to the UN Convention Against Corruption. It further addressed business and human rights in the twenty-sixth session<sup>54</sup> by establishing an open-ended, intergovernmental working group, the mandate of which is to create a legally binding international instrument that will seek to regulate the activities of transnational corporations and other business enterprises<sup>55</sup> in relation to international human rights law.

4. *Terrorism*

In resolution 25/7,<sup>56</sup> the Council called upon States to ensure that measures taken to combat terrorism comply with international law, provide some remedy for those claiming violations, and safeguard the right to privacy. In resolution 25/22,<sup>57</sup> it urged States to ensure that any measures employed to counter terrorism comply with international law, and it called upon States to ensure transparency in their records on the use of remotely piloted aircraft or armed drones and conduct prompt, independent, and impartial investigations wherever violations of international law are indicated.

5. *Women*

In 2014, the UNHRC adopted several resolutions specifically addressing women's rights and empowerment, including Resolution 26/5, aimed at eliminating discrimination;<sup>58</sup> Resolution 26/15, aimed at eliminating violence;<sup>59</sup> and Resolution 27/11, aimed at

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51. See Human Rights Council Res. 25/21, U.N. Doc. A/HRC/RES/25/21 (Apr. 15, 2014).

52. See Human Rights Council Res. 26/27, U.N. Doc. A/HRC/RES/26/27 (July 15, 2014).

53. See Human Rights Council Res. 23/9, U.N. Doc. A/HRC/RES/23/9 (June 20, 2013).

54. See Human Rights Council Res. 26/9, U.N. Doc. A/HRC/RES/26/9 (July 14, 2014).

55. See also Human Rights Council Res. 26/22, U.N. Doc. A/HRC/RES/26/22 (July 15, 2014).

56. Human Rights Council Res. 25/7, U.N. Doc. A/HRC/RES/25/7 (Apr. 11, 2014).

57. Human Rights Council Res. 25/22, U.N. Doc. A/HRC/RES/25/22 (Apr. 15, 2014).

58. Human Rights Council Res. 26/5, U.N. Doc. A/HRC/RES/26/5 (July 14, 2014) (eliminating discrimination).

59. Human Rights Council Res. 26/15, U.N. Doc. A/HRC/RES/26/15 (July 11, 2014) (eliminating violence).

improving mental health.<sup>60</sup> In Resolution 27/22,<sup>61</sup> the UNHRC urged States to increase education about the harmful effects of female genital mutilation, encourage men and boys to become more involved in information and awareness campaigns about the issue, and develop and implement policies to eliminate the practice.

C. SPECIAL RAPPORTEUR ON THE RIGHTS OF PERSONS WITH DISABILITIES

Finally, the Council adopted a resolution<sup>62</sup> establishing a new Special Rapporteur position with a mandate to raise awareness of the rights of persons with disabilities and gather information concerning violations of such rights.

IV. Capital Punishment

A. AFGHANISTAN

In one of his last official acts as president of Afghanistan, Hamid Karzai ordered the public hanging of five men for rape following a trial that was internationally condemned as a travesty. In that trial, which lasted only two hours, numerous judicial procedural irregularities—including assertions that the defense lawyers had received death threats, that the defendants confessed after being tortured, and that the victims were publicly shamed by being paraded in front of the media—prevented any semblance of a fair trial.<sup>63</sup> Ashraf Ghani, Karzai's successor as president, refused to stay the executions. Instead, the government invited the media, attorneys, and others to attend, although the jailers then killed the men out of public view.<sup>64</sup>

B. BANGLADESH

Death penalty convictions arising from the 1971 War of Independence from Pakistan, during which up to 3,000,000 persons were killed, continued to roil the legal and political structures of Bangladesh.<sup>65</sup> A leader of Jamaat-e-Islami, the main Islamic party, who was convicted of atrocities in the 1971 war, was hanged upon order of Bangladesh's International Crimes Tribunal; another Jamaat-e-Islami leader's death sentence was reduced to

60. Human Rights Council Res. 27/11, U.N. Doc. A/HRC/RES/27/11 (Oct. 3, 2014) (improving maternal health).

61. Human Rights Council Res. 27/22, U.N. Doc. A/HRC/RES/27/22 (Oct. 2, 2014) (eliminating gender mutilation).

62. See Human Rights Council Res. 26/20, U.N. Doc. A/HRC/RES/26/20 (July 14, 2014).

63. See Rod Nordland, *In a Final Act, Karzai Orders Execution of 5 Men in Rape Case*, N.Y. TIMES, Sept. 28, 2014, at A14, available at <http://www.nytimes.com/2014/09/28/world/asia/in-a-final-act-karzai-orders-execution-of-5-men-in-rape-case-.html>.

