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This article reviews developments in international human rights law during 2012.¹

I. The Arab Spring and Human Rights Implications

The Arab Spring, also known as the Arab Revolution,² is a name given to the revolutionary wave of demonstrations and protests that erupted in the Arab world recently.³ The impact of the Arab Spring entailed mass protests in the Arab-majority states of North Africa and the Middle East. Numerous well-publicized factors led to the protests.⁴ The use of technology allowed much of the world to see the demonstrations in real time. Places affected by varying degrees of organized protests include: Algeria,⁵ Bahrain,⁶ Dji-

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1. For developments during 2011, see Cleveland Ferguson III, et al., *International Human Rights*, 46 INT'L LAW. 389 (2012). For developments during 2010, see Lawrence G. Albrecht et al., *International Human Rights*, 45 INT'L LAW. 381 (2011).

2. See Mary Casey, *The Arab Uprising: The Unfinished Revolutions of the New Middle East — A Conversation With Mark Lynch*, PROJECT ON MIDDLE E. POL. SCI. (Apr. 17, 2012), <http://pomeps.org/2012/04/the-arab-uprising-the-unfinished-revolutions-of-the-new-middle-east-a-conversation-with-marc-lynch-2/> (providing text and video commentary on the Arab Spring); but see Joseph Massad, *The 'Arab Spring' and Other American Seasons*, MWC NEWS (Aug. 29, 2012, 10:28 AM), <http://mwcnews.net/focus/analysis/21170-american-seasons.html?tmpl=component&page=>.

3. Jean-Marie Guéhenno, *The Arab Spring is 2011, Not 1989*, N.Y. TIMES (Apr. 21, 2011), http://www.nytimes.com/2011/04/22/opinion/22iht-edguehenno22.html?_r=1& (discussing comparisons with the fall of communism throughout Eastern Europe).

4. See Andrey Korotayev & Julia Zinkina, *Egyptian Revolution: A Demographic Structural Analysis*, 13 ENTELEQUIA REVISTA INTERDISCIPLINAR [ENTELEQUIA INTERDISCIPLINARY J.] 139, 139–65 (2011).

5. See, e.g., Meris Lutz, *Arab World: Protests in Algeria and Yemen Draw Inspiration From Tunisia Uprising*, L.A. TIMES (Jan. 23, 2011, 1:12 PM), <http://latimesblogs.latimes.com/babylonbeyond/2011/01/yemen-jordan-albania-algeria-tunisia-egypt-protests.html> (with video commentary).

bouti,⁷ Egypt,⁸ Iraq,⁹ Jordan,¹⁰ Kuwait,¹¹ Libya,¹² Mauritania,¹³ Morocco,¹⁴ Oman,¹⁵ Syria,¹⁶ Sudan,¹⁷ Saudi Arabia,¹⁸ Tunisia,¹⁹ Western Sahara,²⁰ and Yemen.²¹ To date, rulers have been forced from power in Tunisia, Egypt, Libya, and Yemen.

These demonstrations in the Arab world have met violent responses from authorities as well as from pro-government militias and counter-demonstrators, some of which have been well-documented by social media. International law and standards require the governments of these nations to respect, protect, and fulfill the human rights of all those within their territory without discrimination. These obligations are enshrined in the international human rights treaties (IHRT) of which these nations are parties. Ensuring that a legal framework is in place that gives effect to the rights in the international instruments is a fundamental step in addressing the human rights challenges resulting from the Arab Spring.

6. See, e.g., Kelly McEvers, *Bahrain: The Revolution That Wasn't*, NPR (Jan. 9, 2012), <http://www.npr.org/2012/01/05/144637499/bahrain-the-revolution-that-wasnt> (providing audio commentary).

7. See, e.g., *Tunisian Uprising Raises Spectre of Djiboutian Revolt*, REFORM PROGRAMME FOR DJIB. (Jan. 19, 2011), <http://djiboutiplan.com/2011/01/tunisian-uprising-raises-spectre-of-djiboutian-revolt/>.

8. Robert Dreyfuss, *Who's Behind Egypt's Revolt?*, THE NATION (Jan. 31, 2011), <http://www.thenation.com/blog/158159/whos-behind-egypts-revolt#>.

9. Jonathan Steele, *Iraq's Own Arab Spring: A Renewed Sense of Nationalism is Uniting Protesters Over Delays to US Troop Withdrawal*, THE GUARDIAN (Apr. 25, 2011), <http://www.guardian.co.uk/commentisfree/2011/apr/25/united-states-troop-presence-iraq-long-term>.

10. See, e.g., Maha Hosain Aziz, *Is Jordan Headed for an Arab Spring?*, BLOOMBERG BUSINESSWEEK (Nov. 25, 2012), <http://www.businessweek.com/articles/2012-11-25/is-jordan-headed-for-an-arab-spring>.

11. *But see* Abubakar A. Ibrahim, *No Arab Spring in Kuwait, Gulf*, ARAB TIMES (Jan. 12, 2012), <http://www.arabtimesonline.com/NewsDetails/tabid/96/smld/414/ArticleID/174359/reftab/73/Default.aspx>.

12. See, e.g., Borzou Daragahi, *Libya Helps Bankroll Syrian Opposition*, FIN. TIMES (Nov. 5, 2012), <http://www.ft.com/intl/cms/s/0/0897f0d0-2748-11e2-9863-00144feabdc0.html#axzz2KBgRl65L>.

13. See, e.g., *Mauritania Protests*, CNN (Feb. 22, 2011), <http://ireport.cnn.com/docs/DOC-560191>.

14. See, e.g., Gökhan Kurtaran, *Turkish Businessmen Fear a Spark to Launch Uprising in Morocco*, HURRIYET DAILY NEWS (Feb. 25, 2011), <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=turkish-businessmen-fear-a-spark-to-launch-uprising-in-morocco-2011-02-25>.

15. See, e.g., *Oman Riots Increase Fears for Saudi Arabia*, UPI.COM (Mar. 1, 2011, 2:24 PM), http://www.upi.com/Top_News/Special/2011/03/01/Oman-riots-increase-fears-for-Saudi-Arabia/UPI-27381299007449/.

16. See, e.g., Romain Dillet, *Syria Shuts Down Internet in Midst of Uprising, Mobile Services and Land Lines Partially Down*, TECH CRUNCH (Nov. 29, 2012), <http://techcrunch.com/2012/11/29/syria-shuts-down-internet-mobile-services-and-land-lines-partially-down-in-midst-of-uprising/>.

17. See, e.g., Asmaa El-Husseini, *Sudan's Imminent Uprising*, AL-AHRAM WEEKLY ONLINE (June 21, 2012), <http://weekly.ahram.org/2012/1103/re4.htm>.

18. Robert F. Worth, *Twitter Gives Saudi Arabia a Revolution of its Own*, N.Y. TIMES, Oct. 21, 2012, at A6.

19. See, e.g., Elaine Ganley & Bouazza Ben Bouazza, *Tunisia Uprising Drives Iron-Fisted Ruler From Power*, HUFFINGTON POST (Jan. 14, 2011, 11:53 PM), http://www.huffingtonpost.com/2011/01/15/tunisia-uprising-drives-i_n_809459.html.

