



# Law Library of Congress GLOBAL LEGAL MONITOR

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Rubens Medina  
Law Librarian of Congress

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## Attorneys and Judges

### BAHRAIN – First Woman Judge

In early June 2006, Hamad bin Issa, the King of Bahrain, issued a Royal Order by which he appointed Mouna Jasem Mohammed al-Kawari the first woman judge in the Gulf region. On June 5, 2006, the King received the new judge, who took the oath of office before him. The King congratulated al-Kawari, wished her success in carrying out her duties, and expressed his appreciation for the successes that Bahraini women had accomplished in the assumption of civic responsibilities. ([First Woman Judge](#), AL-SHARQ AL-AWSAT, June 26, 2006.)  
(Issam Saliba)

### CHINA – New Legal Education Program

A legal education program named “Holding 100 Lectures on Law by 100 Jurists” was launched in China on July 14, 2006. Speaking at the public ceremony to launch the program, Luo Gan, a member of the Standing Committee of the Political Bureau of the Central Committee of the Communist Party of China (CPC) and Secretary of the CPC Central Commission for Politics and Law, called on the country's legal experts to help promote awareness of the law among the public.

Luo said that the program is a major step to help implement the law. It is also an important part of the Fifth Five-Year Plan for creating public awareness of the law, as well as an opportunity for jurists to lecture on law outside of their classrooms, and institutes. He urged local authorities to support the program. ([Jurists Urged to Help Create Public Awareness About Law](#), PEOPLE'S DAILY, July 15, 2006.)  
(Rui Geissler)



## Budget

### **CANADA – First Conservative Budget Receives Unanimous Consent**

Canada's new Conservative government's first budget received unanimous consent when no opposition members expressed their disapproval during a voice vote. Leaders of the Liberal and New Democratic Parties indicated that they had made a procedural error in not voicing their opposition, but this would not have made a difference because passage had previously been ensured when the Bloc Quebecois indicated that it would support the minority government's proposals.

The major features of Bill C-13 (39<sup>th</sup> Parl. 1<sup>st</sup> Sess) are that it cuts the federal sales tax by one percent, reduces corporate taxes by two percent, and provides for increased spending on defense. For many years, Canada's per capita expenditures on defense were at or near the bottom of all NATO countries. Prior to the last election, the Liberal Government promised significant increases in defense spending. The Conservatives have added Can\$400 million (about US\$351 million) more this year and Can\$725 million (about US\$636 million) next year. Projections are that Canada's defense spending will now increase from Can\$14.6 billion (about US\$12.8 billion) last year to Can\$16.5 billion (about US\$14.5 billion) next year. By 2010, defense spending will reach Can\$20 billion (about US\$17.5 billion) under the current budget. (*The Budget at a Glance*, OTTAWA CITIZEN, May 3, 2006, at A3.) (Stephen Clarke)



## Communications and Electronic Information

### SRI LANKA – Duty Free Cars, Computers for Journalists

On June 30, 2006, the Government of Sri Lanka announced that it would offer duty free cars, motorcycles, and computers to accredited journalists. In addition, there will be state-sponsored scholarships for journalists pursuing higher education and professional training. The plan is designed to promote freedom of the media. President Mahinda Rajapakse, has said: “[t]he freedom of the media could be truly established only if the living conditions of the media personnel are raised.” At present journalists are not recognized as professionals and therefore do not receive the tax advantages accorded to those who have professional status. Details of the proposal will be announced with the annual budget, which usually goes to Parliament in November. ([Sri Lanka Offers Duty Free Cars to Journalists](#), KHALEEJ TIMES, June 30, 2006.) (Constance A. Johnson)



## Criminal Law

### BELGIUM – Reform of Legislation on Juvenile Protection and Criminal Offenders

A Law of June 13, 2006, substantially modifies the 1965 Juvenile Protection Law. The 1965 Law had been increasingly criticized within Belgium, in particular because of its lack of specification of legal rights and the informality of the procedures stipulated. The new Law adds a preliminary title to the 1965 Law setting forth a list of principles on the administration of justice for juveniles. It states, for example:

[M]inors benefit from rights and liberties, among them, those stated in the Constitution and the Convention on the Rights of the Child, and notably, [they have] the right to be heard during the process leading to decisions concerning them and to take part in this process; these rights and liberties must be accompanied by special guarantees.

The reform also aims to give juvenile judges more tools to deal with offenders who commit the least serious offenses. It allows judges to impose alternative punishment on those aged twelve and older, to fit the offender's personal circumstances. This may include payment of reparations to the victim; community service for up to 150 hours; paid work for up to 150 hours to compensate the victim; or participation in sporting, social, or cultural activities. The public prosecutor may also propose a victim-offender mediation when (1) there exist serious indicia of guilt; (2) the minor does not deny committing the offense; and (3) the victim is identified. If an agreement is reached, the prosecutor can only refuse its approval if it is contrary to public order. Juvenile courts may refer to the public prosecutor juvenile offenders aged sixteen years or more who are accused of committing serious offenses, with the intent of prosecuting or sentencing them before either a special chamber of the juvenile court applying general criminal law and procedure or the adult court.

The Law further provides that when the persons having parental authority over a juvenile offender show no interest in his/her criminal actions, and when this lack of interest contributes to the juvenile's problems, the tribunal may order those persons to attend parental training if the judge foresees that it would be beneficial for the juvenile. (*Loi modifiant la législation relative à la protection de la jeunesse et à la prise en charge des mineurs ayant commis un fait qualifié infraction, June 13, 2006, 228 LE MONITEUR BELGE, July 19, 2006, at 36088.*)  
(Nicole Atwill)

### BRAZIL – Federal Prison System

After a waiting period of more than twenty years since the promulgation of the Law of Penal Executions in 1984 (Law No. 7,210 of July 11, 1984) authorizing the construction of federal penitentiaries, the first Brazilian federal maximum-security penitentiary was finally established in June 2006, after eighteen months of construction, and was scheduled to start receiving convicts in July. The new penitentiary is located in the municipality of Catanduvas, in





the southern state of Curitiba, and is one of the five penitentiaries included in the national security plan of the federal government. It will house highly dangerous convicts, leaders of criminal groups, convicts who have posed a threat to order in other penitentiaries, and convicts who have been threatened.

Pursuant to article 86 of Law No. 7,210, the judicial decisions applied by one Brazilian federative entity involving restrictions of liberty may be carried out in another federative entity, in a local or federal establishment. The Law further authorizes the federal government to build federal prisons to harbor convicts sentenced to more than fifteen years of imprisonment, when it is in the interest of public safety or the convict's own best interest.

The major difference between federal penitentiaries and other penal institutions is the security system. Two hundred hidden cameras will monitor all movement in the facility, and seventeen steel doors separate the entrance door from the cells. The floors will have steel plates to avoid the digging of holes, and cell phones will be blocked from use inside the penitentiary. (*Primeira Penitenciária Federal de Segurança Máxima Será Inaugurada Hoje*, GLOBO ONLINE, June 23, 2006.)  
(Eduardo Soares)

### **BRAZIL – New Anti-Drug Law Awaits Presidential Sanction**

On July 12, 2006, the Brazilian Senate approved a proposed law altering the current anti-drug law that was promulgated twenty years ago. The proposed law institutes the National Council of Public Policies on Drugs (SISNAD), determines preventive measures regarding improper use of drugs, sets up programs to re-socialize drug users and those dependent on drugs, and establishes rules for the repression of drug trafficking. The proposed law now awaits presidential sanction.

The major innovation created by the proposed law is the differentiation between drug users and drug dealers, a feature that does not exist in the present legislation. In addition, the proposed law determines public policy on drugs, such as the creation of less stigmatizing penalties for drug users and the inclusion of the family of the drug user as the main target of public policies aimed at the user's resocialization.

Senator Romeu Tuma, who prepared the final draft of the proposed law at the Senate Commission of Constitution, Justice and Citizenship, said that the draft keeps the procedures of the Special Criminal Courts in cases involving the improper use of drugs, which is consistent with the non-stigmatization character of the law and the effort to efficiently resolve small-scale conflicts. According to the Senator, prison is not the appropriate place for drug users, who must be the subject of educational measures and not incarceration. ([\*Senado Aprova e Envia à Sanção Presidencial Nova Lei Antidrogas\*](#), JURID, July 13, 2006.)  
(Eduardo Soares)



### **CANADA – Bill to Raise Age of Consent**

Canada's Conservative Government has introduced a bill to raise the age of consent for non-exploitative sexual activity under the Criminal Code from fourteen to sixteen. The bill also contains a proposed exception for persons who are less than five years older than a fourteen- or fifteen-year-old as well as transitional provisions for married persons and persons living together. (Bill C-22, 39<sup>th</sup> Parl. 1<sup>st</sup> Sess.). The bill will also revise the definition of a "young person" to raise the age limit to sixteen for the specific offense of sexual exploitation. Sexual contact with persons under the age of sixteen will generally be punishable as "sexual interference." The maximum sentence for sexual interference is ten years' imprisonment; for sexual exploitation, five years' imprisonment. (Criminal Code, R.S.C. c. C-46, ss.151-153 (1985), as amended.)