64. See Editorial, *Grim Executions in Afghanistan*, N.Y. TIMES, Oct. 10, 2014, at A26, available at <http://www.nytimes.com/2014/10/10/opinion/grim-executions-in-afghanistan.html>; *Afghan Executions: Five Hanged for Paghman Gang-Rape*, BBC NEWS (Oct. 8, 2014, 10:08 ET), <http://www.bbc.com/news/world-asia-29537738>; *Afghanistan Executes Five Men for Gang-Rape*, GUARDIAN (Oct. 8, 2014, 8:08 EDT), <http://www.theguardian.com/world/2014/oct/08/afghanistan-executes-five-men-gang-rape>.

65. See *Bangladesh Islamist Abdul Kader Mullah Hanged for War Crimes*, BBC NEWS (Dec. 12, 2013, 15:23 ET), <http://www.bbc.com/news/world-asia-25356034>; Gardiner Harris, *Opposition Leader's Execution Spurs Protests in Bangladesh*, N.Y. TIMES, Dec. 13, 2013, at A14, available at <http://www.nytimes.com/2013/12/13/world/asia/execution-for-71-war-crimes-spurs-protests-in-bangladesh.html>.

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life imprisonment by order of the Supreme Court;<sup>66</sup> and two associates of the pro-Pakistani Al-Badr militia aligned with Jamaat-e-Islami were sentenced to death in absentia.<sup>67</sup> Also, 152 former members of the Bangladesh Rifles, a paramilitary border security force, were sentenced to death in a single judicial proceeding in connection with a 2009 mutiny that resulted in seventy-four killings.<sup>68</sup>

C. CHINA

China's Supreme Peoples' Court continued to exert increasing influence over the administration of capital punishment in China. The Court issued a broad directive that barred confessions obtained through torture and also barred death penalty sentences in cases in which material evidence was suspect.<sup>69</sup> This directive raised the hope that ancient Confucian moral precepts of *chuli ruxing* (applying lesser punishment when warranted) and *da she* (great mercy) may again have legal significance.<sup>70</sup> But China continued to apply the death penalty in a wide array of criminal cases.<sup>71</sup> Political unrest and violence in Xinjiang resulted in thirteen executions in June 2014.<sup>72</sup> Three persons, including two Uighurs from Xinjiang, were sentenced to death in connection with a fatal car crash in Beijing's Tiananmen Square.<sup>73</sup> After a terrorist attack blamed on Uighur separatists in Xinjiang caused dozens of civilian casualties, a court in Kashgar prefecture issued death

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66. See *Bangladesh: Islamist Leader's Death Penalty Dropped*, N.Y. TIMES, Sept. 18, 2014, at A13, available at <http://www.nytimes.com/2014/09/18/world/asia/bangladesh-islamist-leaders-death-penalty-dropped.html>.

67. See Ellen Barry, *Bangladesh Sentences 2 Expatriates to Death for War Crimes*, N.Y. TIMES, Nov. 4, 2013, at A5, available at <http://www.nytimes.com/2013/11/04/world/asia/bangladesh-sentences-2-to-death-for-war-crimes.html>.

68. See Julfikar Ali Manik & Ellen Barry, *152 Bangladeshi Border Guards Get Death Penalty over Revolt*, N.Y. TIMES, Nov. 6, 2013, at A8, available at <http://www.nytimes.com/2013/11/06/world/asia/152-soldiers-given-death-penalty-over-revolt-in-bangladesh.html>; *Bangladesh to Execute 152 Soldiers for Mutiny Crimes*, BBC NEWS (Nov. 5, 2013, 12:20 ET), <http://www.bbc.com/news/world-asia-24817887>; *Mutiny and Revenge*, ECONOMIST, Nov. 9, 2013, at 43, available at <http://www.economist.com/news/asia/21589496-mass-conviction-mutineers-comes-politically-delicate-moment-mutiny-and-revenge>.