20. See Colum Lynch, *Turtle Leaks: Preventing the Arab Spring From Reaching Western Sahara*, FOREIGN POLICY (Apr. 20, 2011), http://turtlebay.foreignpolicy.com/posts/2011/04/20/turtleleaks_preventing_the_arab_spring_from_reaching_western_sahara?sms_ss=twitter&at_xt=4db5d59217007097%2C0.

21. See Hamza Hendawi, *Yemen Uprising: Women From Many Walks of Life Bind*, HUFFINGTON POST (Nov. 5, 2011, 12:14 PM), http://www.huffingtonpost.com/2011/11/05/yemen-uprising-woman_n_1077758.html.

II. ASEAN Leaders Sign Human Rights Declaration at 19th Annual ASEAN Summit

Leaders of the ten member states of the Association of Southeast Asian Nations²² (ASEAN), attending the Nineteenth Annual ASEAN summit in Phnom Penh, Cambodia on November 18, 2012, signed into effect the ASEAN Human Rights Declaration (AHRD).²³ The work was completed by the ASEAN Intergovernmental Commission on Human Rights (AICHR). Although hailed as a milestone by the ASEAN,²⁴ many human rights groups criticized the document.²⁵

While the United Nations High Commissioner for Human Rights also welcomed the step shown by the ASEAN region, she expressed concerns about some of the language²⁶ as being inconsistent with international standards.²⁷ Others raised concerns about the AHRD containing “caveats based on cultural relativism, subordination of universal principles to domestic law, novel or unique limitations to universal rights, and group veto over individually-held rights.”²⁸ Nevertheless, the signing of the AHRD has been praised as a significant step towards development of a human rights framework in the ASEAN region.

III. Verdict in the Special Court for Sierra Leone Trial of Former Liberian President Charles Taylor

On May 18, 2012, the Special Court for Sierra Leone issued a landmark decision against former Liberian President, Charles Ghankay Taylor.²⁹ Trial Chamber II convicted Taylor for aiding, abetting, and planning the commission of the crimes for all eleven counts against him, including five counts of crimes against humanity and five

22. The Association of Southeast Asian Nations (ASEAN) was established in 1967 in Thailand with the signing of the ASEAN Declaration (Bangkok Declaration) by Indonesia, Malaysia, Philippines, Singapore, and Thailand. See *Overview*, ASEAN, <http://www.asean.org/asean/about-asean/overview> (last visited Feb. 22, 2013). Brunei Darussalam then joined in 1984, Vietnam in 1995, Lao PDR and Myanmar in 1997, and Cambodia in 1999, making up what is today the ten Member States of ASEAN. *Id.*

23. Irwin Loy, *ASEAN Approves Controversial Human Rights Declaration*, VOICE OF AMERICA (Nov. 18, 2012), <http://www.voanews.com/content/asean-summit-opens-in-phnom-penh/1548305.html>.

24. *Id.*

25. *Id.*

26. *UN Official Welcomes ASEAN Commitment to Human Rights, But Concerned Over Declaration Wording*, UN NEWS CENTRE (Nov. 19, 2012), <http://www.un.org/apps/news/story.asp?NewsID=43536&Cr=human+rights&Cr1=->.

27. *Id.*

28. See, e.g., Daniel Baer, Deputy Assistant Sec’y, Bureau of Democracy, Human Rights, and Labor, Keynote Address to the U.S.-ASEAN Symposium on the ASEAN Human Rights Declaration (Nov. 28, 2012), *transcript available at* <http://www.state.gov/j/drl/rls/rm/2012/201210.htm>.

29. See *Cases: Prosecutor v. Charles Ghankay Taylor*, SPECIAL CT. FOR SIERRA LEONE, <http://www.sc-sl.org/CASES/ProsecutorvsCharlesTaylor/tabid/107/Default.aspx> (last visited Feb. 23, 2013) [hereinafter *Prosecutor v. Charles Ghankay Taylor*]; *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-T, Judgment, ¶ 12 (Special Ct. for Sierra Leone May 18, 2012), *available at* <http://www.sc-sl.org/LinkClick.aspx?fileticket=k%2b03KREPCQ%3d&tabid=107> [hereinafter *Charles Taylor Judgment*].

counts of war crimes.³⁰ Taylor's criminal acts cover a five-year period from November 30, 1996 to January 18, 2002.³¹

The Special Court found Taylor guilty of several grave and serious violations of international law. Crimes against humanity in this case include widespread or systematic attacks against the civilian population involving murder, rape, sexual slavery, other inhumane acts, and enslavement.³² War crimes include violations of Article 3 Common to the Geneva Conventions (Common Article 3) and of Additional Protocol II, such as acts of terrorism, murder, cruel treatment, personal dignity crimes, and pillage in the context of an armed conflict—the civil war in Sierra Leone.³³ The remaining count—the conscription or enlistment of child soldiers—constitutes a serious breach of international humanitarian law.³⁴

Taylor is the first former head of state since the Nuremberg trials to obtain a verdict before an international or hybrid tribunal responsible for the prosecution of serious violations of international law, including crimes against humanity and war crimes.³⁵ In a 2,532-page decision, the Chamber introduced the case and provided context regarding Sierra Leone's decade-long civil war, which spanned from 1991 through 2002.³⁶ The majority of the decision focused on the specific factual and legal findings with respect to Taylor's role in and responsibility of the alleged crimes. The decision concluded with a brief, two-page disposition.³⁷

Taylor's case is also notable because it involved cooperation from other states. After Taylor's government in Liberia came under siege from an armed rebellion in 2002, and the Special Court indicted and issued a warrant for Taylor's arrest in June 2003, Taylor fled to Nigeria.³⁸ In March 2006, Nigerian authorities arrested Taylor pursuant to Liberian President Ellen Johnson-Sirleaf's request that they surrender Taylor to the Special Court.³⁹ The Nigerian authorities immediately responded and transferred Taylor that same day.⁴⁰ Following Taylor's extradition from exile, in response to regional security concerns in Sierra Leone, the Government of the Netherlands, along with the U.N. Security Council and the International Criminal Court, agreed to hold the trial at The Hague.⁴¹

The Special Court, which indicted Taylor in 2003, took just over nine years to convict and sentence the former Liberian president.⁴² The prosecution took less than two years

30. See generally *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-T, *Indictment* (Special Ct. for Sierra Leone May 29, 2007), available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=lrn0bAAMvYM%3d&tabid=107>.

31. See *Charles Taylor Judgment*, *supra* note 29, ¶ 6994.

32. *Id.* ¶¶ 503, 559.

33. *Id.* ¶¶ 560, 562.

34. *Id.*

35. *International Justice: Taylor Trial Sets Positive Example*, AMNESTY INT'L (July 25, 2012), <http://www.hrw.org/news/2012/07/25/international-justice-taylor-trial-sets-positive-example>.