(Stephen Clarke)

### **CHINA – Criminal Law Amended**

On June 29, 2006, effective the same day, the Standing Committee of the National People's Congress adopted amendment six to the Criminal Law of the People's Republic of China. The amendment focuses particularly on economic crimes, enlarging the range of types of such crimes to cover activities that undermine financial markets and company administration. Thus, for example, any member of a board of directors or supervisors or any senior executive of a company who violates his fiduciary duties and takes advantage of his position to manipulate the listed company, compromising its interests and causing significant losses to it through the commission of certain offenses (five are listed, including, e.g., the siphoning of assets, and there is also a catch-all provision), may face up to seven years of imprisonment. Other revised provisions deal with swindling of loans and credit from financial institutions, bankruptcy fraud, and mismanagement of client assets. To make the Criminal Law conform to the revised Securities Law, higher penalties may now be imposed under it for such acts as manipulating the securities or futures markets (fines of up to three million yuan, about US\$375,800).

In addition, the amendment prescribes heavier punishments for acts that violate production safety and cause serious accidents. One new measure provides a punishment of up to seven years' imprisonment for falsifying or not reporting workplace accidents, thereby delaying rescue operations. Another new provision stipulates a similar penalty for persons responsible for holding large-scale mass activities in violation of safety management rules that result in major casualties "or other grave consequences."

A Criminal Law provision on money laundering, which was amended in 2001 to cover the proceeds and gains derived from terrorist crimes, has been further revised to include crimes involving corruption and bribery, disruption of the financial management order, and financial fraud. One of the five types of circumstances in which the covering up or concealment of the sources and nature of such funds is punishable has also been amended to include assisting in converting property into financial instruments (in addition to cash and negotiable securities).



The revised Law also now penalizes organizing handicapped persons or minors under the age of fourteen, through violent or coercive means, to go begging. The maximum punishment for such an offense is seven years of imprisonment and a fine.

A proposed revision that would have criminalized gender-selected abortions was not included in the third version of amendment six that was put to a vote on June 29. Some lawmakers and especially the National Population and Family Planning Commission reportedly argued that the large imbalance in the sex ratio of newborns (119 boys to every 100 girls) is a complicated issue that requires a combination of solutions and that criminalizing gender identification of embryos for non-medical purposes would merely drive potential offenders underground. Other legislators and legal experts contended that preferring boys to girls is an attitude deeply rooted in the countryside that could not be changed legislatively. (*Amendment VI to the Criminal Law will Definitely Restrain the New White Collar Crimes*, 24 ISINOLAW WEEKLY (July 3-9, 2006); [Zhonghua Renmin Gongheguo xing fa xiuzheng an \(6\)](#), LAW-LIB.COM (last visited July 20, 2006).)

(Wendy Zeldin)

### **GERMANY – Juvenile Delinquency**

On May 31, 2006, the Federal Constitutional Court ruled that Germany lacked proper statutory parameters for the execution of prison sentences of juveniles (Docket No. 2 BvR 1673/4 and 2 BvR 2402/04, *available at* JURIS online subscription database). The Court ordered the legislature to remedy this deficiency by the end of 2007. The Court held that the current rudimentary provisions on the execution of prison sentences of juveniles, which are scattered throughout various laws, fail to take into consideration the special needs of adolescents caused by the biological, sociological, and psychological difficulties of adolescence.

The case at hand had been brought by a juvenile prisoner whose mail was being monitored and who was subjected to disciplinary measures. The Court did not rescind these measures, but urged the legislature to provide, through detailed legislation, clearer rules on the implementation of juvenile offenders' sentences.

(Edith Palmer)

### **INDIA – Plea Bargaining**

On July 5, 2006, a plea-bargaining system came into effect in India under the Criminal Procedure Code, in a new chapter 21A. It was introduced through the Criminal Law (Amendment) Act, 2005 passed by the Indian Parliament in its 2005 winter session. Introduction of the system follows close on the heels of the enforcement of the Criminal Procedure Code Amendment 2005, which provides that a defendant who cannot be given the death penalty will be released if he has already served half of the prescribed period of imprisonment for a particular offense.



Under the new system, plea bargaining will apply only to those cases in which the punishment for the offense is imprisonment for a period of up to seven years. It will not apply if the offense affects the country's socio-economic well-being or has been committed against a woman or against a child under fourteen years of age. The plea-bargaining application must be filed on the accused's own volition, in the court in which his trial is pending. The complainant and the accused are given time to work out a mutually satisfactory disposition of the case, which may include the accused's providing compensation to the victim and covering other case-related expenses. Once a satisfactory disposition has been reached, the Court will dispose the case by sentencing the accused to one-fourth of the punishment provided or extendable, depending on the offense. The judgment will be final and no appeal will lie against it in any court. Plea bargaining is expected to help reduce the huge backlog of cases in the trial courts and also stem prison overcrowding. It may benefit as many as 50,000 defendants, in addition to persons involved in new cases. (Editorial, [Freedom for Jailbirds: Plea-Bargaining Will Help Undertrials](#), THE TRIBUNE, July 6, 2006; [Plea Bargaining Comes into Effect from Today](#), ANI, July 5, 2006.)  
(Wendy Zeldin)

### **NIGERIA – Financial Crimes Commission to Arrest Without Warrants**

The Federal Executive Council of Nigeria approved an amendment of the Miscellaneous and Offences Act 2004 that would increase the powers of the Economic and Financial Crimes Commission (EFCC). As announced by the Minister of Information and National Orientation, Frank Nweke Jr., on July 12, 2006, the proposal involves giving the EFCC the authority to search and arrest suspects without warrants. The amendment, which will next be considered by the National Assembly, will also include provisions on criminal punishments. According to Nweke, "[t]he amendment should be approved to include a provision for a term of 10 years in the case of life imprisonment and a term of not more than seven years where the prescribed punishment is stated at a term not less than 21 years." (Nigeria: Federal Government Gives Financial Crimes Commission More Powers, The Guardian, July 13, 2006, Open Source Center No. AFP2006071363008.)  
(Constance A. Johnson)

### **SPAIN - Prevention of Money Laundering**

The Ministry of Economy and Public Finances issued the Order EHA/1439/2006 dated May 3, 2006 to regulate the declaration of movements of payment systems, aimed at preventing the laundering of assets.

Provisions of this Order shall apply to individuals and private corporations which, acting on their own behalf or on behalf of a third party, perform the following movements of payment systems: (a) exit or entrance to the national territory of metallic money, bank bills and bank bearer checks in national currency or in any other currency or in any physical mean, including electronic means, intended to be used as payment, for an amount equal or higher than 10,000 Euros per person and per travel; and (b) movements inside the national territory of metallic



money, bank bills and bank bearer checks to be used as payment for an amount equal or higher than 10,000 Euros.

The need to control the movements of assets was reaffirmed by the approval of the Regulation (CE) 1889/2005 of the European Parliament and Council of 26 October 2005, related to the control of entrance and exit of cash of the (European Economic) Community.

After establishing the extent of application, this Order deals with the model of declaration; the place and manner of submitting the declaration in case of exit or entrance to the national territory; the place and manner of submitting the declaration in case of movements inside the national territory; intervention of the payment systems; information provided to travelers; monthly communication of operations; collaboration between entities of the administration; and authority of the “Comision de Prevencion del Blanqueo de Capitales e Infracciones Monetarias” (Commission on the Prevention of Laundering of Assets and Currency Violations). (Boletin Oficial del Estado, May 13, 2006, pp. 18999-18505)  
(Dario Ferreira)

### **SWAZILAND – Anti-Corruption Law**

On July 14, 2006, King Mswati III of Swaziland signed an Anti-Corruption Act that empowers the government’s Anti-Corruption Unit (ACU), ten years after the unit was established. However, it will not be enforced until after a public education campaign about it has been carried out. The new Act will allow the ACU to seize assets deemed to have been illegally acquired through bribery and kickbacks. It also prescribes punishment for businesses and individuals who offer bribes to public officials, as well as for public-sector employees who accept the bribes.