69. See Chris Buckley, *China: Court Seeks to Curtail Abuses*, N.Y. TIMES, Nov. 22, 2013, at A12, available at <http://www.nytimes.com/2013/11/22/world/asia/chinas-highest-court-seeks-to-curtail-abuses-of-justice.html>.

70. See Mara Hvistendahl, Op-Ed., *China Rethinks the Death Penalty*, INT'L N.Y. TIMES, July 9, 2014, available at <http://www.nytimes.com/2014/07/09/opinion/china-rethinks-the-death-penalty.html>. But see CONFRONTING CAPITAL PUNISHMENT IN ASIA: HUMAN RIGHTS, POLITICS AND PUBLIC OPINION (Roger Hood & Surya Deva eds., 2013) (reviewing resistance throughout Asia to human rights pressure regarding administration of capital punishment).

71. See *China: Death Row Inmate Freed after Six Years of Trials and Appeals*, AMNESTY INT'L (Aug. 22, 2014), <http://www.amnesty.org/en/news/china-death-row-inmate-freed-after-six-years-trials-and-appeals-2014-08-22> (reporting rare acquittal of "placing dangerous materials"); Leila Haddou, *Death Penalty Statistics 2013: Country by Country*, GUARDIAN (Mar. 27, 2014, 3:30 EDT), <http://www.theguardian.com/world/datablog/2014/mar/27/death-penalty-statistics-2013-by-country> (indicating that data on use of the death penalty in China is a state secret, but that there are a minimum of 778 deaths).

72. Michael Forsythe, *China: 13 Executed after Attacks*, N.Y. TIMES, June 17, 2014, at A12, available at <http://www.nytimes.com/2014/06/17/world/asia/china-executes-13-in-xinjiang-region-after-attacks.html>.

73. *Death Penalty in Xinjiang for China Tiananmen Crash*, BBC NEWS (June 16, 2014, 12:03 ET), <http://www.bbc.com/news/world-asia-china-27864060>.

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sentences for twelve convicted terrorists and for fifteen others whose executions were suspended for two years.<sup>74</sup>

D. EGYPT

Following two brief court sessions, a judge sentenced to death 529 Islamist supporters of deposed president Mohamed Morsi for the murder of a police officer—a judgment widely condemned internationally.<sup>75</sup> Subsequently, the same judge recommended the death penalty for 683 people, including Muslim Brotherhood leader Mohammed Badie, following another brief police murder trial that was boycotted by defense counsel who condemned the proceedings as “farcical,” although the judge commuted to life terms 492 of the prior 529 death sentences.<sup>76</sup> Another twenty-six persons convicted of forming a terror group to attack the Suez Canal were sentenced to death.<sup>77</sup> Under Egyptian law, all capital sentences must be reviewed by the state-appointed grand mufti, may also be appealed, and are subject to retrial if sentencing was ordered in absentia.<sup>78</sup> Subsequently, grand mufti Shawqi Allam issued an advisory opinion that rejected the death penalty imposed on senior leaders of the Muslim Brotherhood because of the lack of evidence; but a panel of judges requested the mufti to reconsider, resulting in legal uncertainty about potential death penalty sentences in multiple pending criminal prosecutions arising from political upheaval in Egypt.<sup>79</sup>

E. GAZA

The Hamas government’s ongoing use of capital punishment to punish collaboration with Israel resulted in eighteen public executions on August 21, 2014—one day after an Israeli airstrike killed three top commanders of Hamas’s armed wing.<sup>80</sup>

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74. *China Sentences 12 to Death for South Xinjiang Attacks*, BBC NEWS (Oct. 13, 2014, 8:43 ET), <http://www.bbc.com/news/world-asia-china-29592882>; Chun Han Wong, *China Sentences 12 to Death over Deadly Xinjiang Attack*, WALL ST. J., Oct. 14, 2014, at A11, available at <http://www.wsj.com/articles/china-sentences-12-to-death-over-deadly-xinjiang-attack-1413208917>.

75. Patrick Kingsley, *Egypt Sentences to Death 529 Supporters of Mohamed Morsi*, GUARDIAN (Mar. 24, 2014, 6:52 EDT), <http://www.theguardian.com/world/2014/mar/24/egypt-death-sentence-529-morsi-supporters>; Editorial, *Egypt’s Miscarriage of Justice*, N.Y. TIMES, Mar. 25, 2014, at A26, available at <http://www.nytimes.com/2014/03/25/opinion/egypts-miscarriage-of-justice.html>.