36. See *Charles Taylor Judgment*, *supra* note 29, ¶ 560, 562.

37. *Id.*

38. *Id.* ¶ 9.

39. *Id.*

40. *Id.* ¶ 10.

41. *Id.* ¶ 10.

42. See *Prosecutor v. Charles Ghankay Taylor*, *supra* note 29.

from the opening to the closing of their case.⁴³ In June 2007, the prosecution opened their case, but the trial stalled when Taylor dismissed his lawyers and boycotted the proceedings.⁴⁴ The prosecution's case began six months later in January 2008 with witness testimony and concluded in February 2009, after testimony from ninety-one prosecution witnesses.⁴⁵ In 2010, the prosecution briefly reopened its case to hear testimony from three additional witnesses.⁴⁶ The defense took a little over a year to present its case. The defense began its case in July 2009, involving twenty-one witnesses, including Taylor, and concluded in November 2010.⁴⁷

The Chamber issued its final judgment in court thirteen months after the close of oral argument. The prosecution made its final oral argument in February 2011, and the defense made its closing arguments in March 2011.⁴⁸ On April 26, 2012, the Chamber delivered the final judgment in court, and on May 30, 2012, it sentenced Taylor to fifty years in prison.⁴⁹

Both the prosecution and the defense have appealed various aspects of the judgment and sentence delivered by the Court.⁵⁰ Specifically, the prosecution has argued that the Court erred in failing to find Mr. Taylor individually criminally responsible for ordering and instigating the crimes at issue, as well as sentencing Mr. Taylor to fifty years imprisonment.⁵¹ The defense has raised forty-five grounds of appeal, including that the Court incorrectly defined the mens rea of aiding and abetting and erred in sentencing Mr. Taylor to fifty years imprisonment.⁵²

IV. Potential Impact of Recent Counterterrorism Developments on Humanitarian Operations

Counterterrorism regulations serve important national security interests for the United States. Two frameworks—the material support statute and regulations enforced by the Office of Foreign Assets Control (OFAC)—have garnered attention due to their impact on humanitarian non-governmental organizations (NGOs) and U.N. agencies operating in areas where listed individuals or entities are present. Due to the broad prohibitions in these rules, the lack of an intent requirement underlying many proscriptions, and regular

43. *Id.*

44. *Id.*

45. *Id.*

46. See Charles Taylor Judgment, *supra* note 29, Annex B, ¶ 45.

47. See Prosecutor v. Charles Ghankay Taylor, *supra* note 29.

48. See Charles Taylor Judgment, *supra* note 29, Annex B, ¶¶ 67, 70.

49. Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Sentencing Judgment (Special Ct. for Sierra Leone May 2012), available at <http://www.sc-sl.org/CASES/ProsecutorvsCharlesTaylor/tabid/107/Default.aspx>.

50. See generally Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Prosecution's Notice of Appeal (Special Ct. for Sierra Leone July 19, 2012), available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=SW1ZhnY1yvM%3d&tabid=107>; Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Notice of Appeal of Charles Ghankay Taylor (Special Ct. for Sierra Leone July 19, 2012), available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=eXdZQ%2bQcRos%3d&tabid=107>.

51. See generally Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Prosecution's Notice of Appeal.

52. Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Notice of Appeal of Charles Ghankay Taylor.

override of humanitarian exemptions in Executive Orders, a number of humanitarian organizations have criticized the U.S. rules as impeding the organizations' ability to reach civilian populations in need.⁵³ These frameworks are sometimes contrasted with the balance within international humanitarian law between military necessity and the humanitarian imperative.

The material support statute, which applies extraterritorially, criminalizes the provision of material support to listed terrorist organizations as well as organizations one knows engage in terrorist activity.⁵⁴ Under the statute, "material support" is defined broadly, reaching a number of activities U.N. agencies and NGOs might undertake when operating in conflict areas and other insecure environments.⁵⁵

Pursuant to the International Emergency Economic Powers Act (IEEPA), the U.S. President may issue Executive Orders that block the property and interests of designated groups and individuals.⁵⁶ OFAC is responsible for the implementation of these Executive Orders. U.S. persons are prohibited from dealing with individuals and entities that are so designated.

A. MATERIAL SUPPORT AND INTERNATIONAL LAW

In *Hamdan v. United States (Hamdan II)*, the Court of Appeals for the District of Columbia vacated defendant's conviction for material support for terrorism.⁵⁷ The court determined that the international law of armed conflict, referenced by the Military Commissions Act of 2006 (MCA), does not proscribe material support for terrorism as a war crime.⁵⁸ Thus, because the MCA did not allow retroactive prosecution and material support for terrorism is not prohibited under the law of armed conflict, the defendant's conviction on that charge could not stand. Though it appears not to have significant bearing on the activities of humanitarian NGOs, the case is relevant to adducing the character of material support as understood in international law.

B. EXECUTIVE ORDERS ON BURMA, YEMEN, IRAN, AND SYRIA

In 2012, President Obama issued Executive Orders regulating engagement with listed entities in Burma, Yemen, Iran, and Syria. The IEEPA, which provides the basis for these Executive Orders, contains a humanitarian exemption, which provides that the authority granted to the President does not reach so far as to regulate donations "intended to be used to relieve human suffering," *unless* the President determines that such donations would (1) seriously impair his ability to deal with a declared national emergency, (2) be in response to coercion against the proposed recipient or donor, or (3) would endanger the

53. See, e.g., KAY GUINANE & ELIZABETH HOLLAND, CHARITY & SEC. NETWORK, SAFEGUARDING HUMANITARIANISM IN ARMED CONFLICT 7-8 (2012), available at www.charityandsecurity.org/SafeguardingHumanitarianism; Sarah Pantuliano, et al., *Counterterrorism and Humanitarian Action: Tensions, Impact and Ways Forward*, POL'Y BRIEF 43 (Humanitarian Pol'y Group), Oct. 2011, at 3-5, available at <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7347.pdf>.

54. 18 U.S.C. § 2339B(d)(1) (2012).

55. *Id.* § 2339A(b)(1).

56. International Emergency Economic Powers Act, 50 U.S.C. § 1702 (2012).

57. *Hamdan v. United States*, 696 F.3d 1238, 1241 (D.C. Cir. 2012).

58. *Id.* at 1250.