Finance Minister Majozi Sithole stated in a 2005 interview that corruption cost the government R40 million (US\$5.7 million) a month, an amount equal on an annual basis to the country’s national debt of R450 million (US\$64 million). The government established the ACU in the mid 1990s, in response to a public outcry when no action was taken against the perpetrators of a series of high-profile corruption scandals, but it has never brought action against any culprits. Officials contend that the lack of legislation empowering them to conduct investigations and make arrests had foiled their anti-corruption efforts. ([SWAZILAND: A Leisurely Pace in Tackling Corruption](#), IRINNEWS.ORG, July 14, 2006.)  
(Wendy Zeldin)

### **TAIWAN – Criminal Procedure Law Amended**

Under the amendment of Taiwan’s Criminal Procedure Law promulgated on June 14, 2006, the circumstances under which a criminal defendant may be detained after being questioned by a judge have been revised, mainly to conform to changes in the Criminal Law. The amended CPL also specifies the two articles under the Criminal Law (articles 18 and 19) according to which a court will pronounce rehabilitative measures, if necessary, even for acts



regarded as not punishable; previously, the CPL specified the circumstances, not the articles, in which the provision would apply. In addition, provisions governing the execution of judgment by the judge or prosecutor and on the execution of rehabilitative measures have been revised. ([6693 ZONGTONG FU GONGBAO \[THE GAZETTE OF THE OFFICE OF THE PRESIDENT\]](#) 3-6 (June 14, 2006), Global Legal Information Network, GLIN ID 179421.)  
(Wendy Zeldin)

#### **UNITED KINGDOM – Law to Facilitate Cancellation of Pedophiles’ Credit Cards**

The House of Lords is currently considering an amendment to the United Kingdom’s Data Protection Act 1998 that would provide credit and debit card firms new grounds on which to cancel the cards they have issued. Specifically, cards could be cancelled on the grounds that they have been used to purchase child pornography in breach of the issuers’ terms and conditions. The amendment would allow police to inform issuers when their cards have been used to access child pornography, which is currently not allowed. ([The Data Protection \(Processing of Sensitive Personal Data\) Order 2006, Draft; Paedophiles Face Cancelled Cards](#), BBC NEWS, July 19, 2006.)  
(Clare Feikert)



## Elections and Politics

### AFRICAN UNION – Democracy Charter Rejected

It was reported on June 30, 2006, that the Seventh African Union Summit, held in Banjul, Gambia, did not adopt a democracy charter that might have made it harder for unpopular presidents to stay in office, by calling for strengthened electoral processes, an end to military coups, and halting of constitutional changes that allow leaders to remain in office. According to South Africa's Foreign Minister Nkosazana Dlamini-Zuma, it was the last point that the foreign ministers refused to accept. ([AU Turns Down Democracy Charter](#), BBC NEWS, June 30, 2006.) (Wendy Zeldin)

### BENIN – Parliamentary Terms Extended

The Parliament of Benin voted on June 23, 2006, to amend the constitution of the country and extend the current legislative term by one year, to five years instead of the current four. The change puts off the next parliamentary elections until 2008. Although the vote for the amendment was by a wide margin, pro-democracy groups criticized the move, saying that legislators had acted in their own interests. Reckya Madougou, who leads a group of organizations campaigning for transparent elections in Benin, said, “[t]his is a step backwards for democracy. This revision is unfortunate and opportunistic. . . . They want to stay in their posts to extend their parliamentary immunity, because they have all done things wrong.” The current parliament was elected in 2003. President Thomas Boni Yayi, who was elected in March 2006, is attempting to reform the government. ([Benin Parliament Votes Itself Extra Year in Office](#), IOL, June 24, 2006.) (Constance A. Johnson)

### INDIA – Office of Profit Bill

Prime Minister Manmohan Singh of India stated on July 18, 2006, that the Union Cabinet would shortly take up the Office of Profit Bill before presenting it to the coming session of the parliament. The Election Law forbids the holding of dual offices of profit by elected parliamentarians. The Office of Profit Bill as earlier passed by the parliament exempted members of parliament who held certain specific offices from being considered as holding dual offices of profit, in order to avoid their being disqualified as MPs. However, the President of India had returned the bill to the parliament for reconsideration, stating that instead of providing exceptions, the bill should include “comprehensive and generic” criteria on the holding of certain offices, criteria that should be “fair and reasonable” and applicable in a “clear and transparent” manner.

In admitting that the government cannot totally ignore the President's concerns, the Cabinet apparently is seeking to ensure that its decision will withstand judicial scrutiny. Elaborating further, Singh stated that the government had three options in the matter. First, it may ignore the President's objections and submit the original? bill for his assent, because the Constitution does not allow him to return the same bill twice. Second, it may introduce minor changes in the bill in view of the President's objections. This would be deemed a new bill and



might be liable to be returned again if the presidential concerns are not addressed. Third, it might take up the original bill but provide assurances that the issues raised by the President would be looked into by a parliamentary panel. ([Cabinet to Take Up Office of Profit Bill: PM](#), THE TRIBUNE, July 19, 2006.)  
(Krishan Nehra)

### **INDONESIA – Aceh Governance Law**

On July 11, 2006, Indonesia's House of Representatives ratified the Aceh Governance Law, granting the province greater autonomy in general and control over seventy percent of its mineral wealth, including oil and gas reserves. While reported in THE JAKARTA POST as a law designed to solidify the 2005 peace agreement with rebels, a spokesman for the former Free Aceh Movement (GAM) planned to send criticism of portions of the Law to the European Union monitors, stating that the text "gave too much authority to the central government and left the role of the military unclear." Ferry Mursyidan Baldan, the head of the legislative committee that drafted the legislation, said, "[w]e are very aware that what we have achieved is not perfect, but this is the best we could do," and he left open the possibility of amending the text. (*Aceh Governance Law Ratified by DPR 11 Jul 06: Roundup of Media Reporting*, OSC REPORT, July 11-12, 2006, Open Source Center No. SEP20060712053001.)  
(Constance A. Johnson)

### **KENYA – New Rules for Political Parties**

The Electoral Commission of Kenya (ECK) has issued new rules that apply to political parties participating in the 2007 general election. The rules are adopted under the general rubric of section 17 (1) of the National Assembly and Presidential Elections Act. Among the provisions implemented in a move to prevent the kind of heated, occasionally violent disputes that have characterized the nomination process in Kenya, parties will be required to send a copy of their nomination guidelines to the ECK. In addition, the new provisions are designed to limit opportunities for corruption in the nomination process. This is particularly an issue in regions of the country in which one party is dominant, so that nomination means almost certain election to parliament. The penalty for noncompliance with the new procedures is elimination of the offending party's candidates. "The law requires that party nominations must be carried out according to the rules set by the party. If these guidelines are not adhered to, then we won't accept the candidate," explained Samuel Kivuitu, the ECK chairman. ([Electoral Commission Unveils New Rules for Parties](#), THE STANDARD, July 7, 2006.)  
(Constance A. Johnson)

### **KENYA – Wealth Bill**

The Wealth Declaration Bill is currently before the Kenyan Parliament, and on July 5, 2006, President Mwai Kibaki appealed to legislators to give priority to it. The bill would amend the Public Officers Ethics Act, 2003. If passed, the bill would make available for public scrutiny declarations of assets and liabilities made by public officials. In addition, it would empower the Kenya Anti-Corruption Commission to conduct investigations to determine whether a public





official has violated the Code of Conduct and Ethics established under the Act. At present, the Commission does not have access to the assets declaration records of public officials suspected of corruption; it is therefore unable to investigate or take action against the office holders. ([Kibaki Urges MPs to Pass the Wealth Bill](#), THE STANDARD, July 5, 2006.) (Wendy Zeldin, 7-9832)

### **KUWAIT – Veiled Women Voters**

The Kuwaiti Council of Ministers resolved in a meeting held on June 25, 2006, the controversy surrounding the means by which the identity of veiled women voters is established. The Council entrusted the “judge or anyone authorized by him to ascertain the identity of the woman voter”. (*Veiled Women Voters*, AL-SHARQ AL-AWSAT, June 26, 2006.) (Issam Saliba)

### **MALDIVES – Constitutional System of Government**

On June 18, 2006, history was made in Maldives when the Special Majlis (Parliament) turned the decision on the country’s future system of government over to the people. The ruling party of President Maumoon Abdul Gayoom was in favor of having a presidential system of government, while the opposition wanted a parliamentary system. A large number of ruling party members joined hands with the opposition to give the people the final say on the issue by voting in a national referendum. In 1968, the people voted to abolish the monarchy and replace it with a republic.

Although the referendum may be held before the end of the summer, Information Minister Mohamed Nasheed warned that there could be a legal challenge to it, arguing that the Special Majlis, as the highest authority in the land under the current constitution, cannot turn such a decision over to the people. ([The People Will Decide](#), MINIVAN NEWS, June 18, 2006.) (Krishan Nehra)

### **MAURITANIA – Constitutional Reform**

Mauritanian officials stated on June 26, 2006, that Mauritians had voted overwhelmingly in favor of limiting presidential terms, in a referendum on constitutional change aimed at ending decades of coup attempts and one-party politics. Nearly ninety-five percent of the unofficial turnout, estimated to be about seventy-seven percent of eligible voters, expressed support for the reform. Mauritania has never experienced the change of power through the ballot box, and widespread irregularities, such as multiple voting and intimidation by the army, have reportedly marred previous polls.