76. *Egypt: Brotherhood’s Badie among Mass Death Sentences*, BBC NEWS (Apr. 28, 2014, 12:49 ET), <http://www.bbc.com/news/world-middle-east-27186339>.

77. *Egypt: 26 Sentenced to Death over Suez ‘Terror Plot’*, BBC NEWS (Feb. 26, 2014, 7:24 ET), <http://www.bbc.com/news/world-middle-east-26350601>.

78. *See Of Judges and Generals*, ECONOMIST, Mar. 29, 2014, at 48, available at <http://www.economist.com/news/middle-east-and-africa/21599769-will-abdel-fattah-al-sisi-soon-be-president-be-harsh-his-judges>.

79. *See Hang Them All?*, ECONOMIST, May 3, 2014, at 45, available at <http://www.economist.com/news/middle-east-and-africa/21601577-mass-death-sentences-may-not-be-carried-out-horrify-all-same-hang-them>; *Of Judges and Generals*, *supra* note 78.

80. Fares Akram & Jodi Rudoren, *Executions in Gaza Are a Warning to Spies*, N.Y. TIMES, Aug. 23, 2014, at A10, available at <http://www.nytimes.com/2014/08/23/world/middleeast/israel-gaza.html>; *Gaza: Hamas Says 18 Suspected Informants Executed*, BBC NEWS (Aug. 22, 2014, 12:56 ET), <http://www.bbc.com/news/world-middle-east-28896346>.

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F. INDIA

The legal and political debate over capital punishment intensified in 2014, following the resumption of executions in 2012, as public attention focused on the Supreme Court's decision to commute the death sentences imposed on three of the seven men convicted of assassinating Prime Minister Rajiv Gandhi in 1991.<sup>81</sup>

G. IRAN

In 2014, Iran continued its practice of hanging people for heresy, which includes making "innovations in religion."<sup>82</sup> Under Iran's Islamic justice system, convicted murderers awaiting execution can, however, purchase their freedom from the victim's family, as occurred in a highly publicized case involving payment of \$50,000 for the release of a young man who was seventeen years old when he threw his knife at a rival and killed him.<sup>83</sup> Public hangings at the notorious Evin prison in Tehran continued and included the hanging of a billionaire businessman convicted of banking fraud and embezzlement.<sup>84</sup> Reyhaneh Jabbari, an Iranian woman convicted of murder, despite her contention that the victim had tried to rape her, was hanged under Iran's "eye-for-an-eye" law, in a case that drew widespread condemnation by human rights groups and even resulted in efforts by President Hassan Rouhani's government to commute the death sentence.<sup>85</sup>

H. IRAQ

U.N. condemnation of the "conveyor belt of executions" in Iraq continued in 2014 following the mass hanging of twenty-six people and the subsequent hanging of another eleven people convicted of terrorism-related offenses.<sup>86</sup> The ongoing sectarian strife in Iraq was reported to have resulted in the summary executions of 255 Sunni prisoners by the Iraqi government, which the government denied.<sup>87</sup> Human Rights Watch issued a detailed report on the pervasive abuse of women in Iraq's criminal justice system, includ-

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81. Nilanjana S. Roy, Op-Ed., *Politics Stalks India's Death Row*, INT'L N.Y. TIMES, Feb. 28, 2014, available at <http://www.nytimes.com/2014/02/28/opinion/politics-stalks-indias-death-row.html>.

82. See Saeed Kamali Dehghan, *Iran Executes Man for Heresy*, GUARDIAN (Sept. 29, 2014, 13:15 EDT), <http://www.theguardian.com/world/2014/sep/29/iran-executes-man-heresy-mohsen-amir-aslani>.

83. See Thomas Erdbrink, *Mercy and Social Media Slow the Noose in Iran*, N.Y. TIMES, Mar. 9, 2014, at A1, available at <http://www.nytimes.com/2014/03/09/world/middleeast/mercy-and-social-media-slow-the-noose-in-iran.html>.

84. See *Iran Billionaire Hanged for Fraud*, N.Y. TIMES, May 25, 2014, at A11, available at <http://www.nytimes.com/2014/05/25/world/middleeast/iran-billionaire-hanged-for-fraud.html>.