Armed Forces of the United States engaged in situations in which there are imminent or actual hostilities.⁵⁹ This is known as the override provision to the humanitarian exemption. Employing this override appears to be common practice, as the 2012 Executive Orders on Burma, Yemen, Iran, and Syria—four countries in which there is demonstrable humanitarian need—each include this provision.⁶⁰

C. LICENSES FOR ACTIVITIES TARGETING SYRIA AND IRAN

On July 23, the U.S. Treasury Department approved an application for a license for the Syrian Support Group, a relatively new and little known non-profit.⁶¹ The license, good for two years, permits the group to raise funds and provide certain logistical and communications services to the Free Syrian Army, who is fighting against the regime of President Bashar Assad.⁶²

In the context of continued strengthening of both domestic⁶³ and international⁶⁴ sanctions targeting Iran, the Treasury Department issued a temporary general license in August 2012 to “ease financial transactions related to earthquake relief.”⁶⁵ Though the humanitarian need resulting from the earthquake was of a lesser degree than the conditions seen in other emergency situations, a general license—good for forty-five days—allowed U.S.-based NGOs to collect donations to be used in direct support of humanitarian operations undertaken in response to the earthquake.⁶⁶

D. DELISTING OF THE MUJAHEDIN-E KHALQ

In September 2012, Secretary of State Hillary Clinton (Secretary) revoked the designation of the Mujahedin-e Khalq (often referred to as the MEK or PMOI) as a Foreign Terrorist Organization (FTO) and delisted the group as a Specially Designated Global Terrorist under Executive Order 13224.⁶⁷ The decision took into account the group’s “public renunciation of violence, the absence of confirmed acts of terrorism by the group for more than a decade, and [its] cooperation with the peaceful [closure of Camp Ashraf].”⁶⁸

59. 50 U.S.C. § 1702(b)(2) (2012).

60. Exec. Order No. 13,619, 77 Fed. Reg. 41,243 (Jul. 13, 2012); Exec. Order No. 13,611, 77 Fed. Reg. 29,533 (May 18, 2012); Exec. Order No. 13,628, 77 Fed. Reg. 62,139 (Oct. 9, 2012).

61. U.S. Dep’t of the Treas. License No. SY-2012-294747-1 (Jul. 23, 2012), available at <http://www.syrian-supportgroup.org/wp-content/uploads/2012/10/SY-2012-294747-1-Syrian-Support-Group-1.pdf>.

62. *Id.*

63. See, e.g., Exec. Order No. 13,599, 77 Fed. Reg. 6,659 (Feb. 8, 2012); Exec. Order No. 13,606, 77 Fed. Reg. 24,571 (Apr. 24, 2012); Exec. Order No. 13,622, 77 Fed. Reg. 45,987 (Aug. 2, 2012).

64. See, e.g., S.C. Res. 1929, U.N. Doc. S/RES/1929 (Jun. 9, 2010); *EU Imposes New Sanctions on Iran*, BBC NEWS (Oct. 15, 2012, 11:49 AM), <http://www.bbc.co.uk/news/world-middle-east-19947507>.

65. Press Release, U.S. Dept. of the Treasury, Treasury Issues General License to Aid Iranian Earthquake Victims (Aug. 21, 2012), <http://www.treasury.gov/press-center/press-releases/Pages/tg1689.aspx>.

66. Office of Foreign Assets Control, Release of Iranian General License C (Aug. 12, 2012), available at http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_glc.pdf.

67. Indira A.R. Lakshmanan, *Clinton Revokes Iranian Group’s Terrorist Organization*, BLOOMBERG (Sept. 28, 2012, 5:01 PM), <http://www.bloomberg.com/news/2012-09-28/clinton-revokes-iranian-group-s-terrorist-designation.html>.

68. *Id.*

This case garnered significant media attention. There were reports that the Treasury Department had begun an inquiry into whether speaker fees paid to former U.S. officials by the MEK were in violation of various OFAC regulations or the material support statute.⁶⁹

The Secretary's decision to revoke the group's FTO designation came a few days before a court-set deadline. In a per curiam decision, the D.C. Circuit Court had set October 1, 2012, as the deadline for the Secretary of State to act on PMOI's petition for revocation of its FTO listing under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).⁷⁰ If the Secretary failed to take action, the court indicated it would grant the petitioner's writ of mandamus, setting aside the FTO designation.⁷¹ The court had set the deadline after nearly two years of inaction following a remand to the Secretary.⁷²

E. SETTLEMENT AGREEMENT BETWEEN THE TREASURY DEPARTMENT AND KINDHEARTS

On May 1, 2012, a settlement agreement between the Treasury Department and KindHearts for Charitable Humanitarian Development (KindHearts) was announced.⁷³ The settlement—the first of its kind to be made public—ends litigation centered on due process claims.⁷⁴ KindHearts challenged the blocking of its assets pending investigation and its provisional classification by OFAC as a Specially Designated Global Terrorist (SDGT) under Executive Order 13,224. After a 2010 decision by the U.S. District Court for the Northern District of Ohio in which the government was ordered to show probable cause and provide KindHearts with notice of the basis for the block pending investigation, a settlement was reached between the parties.⁷⁵

The settlement agreement allowed for the distribution of any remaining funds after satisfaction of any outstanding financial obligations to the U.N. World Food Programme, the U.N. Children's Fund, the UN Relief and Works Agency for Palestinian Refugees, and MercyCorps.⁷⁶ It stated that once all of KindHearts's assets and funds were fully allocated, KindHearts would dissolve. Following allocation of assets and funds and the dissolution of KindHearts, OFAC would then remove the group from the list of entities whose assets are blocked.⁷⁷ This case, as well as the unique settlement agreement, is often discussed alongside the earlier *Al Haramain* litigation.⁷⁸

69. See, e.g., Scott Shane, *U.S. Supporters of Iranian Group Face Scrutiny*, N.Y. TIMES, Mar. 13, 2012, at A16.
70. *In re* People's Mojahedin Org. of Iran, No.12-118 (D.C. Cir. June 1, 2012).

71. *Id.*

72. *Id.*

73. See Settlement Agreement, KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner (Nov. 2011), available at http://www.aclu.org/files/assets/kindhearts_v_geithner_-_settlement.pdf [hereinafter Settlement Agreement].

74. See KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner, 710 F. Supp. 2d 637, 649-50, 653 (N.D. Ohio 2010).

75. See Settlement Agreement, *supra* note 73.

76. *Id.* ¶ 1.

77. *Id.* ¶¶ 1-3.

78. *Al Haramain Islamic Found., Inc. v. Dep't of the Treasury*, 660 F.3d 1019 (9th Cir. 2011).

F. DEVELOPMENTS AT THE UNITED NATIONS

Though adopted in 2011, U.N. Security Council Resolutions 1988 and 1989 bear mention. The former served to split what was the Al-Qaida and Taliban Sanctions Committee into two separate bodies: (1) individuals and entities designated as Taliban, and (2) individuals and entities designated as Al-Qaida.⁷⁹

U.N. Security Council Resolution 1989 instituted a change in the existing delisting procedures for the Al-Qaida Sanctions Committee. Now, delisting will take place if the Ombudsperson recommends it take place, so long as the Committee within sixty days of considering the Ombudsperson's report does not decide—by consensus—to block the delisting.⁸⁰

G. EUROPEAN COURT OF HUMAN RIGHTS

Of note is the decision by the Grand Chambers of the European Court of Human Rights in *Nada v. Switzerland*.⁸¹ There, the court determined that Switzerland, through its domestic implementation of its obligations under U.N. Security Council Resolution 1267, *et seq.*, violated the applicant's rights under Articles 8 and 13 of the European Convention on Human Rights (ECHR). The case raised interesting questions as to how potentially contradictory legal obligations are to be reconciled—in this case, the obligations of Switzerland pursuant to the U.N.'s counterterrorism regulations and the obligations of Switzerland under the ECHR. The Court directed that “two diverging commitments must therefore be harmonized as far as possible.”⁸² The Court did not, however, go so far as to state directly whether (or how) the supremacy clause of Article 103 of the U.N. Charter determines the outcome of such a norm conflict.⁸³

V. Capital Punishment

A. THE UNITED STATES

In 2012, the U.S. Supreme Court decided several significant death penalty cases concerning the role and responsibilities of legal counsel in capital cases and additional cases that developed prior rulings.