The referendum is the first step in the transition from military to civilian rule in the Islamic Republic of Mauritania, and it is scheduled to lead to presidential elections in March 2007. It prevents future presidents from serving more than two terms, limited to five years each, and requires that they take an oath on the Qu’ran not to amend the rules in order to stay in power. None of the members of the military junta, which seized power in a bloodless coup in August



2005, will be allowed to run for president. ([Constitutional Changes Get Nod in Mauritania](#), THE STAR, June 27, 2006, at 4.)  
(Wendy Zeldin)

### **NEPAL – Interim Constitution Drafting Committee Begins Work**

Nepal's six-man Interim Constitution Drafting Committee formally began work on July 6, 2006. The government and Nepal's Maoist rebels had established the committee on June 18, with a mandate to complete a draft within a fortnight. However, the panel's official commencement of work was delayed by arguments between committee members of the two sides. Nepalese women activists had also objected to the failure to include a women's representative on the panel as promised. The government has indicated that the committee membership will be expanded to include women.

According to committee coordinator and former Supreme Court Justice Laxman Prasad Aryal, the committee will spend five days on collecting suggestions from the general public, put them in draft form, and formulate the interim law, which would be submitted to the talks teams of the two sides for final approval. Aryal stated that the document would set forth the timeframe and process for holding a constituent assembly and also suggest the formation of an alternative body to the present House of Representatives. The government and the Maoists agreed on June 16 that the House would be dissolved. Aryal further stressed that the interim constitution is temporary, to remain effective until the time of the constituent assembly elections. (Joshua Pantesco, [Nepal Government, Maoist Rebels Begin Joint Work on Interim Constitution](#), JURIST, July 6, 2006; [Interim Constitution Drafting Committee Formally Begins Work](#), EKANTIPUR.COM, July 6, 2006.)  
(Wendy Zeldin)

### **NEPAL – Royal Judicial Power Reduced**

It was reported on July 6, 2006, that Nepal's Judicial Council, led by Chief Justice Dilip Kumar Poudel, agreed on removing the King's power to appoint judges, as part of a gradual move to reduce his power, and on having the appointments be made by the Chief Justice after recommendation by the Council. The HIMALAYAN TIMES DAILY quoted Law, Justice and Parliamentary Affairs Minister Narendra Bikram Nemwang as stating that such recommendations would not be forwarded to the King for approval. The recent parliamentary declaration that curtailed the King's legislative and executive powers was silent on his authority over the judiciary (*see* 7 W.L.B. 2006). The Constitution of 1990 accords the King the power to appoint judges and pardon criminals.

The Council's decision came at a time when it was considering the appointment of fifty-one judges to various district courts. The Chief Justice called a meeting of the Council to discuss the appointments after some judicial staffers, most of whom are eligible for the district judgeships, threatened to go on strike if such a meeting was not held. ([King to Lose Power of](#)



[Appointing Judges](#), LEGAL NEWS FROM NEPAL, July 6, 2006; [CJ Preparing to Appoint 51 District Judges](#), LEGAL NEWS FROM NEPAL, July 5, 2006.)  
(Wendy Zeldin)

### PAKISTAN – Non-Bailable Arrest Warrants for Bhutto and Spouse

On July 18, 2006, on a petition filed by Pakistan's National Accountability Bureau (NAB), Islamabad District and Sessions Court Judge, Rafiuz Zaman, issued non-bailable warrants of arrest against former Prime Minister and leader of the Pakistan People's Party (PPP), Benazir Bhutto, and her husband, Asif Ali Zardari. The petitioner accused the two of filing a false declaration of assets before the Election Commission in 1993.

According to the petition, the defendants had amassed immense wealth and property in foreign countries that they earned through illegal and corrupt means. Further, they had admitted ownership of such property before a Swiss court. Since the defendants, who live in the United Kingdom, were absent from the proceedings, the court ordered service of the notices on them through Interpol and their appearance before the court on September 7, 2006.

Terming the court action an abuse of the judicial process by President Pervez Musharraf of Pakistan, PPP spokesman Farhatullah Babar stated that no objection was raised in 1993 when the alleged false declaration of assets was made by Bhutto and her husband before the relevant officials of Larkana and Nawabshah, respectively. Moreover, Babar stated, "[i]f Ms. Bhutto has mis-declared assets before the Election Commission, then it is for the chief election commissioner to give notice to her and not the NAB." ([Warrants Issued for Arrest of Benazir, Asif](#), THE DAWN, July 19, 2006.)  
(Krishan Nehra)

### POLAND – Vetting Court Procedures

On June 23, 2006, the former deputy prime minister and recent Finance Minister of Poland, Zyta Gilowska, was dismissed over allegations that she had lied in her vetting statement for public office and failed to reveal her ties with communist-era secret services, as is required of politicians and senior public sector officials in Poland. The vetting law aims to prevent senior politicians from being blackmailed over their past associations. (DPA, [Polish Finance Minister Dismissed in Vetting Affair](#), MONSTERS AND CRITICS, June 23, 2006.)

If politicians are found to be lying about their past contacts with communist secret service officers, they are banned from public service. In Gilowska's case, she denied the charges and submitted her resignation, which was accepted by Prime Minister Kazimierz Marcinkiewicz. However, the Ombudsman responsible for vetting public officials asked the Vetting Court to rule on whether Zyta Gilowska had lied about cooperating with communist-era secret services. Following the motion, the Vetting Court decided that it was not possible to open procedures against Gilowska. According to the court, a person who no longer performs a public function and who wants to have their name cleared from suspicion of cooperation with communist secret



services should take action to initiate so-called self-vetting procedures. (*Poland: Vetting Court Urges Ex-Minister to Apply Self-Vetting*, PAP, June 29, 2006, Open Source Center No. EUP 20060629950041.) Judge Zbigniew Puzkarski, justifying the court's decision, emphasized, "Gilowska did not state her position on the matter in court. The former deputy prime minister neither attended to [sic] the court session, nor was she represented by a lawyer." (W.Z., [No Comeback for Gilowska?](#) THE WARSAW VOICE, July 5, 2006.)  
(Grazyna Kolondra, Visiting Scholar in Residence)

### **UNITED STATES – Voting Rights Act Provisions Extended**

On July 27, legislation reauthorizing certain provisions of Voting Rights Act of 1965 was signed into law. The legislation extends the non-permanent provisions of the 1965 act for another 25 years. It reauthorizes provisions requiring jurisdictions with a history of discrimination to obtain pre-clearance by the United States Department of Justice before making changes to their election laws. It also reauthorizes a provision requiring bilingual voting materials in areas with a significant number of voters who speak a language other than English. The legislation also amends prior law, including provisions relating to burden of proof in litigation over alleged violations, the use of federal observers where there is a reasonable belief that a Constitutional violation may occur, the recovery of the cost of hiring expert witnesses by prevailing parties in litigation, and the survey data used in determining whether bilingual language assistance is required. ([Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006](#), Public Law No. 109-246, 120 Stat. 577 (2006).)  
(Luis Acosta)



# Employment Law

## EUROPEAN UNION – Penalties for Exploiting Illegal Workers

Exploitation of illegal workers through forced labor, inhuman working conditions, and low wages is an issue that is dealt with at the national level in the EU. EU Members subject those who engage in such actions to a variety of penalties. These may range from blacklisting those employers and excluding them from public procurement contracts to imposing criminal penalties on them.

The July 18, 2006, incident in which Italian and Polish police freed Polish workers from a forced labor camp in Italy prompted the Vice-President of the Commission, Franco Frattini, to announce his intentions to draft a legal instrument “to punish those businessmen who accept, encourage or actively support black market work.” He added that his plan is to see harmonization of penalties across the EU. ([Brussels Moots EU Penalties for Black Market Employers](#), EUOBSERVER, July 19, 2006.)  
(Theresa Papademetriou)

## UNITED STATES – Pension Law Revised

On August 17, the Pension Protection Act of 2006 was signed into law. The 393-page law significantly amends federal law relating to pensions and retirement benefits. It includes provisions intended to strengthen the funding of private defined-benefit pensions, by changing the actuarial assumptions and method of calculating adequate funding of obligations, increasing funding requirements, shortening the period within which funding shortfalls must be eliminated, and permitting pension plans to contribute more to their plans on a tax deductible basis. Certain airlines and government contractors are given relaxed treatment in meeting their funding requirements. The law requires companies that fail to meet their funding requirements to pay higher premiums to the Pension Benefit Guarantee Corporation. The new law limits certain forms of benefit payments and the accrual of new benefits in underfunded plans. The law requires annual disclosures to participants and beneficiaries of the status of their plans with respect to funding, and requires more detailed information on the tax forms pension plans are required to file. With respect to defined-contribution retirement plans, the law encourages employers to automatically enroll their employees in such plans and to give employees the opportunity to "opt-out" of the plan (rather than requiring employees to affirmatively "opt-in" to participate, as prior law provided). The law also makes permanent various tax provisions affecting individual retirement accounts. The law includes various protections to employees participating in defined-contribution plans, such as prohibiting companies from forcing employees to invest their retirement savings contributions in the stock of their employer. The law also includes provisions that improve the portability and transferability of retirement plan benefits, including provisions allowing the transfer of benefits to non-spouse beneficiaries upon death and during financial hardships. Also included in the legislation are tax provisions relating to charitable organizations, including new disclosure requirements and provisions designed to encourage charitable giving. ([Pension Protection Act of 2006](#), Public Law No. 109-280, 120 Stat. 780 (2006).)  
(Luis Acosta)