85. See Thomas Erdbrink, *Rights Groups Condemn Execution of Iranian Woman*, N.Y. TIMES, Oct. 26, 2014, at A10, available at <http://www.nytimes.com/2014/10/26/world/middleeast/rights-groups-condemn-iranian-execution.html>.

86. Raheem Salman, *Iraq Hangs 11 Convicted of Terrorism-Related Offenses*, WASH. POST, Jan. 23, 2014, [http://www.washingtonpost.com/world/iraq-hangs-11-convicted-of-terrorism-related-offenses/2014/01/23/0f0aae1c-846c-11e3-bbe5-6a2a3141e3a9\\_story.html](http://www.washingtonpost.com/world/iraq-hangs-11-convicted-of-terrorism-related-offenses/2014/01/23/0f0aae1c-846c-11e3-bbe5-6a2a3141e3a9_story.html).

87. Alissa J. Rubin, *Rift with Kurds Widens as Iraqi Leader Replaces the Foreign Minister*, N.Y. TIMES, July 12, 2014, at A4, available at <http://www.nytimes.com/2014/07/12/world/middleeast/maliki-replaces-zebari-as-kurds-seize-oil-plants.html>.

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ing the psychological torture inflicted on women by their proximity to prison executions.<sup>88</sup>

I. JAPAN

Japan's capital punishment practices came under increased public scrutiny, spotlighted by the release of seventy-eight-year-old Iwao Hakamada, who is perhaps the world's longest living death row inmate. Hakamada's 1968 conviction and death sentence were widely condemned as based on fabricated evidence.<sup>89</sup> Although in 2009, a jury system was implemented for most criminal cases, Japan's conviction rate remains at over ninety-nine percent, and executions have increased under the current government of Shinzo Abe.<sup>90</sup>

J. NORTH KOREA

The U.N. Human Rights Council Commission of Inquiry released a detailed report in 2014 regarding, *inter alia*, the vast network of secret prison camps, known as *kwanliso*, where hundreds of thousands of North Koreans have died due to execution, torture, starvation, and disease.<sup>91</sup> The U.N. Security Council, which has the authority to refer countries to the ICC, convened a special session to consider the report and possible remedial actions.<sup>92</sup>

K. PAKISTAN

The Lahore High Court of Appeals upheld the death sentence of a Pakistani Christian woman in a high-profile blasphemy case arising from a dispute with Muslim co-workers who alleged she insulted the Prophet Muhammad. The woman asserted the co-workers verbally abused her when they refused to drink water from bowls she touched.<sup>93</sup>

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88. See HUMAN RIGHTS WATCH, NO ONE IS SAFE: ABUSES OF WOMEN IN IRAQ'S CRIMINAL JUSTICE SYSTEM (2014), available at <http://www.hrw.org/sites/default/files/reports/iraq0214webwcover.pdf>

89. See Hiroko Tabuchi, *Soul-Searching as Japan Ends a Man's Decades on Death Row*, N.Y. TIMES, Mar. 28, 2014, at A1, available at <http://www.nytimes.com/2014/03/28/world/asia/freed-after-decades-on-death-row-man-indicts-justice-in-japan.html>.

90. See *id.*; see Justin McCurry, *Japan Condemned for 'Secret' Executions*, GUARDIAN (Dec. 12, 2013, 3:31 EST), <http://www.theguardian.com/world/2013/dec/12/japan-condemned-secret-executions>.

91. See Human Rights Council, *Rep. of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, ¶¶ 59-61, U.N. Doc. A/HRC/25/63 (Feb. 7, 2014); see also UN's North Korea Report: Main Findings, BBC NEWS (Feb. 17 2014, 14:42 ET), <http://www.bbc.com/news/world-asia-26223180>; Peter Walker, *North Korea Human Rights Abuses Resemble Those of the Nazis, Says UN Inquiry*, GUARDIAN (Feb. 18, 2014, 02:54 EST), <http://www.theguardian.com/world/2014/feb/17/north-korea-human-rights-abuses-united-nations>.

92. See Rick Gladstone, *U.N. Council Takes up Question of Rights in North Korea*, N.Y. TIMES, Apr. 18, 2014, at A3, available at <http://www.nytimes.com/2014/04/18/world/asia/un-council-takes-up-question-of-rights-in-north-korea.html>.

93. See Waqar Gillani & Salman Masood, *Pakistan: Death Sentence Is Upheld in Blasphemy Case*, N.Y. TIMES, Oct. 17, 2014, at A11, available at <http://www.nytimes.com/2014/10/17/world/asia/pakistan-christian-blasphemy-death-penalty.html>.