In *Maples v. Thomas*, the Supreme Court addressed the Sixth Amendment right to counsel regarding a habeas claim by Mr. Maples, who lost the opportunity to appeal his death penalty sentence when his pro bono counsel left its law firm, and a court order regarding an appeal deadline was returned unopened from the firm's mailroom.⁸⁴ The Supreme

79. S.C. Res. 1988, U.N. Doc. S/RES/1988 (June 17, 2011).

80. S.C. Res. 1989, U.N. Doc. S/RES/1989 (June 17, 2011).

81. *Nada v. Switzerland*, 2012 Eur. Ct. H.R. 1691, ¶¶147-48, 166, available at <http://www.bailii.org/eu/cases/ECHR/2012/1691.html>.

82. *Id.* ¶ 170.

83. See, e.g., *id.* ¶ 197.

84. *Maples v. Thomas*, 565 U.S. ___, 132 S.Ct. 912, 916-17 (2012).

Court ruled that counsel had “abandoned” the case and that Mr. Maples had shown the requisite external cause necessary to excuse his procedural default.⁸⁵

In *Martel v. Clair*, the Supreme Court unanimously held that the “interests of justice” standard, which generally applies in criminal cases regarding substitution of counsel, also applies in death penalty habeas cases.⁸⁶

The Supreme Court also held in *Martinez, v. Ryan* that a criminal defendant pursuing an ineffective assistance of counsel claim must demonstrate that the trial attorney’s performance was both significantly deficient and also prejudicial to his defense.⁸⁷ Following *Martinez*, the U.S. Court of Appeals for the Ninth Circuit rejected the third death penalty appeal of a convicted murderer in *Leavitt v. Arave* because of this high burden.⁸⁸ The Ninth Circuit then ruled in *The Associated Press v. Otter* that public media had a First Amendment right to witness an individual’s execution.⁸⁹ Subsequently, the Ninth Circuit ruled in *Lopez v. Brewer*, a death penalty case that unsuccessfully challenged Arizona’s lethal injection protocol, that counsel has a First Amendment right to meet with death row clients until 9:00 a.m. on the morning of scheduled executions.⁹⁰

A pair of capital cases concerning the attorney-client relationship, *Ryan v. Gonzalez* and *Tibbals v. Carter*, were argued on October 9, 2012, and will resolve whether a criminal defendant has a statutory right under 18 U.S.C. § 3599(a)(2) to be competent during habeas proceedings and whether a defendant sentenced to death must be mentally capable of assisting his attorney in challenging the death penalty.⁹¹

In *Blueford v. Arkansas*, the Supreme Court held that although a jury unanimously voted not guilty on a capital first-degree murder charge, but deadlocked on a lesser charge, the Constitution’s Double Jeopardy Clause does not bar a retrial of the capital murder charge.^{92,93}

In *Miller v. Alabama*,⁹⁴ the Supreme Court extended principles announced in *Roper v. Simmons*,⁹⁵ which barred the death penalty for minors, and in *Graham v. Florida*,⁹⁶ which barred life sentences without review for minors convicted of non-homicide crimes. In

85. See Adam Liptak, *Alabama Inmate Must Be Given Second Chance After Mailroom Mix-Up, Justices Rule*, N.Y. TIMES, Jan. 18, 2012, at A11.

86. *Martel v. Clair*, 565 U.S. ___, 132 S. Ct. 1276, 1276, 1283-84 (2012).

87. *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309, 1316 (2012).

88. *Leavitt v. Arave*, 682 F.3d 1138, 1140 (9th Cir. 2012), cert. denied, 493 U.S. 923 (2012). Mr. Leavitt was executed on June 12, 2012. George Prentice, *Live: The Execution of Richard Leavitt*, BOISE WEEKLY (June 12, 2012, 11:42 AM), <http://www.boiseweekly.com/CityDesk/archives/2012/06/12/the-execution-of-richard-leavitt>.

89. *Associated Press v. Otter*, 682 F.3d 821, 824 (9th Cir. 2012).

90. *Lopez v. Brewer*, 680 F.3d 1068, 1070, 1078 (9th Cir. 2012). See also Michael Kiefer, *Media Asks to Witness Arizona Lethal-Injection Preparation*, ARIZ. REP., May 22, 2012, at B3.

91. See *Ryan v. Gonzales*, 568 U.S. ___, 133 S. Ct. 696 (2013). The ABA filed an amicus brief in support of the argument that capital prisoners possess a “right to competence” in federal habeas proceedings. See Brief for Gonzales as Amici Curiae Supporting Respondents at 7, 568 U.S. ___, 133 S.Ct. 696 (July 27, 2012) (Nos. 10-930, 11-218), available at http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/10-930-11-218_respondents_amcu-aba_authcheckdam.pdf

92. *Blueford v. Arkansas*, 566 U.S. ___, 132 S. Ct. 2044, 2048, 2053 (2012).

93. *Id.*; see Editorial, *A Failure of Vigilance*, N.Y. TIMES, May 28, 2012, at A16.

94. *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455, 2458 (2012); see Editorial, *Children in Prison for Life*, N.Y. TIMES, Jun. 27, 2012, at A26.

95. *Roper v. Simmons*, 543 U.S. 551, 570-71 (2005).

96. *Graham v. Florida*, 560 U.S. ___, 130 S. Ct. 2011, 2030 (2012).

Miller, the Supreme Court analyzed two strands of Eighth Amendment cruel and unusual punishment precedents addressed in death penalty and other proportional punishment cases. The first strand adopted categorical capital punishment bans, as in *Roper*.⁹⁷ The second strand, reflected in *Graham*, requires courts to consider the defendant's personal characteristics and specific details of the offense before imposing the death penalty.⁹⁸ A life sentence without parole, the Supreme Court found, is analogous to the death penalty and requires application of these factors.