## Energy

### COMMONWEALTH CARIBBEAN – OLADE to Discuss Cooperation

Barbados is a member of the Latin American Energy Organization (OLADE) along with the other Commonwealth Caribbean countries of Grenada, Guyana, Jamaica, and Trinidad and Tobago. The non-Commonwealth members are Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, Suriname, Uruguay, and Venezuela. This organization is scheduled to meet in Mexico in September 2006 to discuss energy cooperation and integration. The body will create the First Regional Energy Integration Forum (FIER) at that time. (*OLADE Members to Meet in Mexico September 2006*, LATIN AMERICA NEWS DIGEST, July 11, 2006, LEXIS, News Library; Curnws File.)  
(Stephen Clarke)



## Environmental Law

### ARGENTINA/URUGUAY – Hague Court Allows Construction of Pulp Mill

On July 13, 2006, the International Court of Justice (ICJ) authorized the construction of a controversial pulp mill project in Uruguay, which was opposed by Argentina on grounds of the potential damage to the environment. This is an important victory for Uruguay, as the \$1.7 billion pulp mill project on its border with Argentina will provide a big boost to its economy. As Uruguay's largest-ever investment in industry, the project represents about ten per cent of the country's GDP.

Argentina accused Uruguay of breaching an international treaty governing the Uruguay River separating the two countries, on whose banks the mill is being built, by acting "unilaterally." A final ruling on the issue is not expected for another two to three years, but until then the United Nations' highest court in The Hague has ruled that the pulp mill will not cause irreversible harm.

The ruling is good news for the companies building the factories, Finland's Botnia and Spain's Ence, who are awaiting approval for \$400 million in funding from the International Finance Corporation, the private sector arm of the World Bank. The funding was suspended in April until a study on the project's social and environmental impact resulted in a positive outcome for the project. The study results may also determine the future of loans from private banks involved. Argentina's strategy is now expected to focus on preventing those loans. It is feared, however, that disappointed Argentine activists living across the river from the cellulose plants may resume roadblocks across bridges linking the two countries that earlier in the year caused losses to the Uruguayan economy of an estimated \$400 million.

The trial represents the first time that Latin American countries have come before an international court over an environmental dispute. The ICJ expressed its concern for protection of the environment and at the same time its desire to protect the sovereign rights of governments to pursue economic development. The ICJ made clear that it did not favor economic development against environmental protection but based its decision in Argentina's failure to present sufficient evidence to justify the suspension of construction. ([\*Papeleras: los ambientalistas descartan cortes y anuncian una caravana en rechazo al fallo de La Haya\*](#), DIARIO CLARÍN, July 13, 2006.)  
(Graciela Rodriguez-Ferrand)

### EUROPEAN UNION – Stricter Rules on Pesticides

A European Commission proposal to introduce stricter rules on the use of pesticides was met with skepticism by environmental groups, which argued that the measure is not sufficient. Pesticides have long been associated with serious damaging effects on humans and the environment. The proposal prohibits the use of aerial spraying and bans completely the use of



pesticides in natural parks. It also contains rules on training farmers in the proper use of pesticides and on additional collection of data regarding the harmful effects of pesticides.

Another measure that was criticized by environmental groups was the introduction of a new “zonal authorization” system for pesticides. In their view, such a system will inevitably create problems, because it will force one country to accept a product that has been authorized in another, and pesticide companies will “shop around” to find the most profitable market in which to sell their products. (*EU Pesticide Plan Ridiculed by Green Groups*, EUOBSERVER, July 13, 2006 (last visited July 13, 2006).)  
(Theresa Papademetriou)

### **SOUTH INDIAN OCEAN – Fishing Accord**

Comoros, the European Community, France, Kenya, Mozambique, New Zealand, and Seychelles have signed the South Indian Ocean Fisheries Agreement. The Agreement was sponsored by the United Nations and was signed at the U.N. Food and Agriculture Organization (FAO) headquarters in Rome. The purpose of the Agreement is to promote sustainable fishing in the region, in order to conserve natural resources outside of national jurisdictions. Among its provisions are plans for monitoring the state of fish stocks and the impact of fishing on the environment; joint management and conservation measures, including establishing rules for member countries to decide which operators are allowed to fish in the specified ocean region; annual reports on the amounts of captured and discarded fish; and inspections of ships visiting the ports of the Parties to verify compliance with the Agreement. Those vessels not in compliance will be denied landing and discharging privileges. The fishing rules will not apply to catches of tuna, which are administered by the Indian Ocean Tuna Commission.

The Agreement will come into force when at least four instruments of ratification, of which at least two must be from nations with Indian Ocean coasts, are received by the FAO. The Agreement is open for signature by additional countries. ([\*New UN-Backed Fishing Accord Seeks to Ensure Conservation in Indian Ocean\*](#), UN NEWS CENTRE, July 12, 2006.)  
(Constance A. Johnson)

### **SWEDEN – Prohibition on Phosphates in Detergents Proposed**

The Swedish Minister for the Environment has proposed a prohibition on phosphates in laundry detergents and cleaning agents. Sweden cleans phosphates from wastewater through sewage plants, but they also reach the seas, lakes, and rivers from the one million private sewage systems around Sweden. The aim of prohibiting the phosphates is to try to halt or reverse the over-fertilization of the Baltic Sea. The Swedish Government has asked the Swedish Chemicals Inspectorate to investigate the possibility of introducing such a prohibition. The results of the investigation will be presented on November 15, 2006. (Press Release, Ministry of Sustainable Development, [\*Regeringen k aver fosfatfria tv ttmedel\*](#) (July 10, 2006).)  
(Linda Forslund)





**TAIWAN – Landmine Statute**

The Statute for Anti-personnel Landmine Control was promulgated on June 14, 2006. The competent authority for landmine control is specified as the Ministry of National Defense (MND). The Statute sets forth the types of activities that are to be prohibited without the MND's permission as well as the penalties that may be imposed for failure to obtain such permission. It provides for the circumstances under which anti-personnel landmines may be handed over, held in reserve, or not be used. The Statute further stipulates that the MND is to publicize landmine areas and that the landmines in those areas will be eliminated within seven years. It also sets forth the landmine-related matters that are to be monitored and controlled by the MND. The Statute specifies that for purposes of destroying or eliminating anti-personnel landmines, the MND may, based on the principle of reciprocity, call upon other countries for assistance. According to the Statute, any person who suffers injury, death, or property damage as a result of the government's use or elimination of the landmines may claim monetary compensation from the MND. ([6693 ZONGTONG FU GONGBAO \[THE GAZETTE OF THE OFFICE OF THE PRESIDENT\] 24-27](#) (June 14, 2006), Global Legal Information Network, GLIN ID 179430.)  
(Wendy Zeldin)



## Family Law

### EUROPEAN UNION – Cross-Border Divorce

The European Commission has devised a proposal dealing with cross border divorce proceedings. Approximately 350,000 people of different nationalities marry in the European Union, and close to 170,000 of the couples later seek a divorce. The purpose of the proposal is to ensure legal certainty and access to the courts, not to bring harmonization of the divorce laws. The proposal will give people the right to choose the location of the divorce proceeding, pursuant to their nationality or the place of residence. If they do not reach an agreement, it will be the country of residence or the country to which the couple has strong links. The proposal must be agreed upon by consensus of twenty-four of the EU Members, except Denmark, which has opted out of all judicial-related issues of the EU. Ireland has expressed strong doubts about the proposal. In practical terms, it means that a Swedish couple living in Ireland will obtain a divorce eight times faster than an Irish couple. On the other hand, the island of Malta does not recognize divorce, but it does recognize foreign divorce judgments. (*EU Proposes Speeding Cross-Border Divorce*, EUOBSERVER, July 17, 2006 (last visited July 18, 2006).) (Theresa Papademetriou)

### IRAN – Calculation of Dower (*Mahr*) in Divorce

Often in cases where a marriage ends in divorce in Iran after several years and the wife claims her right to the dower, it has considerably depreciated in value. The Iranian legislature decided to address the injustice by recently amending the relevant law. The law now provides that the amount of dower must be evaluated on the basis of the latest price index of goods and services, prepared annually by the Central Bank of Iran, as against the year the marriage contract was concluded, in order to offset the accrued depreciation. The Council of Ministers has approved a formula that must be used as the basis for calculating the amount of the dower to be paid to the wife at the time of divorce.