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L. SAUDI ARABIA

Judicial authorities beheaded at least nineteen people in August 2014—many of whom were convicted of non-violent offenses. These beheadings were consistent with Saudi Arabia’s long-standing legal culture, which imposes the death penalty for non-lethal crimes such as adultery, apostasy, sorcery, and witchcraft.<sup>94</sup> A prominent cleric was sentenced to death by Riyadh’s Specialized Criminal Court, which heard terrorism cases following mass anti-government protests in the Shia majority Eastern Province in 2011. Prosecutors demanded execution by “crucifixion,” which involves beheading followed by public display of the decapitated body.<sup>95</sup> Four family members were executed for possession of hashish, following confessions reportedly extracted after torture, beatings, and sleep deprivation.<sup>96</sup> Indonesia agreed to pay \$1.8 million in blood money to prevent the beheading of a domestic maid in Saudi Arabia who was convicted of killing her employer, despite her claim of self-defense following an assault.<sup>97</sup>

M. SINGAPORE

In a landmark ruling following legislative amendments to Singapore’s capital punishment laws, the death sentence of a Malaysian man convicted of drug trafficking was commuted to life imprisonment and fifteen strokes of the cane; other death row inmates’ death sentences were similarly commuted.<sup>98</sup>

N. SUDAN

In a 2014 case that drew wide international focus, a Sudanese appeals court overturned a death sentence imposed under *sharia* law for apostasy and released a woman who refused to renounce her Orthodox Christian faith.<sup>99</sup> Sudan’s 1991 penal code prescribes the death penalty for a sweeping range of non-Islamist religious belief, based on a harsh interpretation of *sharia* law, which is rarely challenged in the legal system.<sup>100</sup>

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94. See Rick Gladstone, *Saudi Arabia: Executions Draw Rebukes*, N.Y. TIMES, Aug. 22, 2014, at A10, available at <http://www.nytimes.com/2014/08/22/world/middleeast/saudi-arabia-executions-draw-rebukes.html>.

95. See *Saudi Shia Cleric Nimr Al-Nimr ‘Sentenced to Death’*, BBC NEWS (Oct. 15, 2014, 13:33 ET), <http://www.bbc.com/news/world-middle-east-29627766>; *The Sword Unsheathed*, ECONOMIST, Oct. 18, 2014, at 49, available at <http://www.economist.com/news/middle-east-and-africa/21625868-protests-break-out-after-shia-cleric-sentenced-death-sword-unsheathed>.

96. See *Saudi Arabia Executes Four for Hashish Possession*, BBC NEWS (Aug. 19, 2014, 06:39 ET), <http://www.bbc.com/news/world-middle-east-28851512>.

97. *Blood Money Spares Indonesian Maid from Saudi Execution*, BBC NEWS (Apr. 3, 2014, 09:32 ET), <http://www.bbc.com/news/world-asia-pacific-26872447>.

98. See *Singapore Lifts Death Sentence for Drug Trafficker*, BBC NEWS (Nov. 14, 2013, 07:05 ET), <http://www.bbc.com/news/world-asia-24940568>.

99. See Charlotte Allen, *Meriam Ibrahim and the Persecution of Christians*, WALL ST. J., June 27, 2014, at A11, available at <http://online.wsj.com/articles/charlotte-allen-meriam-ibrahim-and-the-persecution-of-christians-1403822908>; *Sudan Death Sentence Woman ‘Freed’*, BBC NEWS (June 23, 2014, 12:18 ET), <http://www.bbc.com/news/world-africa-27979782>.

100. See *Islam and Apostasy: Show Who’s Boss*, ECONOMIST, June 7, 2014, at 55, available at <http://www.economist.com/news/middle-east-and-africa/21603509-death-sentence-issued-sudanese-court-has-stirred-up-controversy-show-whos>.