The Supreme Court chastised the Court of Appeals for the Sixth Circuit in *Parker v. Matthews* for setting aside two twenty-nine year capital murder convictions "on the flimsiest of rationales."⁹⁹ The AEDPA "prevents defendants from. . . using federal *habeas corpus* review as a vehicle to second-guess the reasonable decisions of state courts."¹⁰⁰ Under the AEDPA, courts cannot issue a writ of habeas corpus unless the decision under review was "contrary to, or involved an unreasonable application of, clearly established Federal Law, as determined by the Supreme Court of the United States," or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."¹⁰¹ The Supreme Court rejected arguments that the state courts had impermissibly shifted the burden to the defendant to prove extreme emotional disturbance and that the prosecution failed to prove the absence thereof beyond a reasonable doubt, and the Court also rejected a due process challenge regarding the prosecution's closing argument remarks.¹⁰² The Supreme Court further held that the Sixth Circuit erred by reviewing its own precedents, rather than only Supreme Court precedent, as is mandated under the AEDPA.¹⁰³

The Supreme Court refused to grant a fourth stay of execution to Cleve Foster, whose ineffective assistance of legal counsel claims had been rejected by the lower courts.¹⁰⁴ Mr. Foster was then executed by the State of Texas.¹⁰⁵ The Supreme Court also refused to issue a stay of execution to Marvin Wilson, whose mental impairment and incompetency claim was supported by, inter alia, an IQ test score of 61.¹⁰⁶ Two hours later, the State of Texas proceeded with its lethal injection protocol.¹⁰⁷

In 2012, Connecticut became the seventeenth state to abolish the death penalty.¹⁰⁸ Several additional states ordered ballot initiatives or other repeal measures primarily be-

97. *Miller*, 132 S. Ct. at 2463-70.

98. *Id.*

99. *Parker v. Matthews*, 567 U.S. ___, 132 S. Ct. 2148, 2149 (2012) (per curiam).

100. *Renico v. Lett*, 559 U.S. 766, 130 S. Ct. 1855, 1866 (2010).

101. 28 U.S.C. § 2254(d) (2012); see *Cullen v. Pinholster*, 563 U.S. ___, 131 S. Ct. 2951 (2011) (finding that this standard is highly deferential and difficult to meet).

102. *Parker*, 132 S. Ct. at 2151-53. See *Darden v. Wainwright*, 477 U.S. 168 (1986) (regarding due process standards applicable to the prosecution's trial conduct).

103. *Parker*, 132 S. Ct. at 2155-56. See *Renico*, 130 S. Ct. at 1859 (only Supreme Court precedent satisfies the "clearly established Federal Law" standard under the AEDPA).

104. *Foster v. Thaler*, 133 S. Ct. 99, 100 (2012).

105. See *Texas Executes Death Row Inmate After Supreme Court Rejects Request for Stay*, THE GUARDIAN (Sept. 26, 2012, 9:46 AM), <http://www.guardian.co.uk/world/2012/sep/26/texas-executes-death-row-inmate>.

106. *Mentally Retarded and on Death Row*, N.Y. TIMES, Aug. 4, 2012, at A16.

107. See *Marvin Wilson Execution Goes Ahead in Texas*, THE GUARDIAN (Aug. 7, 2012, 10:22 PM), <http://www.guardian.co.uk/world/2012/aug/08/marvin-wilson-execution-goes-ahead>.

108. See *Connecticut Abolishes the Death Penalty*, BBC NEWS (Apr. 25, 2012, 4:55 PM), <http://www.bbc.co.uk/news/world-us-canada-17849177>; *The Death Penalty: Another Reprieve*, ECONOMIST (Apr. 21, 2012), <http://>

cause of increasing public and political awareness of the enormous costs inherent in death penalty administration and instances of gross injustice in its application.¹⁰⁹ The Kentucky Commission on Human Rights voted unanimously to recommend abolishing the death penalty.¹¹⁰ But in Oregon, death row inmate Gary Haugen filed suit and claimed a constitutional right to die by lethal injection following Governor John Kitzhaber's reprieve under a statewide moratorium on executions.¹¹¹

The commutation of Marcus Robinson's death sentence under a North Carolina statute based on racial bias, partially proven by analysis of statistical patterns, drew wide international attention and was viewed as a landmark decision.¹¹²

In 2012, Damon Thibodeaux became the 300th person exonerated on the basis of DNA evidence and the eighteenth death row inmate saved from execution by post-conviction DNA testing.¹¹³

B. CHINA

China continues to lead the world in annual executions; however, judicial regulation and supervision of death sentences is becoming more institutionalized and common, although subject to political interference.¹¹⁴ In 2012, China averred that, within three to five years, it planned to end the practice of harvesting and transplanting organs from executed prisoners.¹¹⁵

www.economist.com/node/21553058; Peter Applebome, *Death Penalty Repeal goes to Connecticut Governor*, N.Y. TIMES, Apr. 12, 2012, at A21.

109. See *More Evidence Against the Death Penalty*, N.Y. TIMES, Apr. 13, 2012, at A22; Ashby Jones & Steve Eder, *Death Penalty Costs Get Close Look*, WALL ST. J., Oct. 6, 2012, at A3; *End the Death Penalty in California*, N.Y. TIMES, Nov. 6, 2012, at A28.

110. See Press Release, Comm'n on Human Rights, KY Human Rights Commission Passes Resolution Opposing Death Penalty (Oct. 18, 2012), <http://migration.kentucky.gov/Newsroom/kchr/KY+Human+Rights+Commission+Passes+Resolution+to+end+death+penalty+10-1812.htm>.

111. Chris McGreal, *Oregon Governor in Wrangle with Death Row Inmate Suing for the Right to Die*, THE GUARDIAN (Sept. 14, 2012, 3:46 PM), <http://www.guardian.co.uk/world/2012/sep/14/oregon-governor-death-row-inmate>.

112. See Campbell Robertson, *Bias Laws Used to Move a Man off Death Row*, N.Y. TIMES, Apr. 21, 2012, at A1; Steve Eder, *Bias Law Spurs Judge to Toss Out Death Sentence*, WALL ST. J., Apr. 21, 2012, at A3; *Racial Bias Saves Death Row Man*, BBC NEWS (Apr. 20, 2012, 12:14 PM), <http://www.bbc.co.uk/news/world-us-canada-17762035>; *A Jury of Whose Peers?*, ECONOMIST (Apr. 28, 2012), <http://www.economist.com/node/21553452>.

113. See Douglas A. Blackmon, *Louisiana Death-Row Inmate Damon Thibodeaux Exonerated With DNA Evidence*, WASH. POST (Sept. 28, 2012), http://www.washingtonpost.com/national/louisiana-death-row-inmate-damon-thibodeaux-is-exonerated-with-dna-evidence/2012/09/28/26e30012-0997-11e2-aff-d6c7f20a83bf_story.html; Molly Hennessy-Fiske, *Louisiana Death Row Inmate 300th Prisoner Freed by DNA Evidence*, L.A. TIMES (Sept. 28, 2012), <http://www.latimes.com/news/nation/nationnow/la-na-nn-louisiana-death-row-released-20120928,0,6617772.story?page=1>.

114. See *Death Sentences and Executions 2011*, AMNESTY INT'L (Mar. 27, 2012), <http://www.amnesty.org/en/library/info/ACT50/001/2012/en>; *Who Goes to the Gallows?*, ECONOMIST (Jan. 28, 2012), <http://www.economist.com/node/21543593>; Edward Wong, *Chinese Court Overturns a Young Tycoon's Death Sentence*, N.Y. TIMES, Apr. 21, 2012, at A7; Andrew Jacob, *China Defers Death Penalty for Disgraced Official's Wife*, N.Y. TIMES, Aug. 19, 2012, at A4.