Dower (*mahr* in Persian) is a custom that existed before the advent of Islam and is current throughout most of the Middle East, Africa, and the Far East. In Islam it has been given special significance by the words in the Quran “Give women their dowries as a free gift...” (Sūra No. 4, ABDULLAH YUSUF ALI, 1 HOLY QURAN: TEXT, TRANSLATION, AND COMMENTARY 179 (1934).) In Islam, dower is an integral part of every marriage contract; there can be no marriage without it, because it is either named in the contract of marriage or implied by the existence of the contract itself. Dower is a gift that the bridegroom offers to the bride at the time of marriage as recommended by the Quran. It becomes the exclusive property of the bride after marriage and she is free to dispose of it in whatever way she wishes (Civil Code of Iran, art. 1082). Dower is not the exchange or consideration given by the man to the woman for entering into the contract. (OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN 7 (May 22, 2006).) (G. H. Vafai)



### **NIGERIA – Police to Enforce Widow’s Rights**

At a workshop for police organized by the Widows’ Development Organisation in Enugu State, Nigeria, the State Commissioner of Police Charles Dawodu expressed the willingness of the police force to enforce the 2001 law protecting widows’ rights. However, it was argued, the law cannot be effectively enforced without public cooperation. Information on any infringements of rights should, Dawodu said, be turned over to the police for proper investigation. Widows in the region have had difficulty reporting abuse in part due to illiteracy and lack of knowledge of their legal rights. (*Enugu Police to Enforce Widows’ Rights*, THE GUARDIAN, June 30, 2006.)  
(Constance A. Johnson)

### **PORTUGAL – Church Pledges Boycott of Medically Assisted Procreation Law Provisions**

On July 12, 2006, the spokesman for the Portuguese Episcopal Conference, Don Carlos Azevedo, recommended that Christians not comply with all aspects of the medically assisted procreation law recently promulgated by the President of Portugal, Anibal Cavaco Silva. The new law applies to heterosexual couples older than eighteen years of age. It regulates techniques involving the anonymous donation of sperm, ovules, and embryos and the scientific investigation of excess embryos. The use of surrogate mothers and cloning are prohibited, but the selection of viable embryos with the elimination of others in a fertilization procedure is allowed.

Don Carlos stated that Christians must adapt to the legislative reality without resorting to practices that go against the human reality and that the Church will soon publish a document aimed at providing guidance to Christians on this issue from an ethical and moral point of view. According to Don Carlos, this document will enable Catholics to avoid provisions of the new legislation that go against human freedom, specifically, the use for purposes other than procreation of excess embryos, which from the Church’s perspective, represent human life and therefore are endowed with dignity. However, not all Catholic clergy share this perspective. Father Anselmo Borges, also a philosophy professor, said that he does not object to the new law and that the President acted correctly in promulgating it, because Portugal was one of the few European countries to lack legislation on this issue, making all types of medically assisted procreation permissible. (Pedro Correia, [\*Igreja Defende Boicote à Lei que Cavaco Promulgou\*](#), DIÁRIO DE NOTÍCIAS, July 13, 2006.)  
(Eduardo Soares)

### **SLOVENIA – Law on Same-Sex Unions**

Slovenia’s Law on Registering a Same-Sex Union entered into force on July 23, 2006. Under the Law, the two partners of a same-sex union must apply at the regional administrative office thirty days before the registration. The office checks to see whether they meet the following conditions: they are not underage, neither is married or in another registered union, they are not related to each other, neither is a legal guardian of the other, neither is mentally handicapped, and at least one of them is a Slovenian citizen. A registrar carries out the registration procedure in “a light and tidy official room containing state symbols.” According to



Ljubica Salinger, head of the family office legal section of the Ministry of Labor, Family, and Social Affairs, “the registration is not a public or ceremonial procedure,” and the relationship is one “between two adults with no affect [sic] on other people and is therefore different from marriage.” Thus, while it is not forbidden to have friends and relatives present, “it is up to the regional office whether it allows it or not.” In order to end a registered union, one or both partners has to file a request for its termination at the office where the union was registered.

Homosexual organizations in Slovenia reportedly consider the Law a first step towards fair legislation regarding homosexuals because it formally introduces certain rights and obligations. However, they still find it insufficient and contend that some of the articles are discriminatory. One group has already urged the government to amend the Law. (*Law on Registering Same Sex Unions in Force in Slovenia*, LJUBLJANA DELO, July 23, 2006, Open Source Center No. EUP20060724950021.)  
(Wendy Zeldin)



# Gun Control

## CANADA – New Gun Control Exemptions

In 1995, Canada's former Liberal government enacted a Firearms Act to eventually require virtually all firearms to be registered and all firearms owners to be licensed (Firearms Act, 1995 S.C. c. 39). The costs of this program ballooned from what was originally estimated to be approximately Can\$2 million (about US\$1.7 million) to over Can\$1 billion (about US\$882,000). The staggering cost overrun has not been the only problem with Canada's ten-year-old gun control laws. Compliance has been less than was expected, even though numerous extensions and amnesties have been granted.

The new Conservative government has responded to the situation by introducing legislation that will largely abolish the long-gun (primarily rifles and shot-guns) registry by exempting shotguns and hunting rifles from the registration requirement. Bill C-21 (39<sup>th</sup> Parl. 1<sup>st</sup> Sess.) was introduced just prior to the adjournment of parliament for the summer and will not be voted upon until the fall at the earliest. Many expect that the bill will eventually be amended. One possibility is that the government will decide to simultaneously amend the licensing requirement to make it faster and easier. However, as a minority government, the Conservative leadership will have to secure the support of at least some members of parties that are generally in favor of the stronger gun control legislation enacted by the former Liberal government. This opposition support is particularly strong for handgun control, and so it does not appear that the current government intends to abolish the registry for handguns and prohibited weapons. (Jim Brown, *Gun Registry in Tories Sights; Bill Could Be Introduced Today to Remove Rifles, Shotguns from List*, HAMILTON SPECTATOR, June 19, 2006, at A9.)  
(Stephen F. Clarke)



## Health Law & Regulation

### AUSTRIA – Living Will

The Austrian Parliament enacted the Act on Advance Medical Directives on May 8, 2006 (Bundesgesetzblatt I no. 55/2006). The Act stipulates that an advance medical directive is binding if it clearly specifies the treatments that the patient wishes to forego, is accompanied by the certification of a physician who found that the signer was of sound mind and had a good understanding of the consequences of foregoing certain treatments, and was made before an attorney or ombudsman of a hospital. An advance directive remains effective for five years, unless revoked. An advance directive that does not conform to these statutory requirements nevertheless retains some persuasive force in regard to the treatment of the patient, depending on the circumstances of the case. A restrictive feature of the Act is the requirement that the certifying physician describe the reasons for assuming that the patient understands the consequences of foregoing treatment, by listing circumstances such as the patient's experience in connection with an illness of a close family member.

(Edith Palmer)

### SAUDI ARABIA – Mandatory Health Insurance Scheme for Foreigners

Enforcement of a mandatory health insurance scheme for foreign residents in the Kingdom of Saudi Arabia started on July 15, 2006. The issuance of an *Iqamah* (residence permit) will be tied to having a health insurance policy; before seeking issuance or renewal of an *Iqamah*, emigrants must have valid health insurance. The mandatory health insurance scheme will cover seven million residents in Saudi Arabia by the end of 2006. The insurance will cover organic and physical diseases and twenty-eight new health centers will be distributed throughout regions of the country as needed. (Khamees Al-Sa'adi, *Implementation of the Compulsory Health Insurance Scheme in KSA as of Next Saturday*, AL-JAZIRAH NEWSPAPER, July 7, 2006.)

(Dr. Abdullah F. Ansary)

### SAUDI ARABIA – New Animal and Plant Quarantine Law to Be Enforced

On July 26, 2006, the Saudi Department of Agriculture began enforcing the Implementing Regulations of the Veterinary Quarantine for the Countries of the Gulf Cooperation Council (GCC). The General Manager of the Agriculture Department for Mekka Province told the news agency Okaz that the offices of animal and plant quarantine at King Abdul Aziz International Airport and the Islamic Jeddah Seaport will begin the enforcement and that the Implementing Regulations will control the import and export of shipments of animals, vegetables, and their products in the GCC countries.

Among other requirements imposed by the Implementing Regulations the importer must obtain an import permit from the appropriate administration for shipments of imported live animals or animal by-products as well as animal-based biological products. A permit is also required for export. (*New Animal and Plant Quarantine Law to Be Enforced as of 1 Rajab*, OKAZ NEWSPAPER, July 12, 2006.)

(Issam Saliba)



### **SPAIN - Assisted Human Reproduction**

On May 26, 2006, King Juan Carlos of Spain enacted Law 14/2006 on techniques of assisted human reproduction. The background of this legislation is the development in the 1970s of techniques of assisted reproduction that opened new possible solutions to the problem of sterility for a great number of couples affected by this pathology. This Law introduces important updates to previous Law 35/1988 of November 22, 1988, on techniques of assisted reproduction, and its amendment Law 45/2003 of November 21, 2003, which authorized the utilization of pre-embryos for research purpose, but with some limitations. Law 14/2006 clearly defines the concept of pre-embryo as the *in vitro* embryo made by the group of cells resulting from the progressive division of the egg from the moment of its fertilization to 14 days afterward.