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O. UNITED STATES

In the widely followed case of *Hall v. Florida*,<sup>101</sup> the U.S. Supreme Court held (5-4) that a Florida statute, which required evidence of an I.Q. score of seventy or below before additional evidence of intellectual disability was admissible to avoid execution, violated the Eighth Amendment ban on cruel and unusual punishment.<sup>102</sup> The Supreme Court found that no legitimate penological purpose was advanced by executing an intellectually disabled person and that the prohibition of such executions protects the integrity of judicial proceedings because an intellectually disabled person is less likely to fully understand and participate in his or her own defense—an inherent judicial concern present in several states with rigid rules for determining intellectual disability.<sup>103</sup> But in an analogous capital case, *Kansas v. Cheever*,<sup>104</sup> the Supreme Court ruled unanimously that the Fifth Amendment proscription against self-incrimination was not violated when the accused offered expert testimony of diminished mental capacity and the prosecution sought to present rebuttal evidence from a court-ordered expert who examined the accused. The Court reasoned that because the accused initiated the testimony on mental state, the proffered rebuttal evidence did not violate the Constitution.

In *Hinton v. Alabama*,<sup>105</sup> the Supreme Court held that a death row inmate's Sixth Amendment right to legal counsel<sup>106</sup> was violated because trial counsel mistakenly concluded that additional capital defense funds were unavailable to retain a more qualified expert to replace an expert whom counsel deemed inadequate. The Supreme Court ordered the state court to reconsider whether the attorney's deficient performance was prejudicial.

Two lower federal courts granted habeas petitions that were reversed by the Supreme Court. In *White v. Woodall*,<sup>107</sup> the Supreme Court reversed the Sixth Circuit's grant of habeas relief, instead holding that the Kentucky Supreme Court's decision on the trial court's failure during the death penalty phase to mandate a "no adverse inference" jury instruction regarding the defendant's decision not to testify was reasonable. In *Lopez v. Smith*,<sup>108</sup> the Supreme Court reversed and admonished the Ninth Circuit, which had granted habeas relief under the Antiterrorism and Effective Death Penalty Act

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101. *Hall v. Florida*, 134 S. Ct. 1986 (2014).

102. *Hall*, 134 S. Ct. at 2001; *see also* *Atkins v. Virginia*, 536 U.S. 304, 321 (2002) (holding that the Constitution forbids the execution of intellectually disabled persons who have a reduced capacity for understanding, reasoning, and impulse control).

103. *Hall*, 134 S. Ct. at 1992-93; *see also* Lizette Alvarez & John Schwartz, *On Death Row with Low I.Q., and New Hope for a Reprieve*, N.Y. TIMES, May 31, 2014, at A1, available at <http://www.nytimes.com/2014/05/31/us/on-death-row-with-low-iq-and-new-hope-for-a-reprieve.html>; Adam Liptak, *Justices Reject a Rigid I.Q. Rule for Executions*, N.Y. TIMES, May 28, 2014, at A1, available at <http://www.nytimes.com/2014/05/28/us/court-rules-against-florida-iq-rule-in-death-cases.html>; Editorial, *The Shrinking Death Penalty*, N.Y. TIMES, May 28, 2014, at A20, available at <http://www.nytimes.com/2014/05/28/opinion/the-shrinking-death-penalty.html>.

104. *Kansas v. Cheever*, 134 S. Ct. 596, 603 (2013).

105. *Hinton v. Alabama*, 134 S. Ct. 1081, 1088, 1090 (2014) (per curiam).

106. *See generally* *Strickland v. Washington*, 466 U.S. 668, 694 (1984) (holding that the Sixth Amendment is violated if counsel's representation is not objectively reasonable and if there is a reasonable probability that the trial outcome would otherwise have been different).

107. *White v. Woodall*, 134 S. Ct. 1697, 1706-07 (2014).

108. *Lopez v. Smith*, 135 S. Ct. 1, 5 (2014) (per curiam).

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(AEDPA),<sup>109</sup> because Ninth Circuit cited only its own precedent rather than clearly established Supreme Court precedent. Thus, the Ninth Circuit violated the AEDPA standard for determining whether constitutional rights (here the Sixth Amendment and due process right to fair notice of the prosecution's murder theory considered by the jury) were clearly established.