115. See Keith Bradsher, *China to End Organ Taking*, N.Y. TIMES, Mar. 25, 2012, at A4; Keith Bradsher, *China Moves to Stop Transplants of Organs After Executions*, N.Y. TIMES, Mar. 23, 2012, at A7.

C. NORTH KOREA

Ongoing satellite imaging of the vast North Korean gulag and firsthand accounts of former prisoners continues to expose the catastrophic human rights conditions at prison camps where the arbitrary and gruesome execution of prisoners is commonplace and unchecked by any judicial restraints.¹¹⁶

D. JAPAN

Japan resumed hanging death-row inmates in 2012 after nearly eighteen months without carrying out a capital sentence.¹¹⁷ A woman was executed by Japan for the first time since 1997, and 153 capital offenders remain on death row.¹¹⁸

E. INDIA

Led by retired judges, human rights activists, and the Hindu newspaper, a campaign to abolish the official position of government hangman continues, and only one hanging has taken place since 1995; however, thirty-three death sentences have been imposed by the judiciary.¹¹⁹ India's Supreme Court upheld the death sentence of Pakistani national Mohammad Ajmal Amir Qasab, who was found guilty of murder and terrorism in the 2008 attacks in Mumbai that killed 166 people.¹²⁰ Five members of a Delhi family were sentenced to death for the murder of a young couple in a so-called "honor-killing" because of their objection to the wedding on caste grounds.¹²¹ Capital punishment for honor killings is imposed as a deterrent and was upheld by India's Supreme Court.¹²²

116. See Matthew Pennington, *Report: 150,000 Languish in NKorean Prison Camps*, THE GUARDIAN (Apr. 10, 2012), <http://www.guardian.co.uk/world/feedarticle/10187403>; *The Gulag Behind the Goose-Steps*, ECONOMIST (Apr. 21, 2012), <http://www.economist.com/node/21543593>; Evan Ramstad, *Defectors Cast New Light on Korean Camps*, WALL ST. J., May 31, 2012, at A14.

117. See Justin McCurry, *Japan Hangs Three Prisoners After 18 Month Stay of Executions*, THE GUARDIAN (Mar. 29, 2012, 12:22 AM), <http://www.guardian.co.uk/world/2012/mar/29/japan-hangs-three-prisoners-executions>.

118. See Press Release, Amnesty Int'l, *Two Executed in Japan Amid Fears of New Wave of Hangings*, (Sept. 27, 2012), <http://www.amnesty.org/en/for-media/press-releases/two-executed-japan-amid-fears-new-wave-hangings-2012-09-27>.

119. See *India's Last Hangman: An Executioner's Tale*, ECONOMIST (Feb. 11, 2012), <http://www.economist.com/node/21547271>.

120. Mohammad Ajmal Amir Kasab v. State of Maharashtra, (2012) Nos. 1899-1900, at 1, 355 (India S.C.), available at <http://supremecourtindia.nic.in/outtoday/39511.pdf>; see *India Court Upholds Mumbai Attacker Qasab Death Penalty*, BBC NEWS (Aug. 29, 2012, 5:37 AM), <http://www.bbc.co.uk/news/world-south-asia-19406943>.

121. See *Death Penalty for Family Members in India 'Honour Killing'*, BBC NEWS (Oct. 5, 2012, 6:07 AM), <http://www.bbc.co.uk/news/world-asia-india-19840429>.

122. Bhagwan Dass vs. State (Nct) of Delhi, (2011) 6 S.C.R. 330 (India), available at <http://www.indiankanon.org/doc/1422914/>; see *Indian 'Honour' Killers Should Hang, Supreme Court Says*, BBC NEWS (May 10, 2011, 10:35 AM), <http://www.bbc.co.uk/news/world-south-asia-13348414>.

F. SRI LANKA

Although Sri Lanka has not executed a prisoner in over thirty years, capital punishment remains lawful.¹²³ In 2012, 369 people remained on death row, 471 convicts had appealed their capital sentences, and the government advertised for a hangman following a serious crime wave, which reopened the death penalty debate.¹²⁴

G. IRAN

Human rights attorneys in death sentence cases were imprisoned in Iran in 2012. Attorney Javid Houtan Kian is serving a lengthy prison sentence related to his defense of Sakineh Mohammadi Ashtiani, whose capital conviction for adultery was condemned internationally.¹²⁵ Attorney Mohammad Ali Dadkhah, associated with Iran's defense of Human Rights Center (formerly presided over by Nobel Prize laureate Shirin Ebadi) was sentenced to nine years in prison related to his defense of several people on death row, including a Christian pastor condemned to death for apostasy.¹²⁶ Iran sentenced five Arab minorities to be executed for terrorism-related charges in closed judicial proceedings and executed three Ahwazi Arab minorities for murder following secret proceedings.¹²⁷

H. IRAQ

In Iraq, at least sixty-five people were executed in the first forty days of 2012, including fourteen on a single day, according to a Human Rights Watch report detailing over fifty crimes for which the death penalty is authorized.¹²⁸ Saddam Hussein's former personal secretary, Abed Hamid Hmoud, was executed by hanging for crimes related to the violent crushing of the Shiite rebellion after the 1991 Gulf War.¹²⁹ Iraq also imposed the death sentence on its former Sunni Vice-President, Tariq al-Hashimi, who was tried and convicted in absentia.¹³⁰

123. See *New Executioners for Sri Lanka: Hanging About*, ECONOMIST (Oct. 6, 2012), <http://www.economist.com/node/21564262>.

124. *Id.*

125. See *Hopes Grow for Iranian Woman 'Adulterer' Sentenced to Death by Stoning as Her Lawyer Says Execution Has Been 'Cancelled'*, MAIL ONLINE (June 25, 2012, 6:17 AM), <http://www.dailymail.co.uk/news/article-2164335/Sakineh-Mohammadi-Ashtianis-lawyer-says-execution-cancelled.html>.

126. See Saeed Kamali Dehghan, *Iranian Lawyer Mohammad Ali Dadkhah Sentenced to Nine Years in Jail*, THE GUARDIAN (May 3, 2012, 11:36 AM), <http://www.guardian.co.uk/world/iran-blog/2012/may/03/iran-lawyer-mohammad-ali-dadkhah-sentenced>.

127. See Saeed Kamali Dehghan, *Iran Steps Up Crackdown Against Its Arab Minority*, THE GUARDIAN (July 19, 2012, 9:57 AM), <http://www.guardian.co.uk/world/iran-blog/2012/jul/19/iran-steps-up-crackdown-arab-minority>.

128. See *Iraq: 65 Executions in First 40 Days of 2012*, HUM. RTS. WATCH (Feb. 9, 2012), <http://www.hrw.org/news/2012/02/09/iraq-65-executions-first-40-days-2012>.

129. *Iraq: Hussein Secretary is Executed*, N.Y. TIMES, June 7, 2012, at A10.