The object of the Law is to regulate the application of scientifically accredited and clinically approved techniques of assisted human reproduction; to regulate the application of those techniques in the prevention and treatment of diseases of genetic origin, provided that there are enough diagnostic and therapeutic guarantees and are properly authorized; and to regulate the assumptions and requirements of utilization of gamete and cryo-preserved (frozen) human embryos.

The Law states that the techniques of assisted reproduction will be performed only when there are reasonable possibilities of success, do not expose to serious risk the physical or physical health of the woman or the possible offspring, and there is previous acceptance by the woman. In the case of *in vitro* fertilization and similar techniques, the transfer of a maximum of three pre-embryos in each woman in each reproductive cycle is authorized.

This Law adopts specific measures concerning donors and contracts of donation, users of the techniques, filiation of the children born through the techniques of assisted reproduction, legal determination of the filiation, pregnancy by substitution; cryo-conservation and other supporting techniques of assisted reproduction; research with gamete and human embryos; health centers and biomedical equipment; authority and functions of the “Comision Nacional de Reproduccion Humana Asistida” (National Commission of Assisted Human Reproduction); and national registries of assisted reproduction.

The final chapter is devoted to different types of violations, responsibility of the author and sanctions with fines according to the seriousness of the violation. (Boletin Oficial del Estado, May 27, 2006, pp. 19947-19956)  
(Dario Ferreira)

### **TAIWAN – Controlled Drugs Law Amended**

The Statute on Management of Controlled Drugs was amended as of June 14, 2006. Provisions governing permits for medical practitioners, dentists, and veterinarians to use controlled drugs have been added. The revised Statute specifies that the central health authority will set up an information system to monitor and warn against abuse of controlled drugs.



Provisions on the imposition of fines for certain violations of the Statute have also been revised, but an article that made violators of the Statute subject to compulsory execution for failure to pay fines has been repealed. ([6693 ZONGTONG FU GONGBAO \[THE GAZETTE OF THE OFFICE OF THE PRESIDENT\] 9-11](#) (June 14, 2006), Global Legal Information Network, GLIN ID 179425.)  
(Wendy Zeldin)

### **TAIWAN –Emergency Medical Service Law Amendment**

Taiwan's Executive Yuan approved an amendment of the Emergency Medical Service Law on July 5, 2006. Medical centers will soon be banned from refusing to offer services in emergency cases. The revision of the Emergency Medical Service Law is intended to avoid any more incidents like the one that happened last year, in which a seriously injured young girl was refused admittance by major hospitals.

Under the proposed amendment, hospitals and clinics will be graded according to their capabilities and resources. Based on the grade, the medical institutions will be obligated to offer certain services. The National Health Administration will be in charge of grading the medical institutions. ([Cabinet's Amendments to Hospital Law Aim to Prevent Repeat of Chiu Tragedy](#), TAIPEI TIMES, July 6, 2006.)  
(Rui Geissler)

### **UGANDA – Death Penalty Proposed for HIV/AIDS Infectors of Children**

The Government of Uganda recently tabled a bill in parliament that seeks the death sentence for HIV/AIDS sufferers who intentionally infect minors with the disease. Under the bill to amend the Penal Code, any person who knowingly has HIV/AIDS, has sex with a person below the age of eighteen, and infects that person with the disease will be subject to the death penalty on conviction of the crime, according to Dr. Elioda Tumwesigye, a member of the Parliamentary Committee on HIV/AIDS. Tumwesigye made his remarks at the launch of the Partnership for AIDS Treatment Providers (PATREP) on June 30, 2006. PATREP is a joint effort by anti HIV/AIDS organizations, including the World Health Organization, the Mulago Hospital Infectious Disease Institute, the Kampala City Council, and private health care providers, to maximize the health care system's potential to provide treatment for the disease. ([Uganda Seeks Death Penalty for Defilers Who Infect Children with HIV](#), THE MONITOR (Kampala), July 2, 2006, Open Source Center No. AFP20060702950008.)  
(Wendy Zeldin)

### **UNITED STATES – Tobacco Companies Found to Violate Federal Racketeering Statute**

A federal judge on August 17 ruled that major American tobacco companies violated the federal racketeering statute by engaging in a pattern of fraudulent misrepresentations, including (1) denying that smoking causes lung cancer, emphysema, and other forms of cancer; (2) denying that environmental tobacco smoke causes lung cancer and endangers the health of children; (3) denying that nicotine is highly addictive; (4) falsely marketing low tar/light cigarettes as less harmful; (5) intentionally marketing cigarettes to persons under the age of





twenty-one while denying doing so; and (6) concealing evidence, destroying documents, and abusing the attorney-client privilege in order to prevent the public from knowing about the dangers of smoking and to protect the industry from lawsuits.

The 1,742-page opinion, by Judge Gladys Kessler of the United States District Court for the District of Columbia, enjoins the tobacco companies from using deceptive brand descriptors in their marketing such as "low tar," "light," "mild," and "natural." It orders the tobacco companies to issue corrective statements in newspapers, television, and retail displays regarding the adverse health effects and addictiveness of smoking, the lack of health benefits of smoking "low tar," "light," "mild" or "natural" cigarettes, and the adverse effects of exposure to secondhand smoke. It also orders the tobacco companies to create document depositories and Web sites to provide the Government and the public access to all industry documents disclosed in this litigation, and to provide marketing data to the Department of Justice to enable the government to monitor whether they are violating the marketing provisions of the order. (*United States of America v. Philip Morris USA, Inc.*, No. 99-2496 (GK) (D.D.C.), [Final Opinion](#); [Final Judgment and Remedial Order](#).)

(Luis Acosta)

#### **VIETNAM/UNITED STATES – First Official Health Agreement**

On July 20, 2006, the Socialist Republic of Vietnam (SRV) and the United States signed their first official agreement to continue cooperation in health-related matters, including avian and pandemic influenza, HIV AIDS, and emerging diseases. It takes effect as of the signing date and will remain in force for five years. The Agreement on Health and Medical Science was inked in Washington, D.C., by the SRV Minister of Health and the Secretary of the U.S. Department of Health and Human Services. It covers the exchange of technical information and expertise, development of rapid response plans for the SRV, personnel training, production of vaccines, and management of pharmaceutical products. The Agreement follows upon an October 2005 letter of intent of cooperation signed by both sides in Hanoi. ([Viet Nam, US Sign First Official Agreement on Health](#), NEWS (Embassy of the Socialist Republic of Vietnam in the United States), July 21, 2006.)

(Wendy Zeldin)



## Human Rights

### BRAZIL – Equal Opportunity Bill Opposed

A group of intellectuals, artists, and activists of Brazil's "Black Movement" issued a manifesto on June 29, 2006, against a proposed law that institutes a policy of quotas in federal universities, reserving fifty percent of the positions to public school students and black people and creating a Statute of Racial Equality, which would reserve spots for black people in the higher education system and in the public service. The document was delivered to the Presidents of the Senate, Renan Calheiros, and of the Chamber of Deputies, Aldo Rebelo. The document, entitled *Carta Pública ao Congresso Nacional – Todos Têm Iguais na República Democrática*, asks Congress to reject both projects under the argument that the adoption of specific policies favoring black people may instigate racial conflict, as it gives legal status to the concept of race and does not address the structural problem of inequality in the country – the lack of universal access to a quality education.

The author of the Statute of Racial Equality, Senator Paulo Paim, said that the statute has the objective of providing reparations to the black population for the pain and suffering and lack of opportunities for socio-economic advancement due to the legacy of slavery. Paim also highlighted the fact that it is very rare to have a black person in charge of a company or a financial institution.

In response to the manifesto, on July 4<sup>t</sup>, 2006, representative members of other black movements and intellectuals went to Congress to deliver a document in support of the proposed laws, which was also given to the Presidents of the Senate and the Chamber of Deputies. (Demétrio Weber, *Intelectuais Lançam Manifesto Contra Cotas*, O GLOBO, June 30, 2006); Demétrio Weber, *Movimentos Negros e Intelectuais Reagem Com Manifesto Pró-Cotas*, GLOBO ONLINE, July 5, 2006.)  
(Eduardo Soares)

### CONGO (Democratic Republic of) – Journalist Released

On July 5, 2006, following seventy-five days of detention, Kazadi Mukendi was released from a Kinshasa jail. He had been arrested while working as a journalist for the weekly publication LUBILANJI EXPANSION and was released on an order of the Kinshasa/Gombe High Court prosecutor.