In October 2014, the Supreme Court agreed to hear a 1989 California death penalty case in which all of the African-American and Hispanic potential jurors were struck in a 1989 murder trial.<sup>110</sup>

Although the Supreme Court declined to hear two cases concerning whether death row inmates have a constitutional right to specific information about the chemicals the states planned to use in their executions,<sup>111</sup> lower courts continued to address a variety of analogous constitutional challenges. In *Wood v. Ryan*,<sup>112</sup> the Ninth Circuit held that an Arizona death row inmate had a First Amendment right to receive details about the prescribed lethal injection drugs and the professional qualifications of the execution team. This decision conflicts with other federal and state court rulings in Louisiana, Missouri, Georgia, Oklahoma, and Texas—all of which have rejected similar challenges and allowed executions to proceed with secrecy about the lethal drugs and manufacturers.<sup>113</sup>

A federal district court<sup>114</sup> found that California's death penalty system was so arbitrary and plagued with delay that the entire system violated the Eighth Amendment. This decision impacts over 740 death row inmates, about 40 percent of whom have languished on death row for at least twenty years.<sup>115</sup> The governor of the state of Washington suspended the death penalty because of systemic flaws and unequal application and promised to issue a reprieve if any of the nine death penalty sentences awaiting execution moved

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109. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 104, 110 Stat. 1214, 1218-19 (1996) (codified as amended at 28 U.S.C. § 2254(d)(1) (2006)).

110. See *Chappell v. Ayala*, 135 S. Ct. 401 (2014) (mem.); see also *Supreme Court to Review Impact of Eliminating Black and Hispanic Jurors in Capital Case*, DEATH PENALTY INFO. CENTER, <http://www.deathpenaltyinfo.org/node/5913> (last visited Feb. 20, 2015).

111. See *Sepulvado v. Jindal*, 729 F.3d 413 (5th Cir. 2013), *cert. denied*, 134 S. Ct. 1789 (2014) (mem.); *In re Lombardi*, 741 F.3d 888 (8th Cir. 2014), *cert. denied*, 134 S. Ct. 1790 (2014) (mem.).

112. *Wood v. Ryan*, 759 F.3d 1076, 1088 (9th Cir. 2014), *vacated*, 135 S. Ct. 21 (2014).

113. See Ed Pilkington, *Oklahoma Execution Misstep Sets up Legal Assault against US Drug Secrecy*, GUARDIAN (Apr. 30, 2014, 15:53 EDT), <http://www.theguardian.com/world/2014/apr/30/oklahoma-execution-misstep-legal-assault-drug-secrecy>.

114. See *Jones v. Chappell*, 31 F. Supp. 3d 1050, 1069 (C.D. Cal. 2014).

115. Erik Eckholm & John Schwartz, *California Death Penalty System Unconstitutional, Federal Judge Rules*, N.Y. TIMES, July 17, 2014, at A11, available at <http://www.nytimes.com/2014/07/17/us/california-death-penalty-unconstitutional-federal-judge-says.html>; see also Mark Berman, *Federal Judge Says California's Death Penalty System Is 'Unconstitutional'*, WASH. POST (July 16, 2014), <http://www.washingtonpost.com/news/post-nation/wp/2014/07/16/federal-judge-says-californias-death-penalty-system-is-unconstitutional/>.

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forward.<sup>116</sup> The overall legal trend, informed by public opinion, may be slowly moving towards the demise of capital punishment in the United States.<sup>117</sup>

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Thirty defendants in a heroin smuggling trial conducted at a prison were sentenced to death and joined over 500 other convicts on death row awaiting execution.<sup>118</sup>

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116. See Ian Lovett, *Executions Are Suspended by Governor in Washington*, N.Y. TIMES, Feb. 12, 2014, at A12, available at <http://www.nytimes.com/2014/02/12/us/washington-governor-jay-inslee-suspends-death-penalty.html>; Kristen Millares Young, *Washington State to Suspend Death Penalty by Governor's Moratorium*, GUARDIAN (Feb. 11, 2014, 21:13 EST), <http://www.theguardian.com/world/2014/feb/11/washington-state-death-penalty-governor-inslee-suspends>. See generally *The Slow Death of the Death Penalty*, ECONOMIST, Apr. 26, 2014, at 27, available at <http://www.economist.com/news/united-states/21601270-america-falling-out-love-needle-slow-death-death-penalty>.

117. See Mark Berman & Robert Barnes, *Everything You Need to Know about Executions in the United States*, WASH. POST (May 1, 2014), <http://www.washingtonpost.com/news/post-nation/wp/2014/05/01/everything-you-need-to-know-about-executions-in-the-united-states/>.

118. See *Vietnam Sentences 30 to Death over Drug Smuggling*, BBC NEWS (Jan. 20, 2014, 5:25 ET), <http://www.bbc.com/news/world-asia-25806353>.

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