130. See Omar Al-Jawoshy & Michael Schwirtz, *Death Sentence for a Top Iraqi Leader in a Day of Bloodshed*, N.Y. TIMES, Sept. 9, 2012, at A1; *Renewed Tensions in Iraq*, N.Y. TIMES, Sept. 10, 2012, at A18.

I. PAKISTAN

The fate of a Christian girl who potentially faced a death penalty for allegedly burning Islamic texts focused worldwide attention on capital blasphemy offenses.¹³¹ Judges in Pakistan are politically intimidated and pressured to impose the death sentence on anyone who insults Islam, a practice condemned in a statement issued by the Commonwealth Lawyers Association and the Bar Human Rights Committee.¹³²

J. SAUDI ARABIA

Saudi Arabia executed at least sixty-five people in 2012 for a wide array of capital offenses.¹³³ Capital offenders executed included individuals convicted of murder, robbery, drug offenses, “witchcraft,” adultery, and a joy-rider who struck and killed two people during a car stunt.¹³⁴

K. SUDAN

Sudan sentenced a young woman convicted of adultery to death by stoning after she allegedly confessed following beatings from her brother. She had no legal representation, the legal proceeding was not in her native language, and she was not offered a translator. A male held with her was released.¹³⁵

L. MOROCCO

In Morocco, prominent Salafi clerics campaigned for the death penalty against a journalist who, along with the Moroccan Association of Human Rights, advocated for greater sexual freedom and the repeal of Article 490 of the Moroccan Penal Code, which condemns sex outside of marriage.¹³⁶

131. See Jon Boone, *Pakistani Girl Accused of Qur'an Burning Could Face Death Penalty*, THE GUARDIAN (Aug. 19, 2012, 3:25 PM), <http://www.guardian.co.uk/world/2012/aug/19/pakistan-christian-tensions-quran-burn-ing-allegations>.

132. See Rebecca Santana, *UN: Pakistan Judges Pressured to use Blasphemy Law*, AP (May 29, 2012, 11:16 AM), <http://bigstory.ap.org/content/un-pakistan-judges-pressured-use-blasphemy-law>; Statement, Commonwealth Lawyers Ass'n, Bar Human Rights Comm. of Eng. & Wales, Statement on Blasphemy Legislation in Islamic Republic of Pakistan (Apr. 21, 2011), [http://www.barhumanrights.org.uk/sites/default/files/documents/biblio/CLA_BHRC_Statement_Blasphemy_Pakistan_110121%20\(1\).pdf](http://www.barhumanrights.org.uk/sites/default/files/documents/biblio/CLA_BHRC_Statement_Blasphemy_Pakistan_110121%20(1).pdf).

133. See *Death Penalty: A Decade On, Executions Are on the Wane but Challenges Remain*, AMNESTY INT'L (Oct. 10, 2012), <http://www.amnesty.org/en/news/death-penalty-decade-executions-are-wane-challenges-remain-2012-10-09>.

134. See Asma Alsharif, *Saudis to Behead Joy-Rider for Hit-and-Run Incident*, REUTERS (Jun. 26, 2012, 9:58 AM), <http://www.reuters.com/article/2012/06/26/us-saudi-sentence-idUSBRE85PORN20120626>.

135. See David Smith, *Sudanese Woman Sentenced to Stoning Death Over Adultery Claims*, THE GUARDIAN (May 31, 2012, 1:12 PM), <http://www.guardian.co.uk/world/2012/may/31/sudanese-woman-stoning-death-adultery>; *Sudan: Ban Death by Stoning*, HUM. RTS. WATCH (May 31, 2012), <http://www.hrw.org/news/2012/05/31/sudan-ban-death-stoning>.

136. See Aziz El Yaakoubi, *Morocco Salafi Clerics Back Death for Journalist*, AP (Jul. 6, 2012, 1:34 PM), <http://bigstory.ap.org/article/morocco-salafi-clerics-back-death-journalist>.

M. THE GAMBIA

Gambia's president, Yahya Jammeh, publicly advocated for mass executions by hanging for the forty-seven persons on death row for various offenses.¹³⁷ Nine executions were reported.¹³⁸

N. SOUTH AFRICA

The Constitutional Court of South Africa ruled that Sections 10, 11, and 12 of its Constitution, which incorporated human rights and international treaty law, prohibited the deportation of two individuals who faced the death penalty in Botswana, the only country in southern Africa that carries out the death penalty, without prior government assurance that capital punishment would not be applied.¹³⁹

O. EUROPE

The European Commission imposed tough new restrictions on the export to the United States of drugs, which may be used to carry out executions by lethal injection.¹⁴⁰ Belarus remains the only European country that continues to carry out executions in judicial proceedings, a practice which harkens back to the Stalin era.¹⁴¹

137. *Nine Executed in Gambia, Says Amnesty International*, BBC NEWS (Aug. 24, 2012, 5:53 PM), <http://www.bbc.co.uk/news/world-africa-19371622>.

138. See Adam Nossiter, *Gambia's Leader Declares Plans for Mass Executions*, N.Y. TIMES, Aug. 25, 2012, at A4; *Nine Executed in Gambia, Says Amnesty International*, *supra* note 137; Press Release, Amnesty Int'l, Executions in The Gambia Giant Leap Backwards (Aug. 24, 2012), <http://www.amnesty.org/en/for-media/press-releases/executions-gambia-giant-leap-backwards-2012-08-24>; *African Union Urges Gambia to Stop Prisoner Executions*, BBC NEWS (Aug. 24, 2012, 8:23 AM), <http://www.bbc.co.uk/news/world-africa-19366101>; Adam Nossiter, *Jesse Jackson Helps Free 2 From Gambia Prison*, N.Y. TIMES, Sept. 22, 2012, at A4.

139. *Minister of Home Affairs v. Tsebe*, 2012 (5) SA 1 (CC) at 17-18 para. 30, at 56 para. 99 (S. Afr.), available at <http://www.saflii.org/za/cases/ZACC/2012/16.html>; see *Landmark Ruling Confirms South Africa Cannot Deport People at Risk of Death Penalty*, AMNESTY INT'L (July 27, 2012), <http://www.amnesty.org/en/news/landmark-ruling-confirms-south-africa-cannot-deport-people-risk-death-penalty-2012-07-27>.

140. *Beaty v. FDA*, 853 F. Supp. 2d. 30 (D.D.C. 2012) (the district court barred the import of misbranded and unapproved drugs intended for use in lethal injection protocols); see *FDA Goes to Court to Secure Drugs for Lethal Injection*, BBC NEWS (June 1, 2012, 12:47 AM), <http://www.bbc.co.uk/news/science-environment-18253578>; Ed Pilkington, *Europe Moves to Block Trade in Medical Drugs Used in US Executions*, THE GUARDIAN (Dec. 20, 2011, 1:27 PM), <http://www.guardian.co.uk/world/2011/dec/20/death-penalty-drugs-european-commission>.

141. Michael Schwartz, *Belarus Executes Man, 26, Convicted in Subway Bombing*, N.Y. TIMES, Mar. 17, 2012, at A4.