Mukendi, also known as Kazadi Kwambi Kasumpata, had been arrested on April 20, after publishing an article about the Protestant University of Congo, describing embezzlement of funds and mismanagement of donations. On June 14, he had been sentenced to four months in prison and fined US\$5,000 for "damaging allegations" against the university. It possible that Mukendi will be tried again by the Kinshasa/Gombe High Court. ([Journalist Released After Spending 75 Days in Prison](#), ALLAFRICA.COM, July 10, 2006.)  
(Constance A. Johnson)



### **CYPRUS – Destruction of Religious Heritage**

On July 7, 2006, the European Parliament adopted a written declaration concerning the protection and preservation of the religious heritage of the northern part of Cyprus. The latter has been under occupation by Turkish forces since 1974. The declaration condemns the pillage and desecration of more than 133 Greek Orthodox churches and monasteries, which have been converted to mosques or used for military purposes. Moreover, the declaration notes that more than 15,000 icons and other items used in liturgies have been removed from churches and other holy places. The declaration was signed by 409 Members of the European Parliament. ([European Parliament Condemns Destruction of Cyprus' Religious Heritage](#), Cyprus Embassy News, July 7, 2006.)

(Theresa Papademetriou)

### **EGYPT – Imprisonment for Demeaning Religion**

On July 6, 2006, a criminal court in Cairo convicted two persons connected to the prestigious al-Azhar Islamic University on charges of demeaning religion. Abd al-Sabbour Hassan al-Kashef, who worked for the University, and Mahmoud abd al-Aal, a former graduate, were sentenced to eleven- and three-year terms of imprisonment, respectively. They were charged with calling for the abolition of Muslim prayers and the sanctioning of adultery, fornication, and incest and for classifying the U.S. President and the former Israeli Prime Minister in the rank of prophets. ([Eleven-Year Imprisonment for Demeaning Religion](#), AL-SHARQ AL-AWSAT, July 7, 2006.)

(Issam Saliba)

### **FIJI – Affirmative Action Program Held Unconstitutional**

A report released by the Fiji Human Rights Commission has found that the Social Justice Act 2001 and the majority of the Fijian Government's affirmative action programs established under that Act are unconstitutional. The Commission found that affirmative action plans based on ethnicity do not comply with the Social Justice Provision of the Fijian Constitution (Chap. 5 s44), fail to make provision for all disadvantaged persons, and are disproportionate between the disadvantage being addressed and the measures taken to address such perceived disadvantages. For example, minor disparities between ethnic groups were a basis for exclusion of all ethnic groups other than indigenous Fijians and Rotumans from many programs. (FIJI HUMAN RIGHTS COMMISSION, [REPORT ON GOVERNMENT'S AFFIRMATIVE ACTION PROGRAMMES, 2020 PLAN FOR INDIGENOUS FIJIANS AND ROTUMANS AND THE BLUEPRINT](#) (June 2006).)

(Lisa White)

### **IRAN – Recommendation on Women's Fashions**

Iran's Islamic House of Representatives recently approved a long-awaited bill known as the "Fashion and Dress Code" for Iranian women. Ms. Sharia'ti, a member of the Culture Committee of the House and one of the sponsors of the bill, stated that its purpose is to recommend a number of styles of dress deemed appropriate for women in an Islamic society. Thus, foreign fashions will not be imposed on Iranian women, she argued.



The government organized a week-long fashion show in Tehran designed to make the *hejab* (the Persian word for the covering up of hair and all parts of a woman's body except the hands and face and for dress that does not reveal the body shape, required by Islam) more palatable. The fashion display was organized by the Ministry of Interior, the National Police, and Tehran's Governor-General, and was entitled "Women of My Land." Dozens of Iranian fashion designers participated and tried to combine the restrictions imposed by the Islamic requirements of modesty with modern fashion standards. (*Recommendation on Women's Fashions* [in Persian], HAMSHAHRI, June 8, 2006, at 3; *Recommendation on Women's Fashions*, INTERNATIONAL IRAN TIMES, July 28, 2006, at 14.)  
(G. H. Vafai)

### **ITALY – Regional Government Adopts Slovene Minority Bill**

Friuli Venezia-Giulia, a regional government in Italy, on June 23, 2006, adopted a bill that regulates the protection of the Slovene minority in the region. The bill facilitates the election of Slovene minority representatives to the regional parliament and to provincial and municipal councils; it also confirms the existing fund of €300,000 (about US\$386,000) as a means of funding minority activities. Moreover, this bill guarantees the right to communicate with regional institutions in Slovenia; foresees special offices for communication with ethnic Slovenians in Trieste, Gorizia, and Cividale; and prescribes the correct writing of Slovene first names, surnames, and town names. ([Italian Regional Government Adopts Slovene Minority Bill](#), LJUBLJANA STA, June 24, 2006, Open Source Center, No EUP 20060624950020).

The bill still has to be endorsed by the regional parliament, which expects to discuss it in the autumn. If it is endorsed, certain provisions will apply only in areas where the Slovene minority has traditionally lived. (Government Public Relations and Media Office, *Italian Regional Government Adopts Slovene Minority Bill*, SLOVENIA NEWS, June 24, 2006.)  
(Grazyna Kolondra, Visiting Scholar in Residence)

### **KOREA, SOUTH – Right to Change Official Designation of Sex**

The Supreme Court of the Republic of Korea decided on June 22, 2006, that transsexuals could change their official sex in their family register. The Court wrote, "[i]t is reasonable to recognize their changed sex if they have the appearance of the gender opposite to the one they were born with and it is clear that their new sex is reflected in their personal and social circumstances and does not militate against public welfare and the social order." ([Transsexuals Win Right to Change Official Sex](#), CHOSUN ILBO, June 22, 2006.)  
(Sayuri Umeda)

### **MALAYSIA – School's Prohibition of Headdress Is Legal**

On July 13, 2006, the Federal Court of Malaysia dismissed an appeal by three school students who were expelled from school for failing to comply with school uniform regulations. The three applicants refused to remove their turbans in contravention of the School Regulations 1997. Their appeal was based on a claim that the School Regulations were unconstitutional, as



they contravened article 2, clause 11(1), of the Constitution, which states, “[ev]ery person has the right to profess and practice his religion ...”

The Federal Court found that an assessment had to be made as to the importance of the practice to the religion and the extent of the prohibition imposed by the regulations. The court found that the wearing of a turban was not essential to Islam and that the prohibition was not extensive as students may wear a turban when saying prayers. Further, the court found that the students gained a benefit from complying with school discipline that was lost due to the students’ expulsion from school ([\*Dalam Mahkamah Persekutuan Malaysia \(Bidang Kuasa Rayuan\) Permohonan Sivil No. 01-3-2005\(N\)\*](#)).

(Lisa White)

### **POLAND – Silesians Claim Status of National Minority**

Over the years, Katowice courts have refused to register an organization named the Union of Population of Silesian Nationality (ZLNS), an association of persons of Silesian nationality who claim legal guarantees protecting the rights of persons belonging to national minorities. Katowice courts hold that a Silesian nationality does not exist under Polish law. As a result, on July 13 2006, ZLNS lodged a complaint with the European Parliament President Josep Borrell, to the effect that Polish Silesians are discriminated against and treated unfairly in Polish courts and schools. The leader of ZLNS said to the Polish Press Agency (PAP) that the main reason for the discrimination “is that the Union uses the notion of ‘Silesian nationality.’” The activists contend that their right of freedom of association has been violated and they plan to file another complaint with the European Court in Strasbourg. (*Polish Silesians Send Discrimination Complaint to European Parliament*, PAP, July 13, 2006, Open Source Center No. EUP2006071450018.)

(Grazyna Kolondra, Visiting Scholar in Residence)

### **SWEDEN – Man Sentenced to Prison for Female Circumcision**

The District Court of Gothenburg, Sweden, has sentenced a man to four years in prison for having his twelve-year-old daughter circumcised abroad. The man was also sentenced for dealing arbitrarily with a child and has been ordered to pay his daughter damages. Female circumcision has been illegal in Sweden since 1982, and in 1999 the law was amended to encompass circumcisions abroad.

The father in this case has four children with his ex-wife, whom he divorced in 2002. After the divorce he took his two oldest children and moved to Somalia. The oldest daughter managed to flee to the Swedish Embassy in Ethiopia, where she explained that she had been circumcised. She was reunited with her mother and decided to press charges against her father with the Swedish police. The father claims to have no knowledge of the circumcision and holds that it must have occurred in Sweden in 1997 by initiative of the mother, who, the father claims, believes in female circumcision, though he does not. The District Court chose to believe the



daughter's story. (Peter Sandberg, [Fyra Års Fängelse För Könstymning](#), DAGENS NYHETER, June 26, 2006.)  
(Linda Forslund)

### **THAILAND – UN Expert Calls for Repeal of Emergency Rules**

UN Special Rapporteur on extra-judicial, summary, or arbitrary execution, Philip Alston, has called on Thailand to repeal a provision of Thai law that protects soldiers and police from being prosecuted for killings as long as they claim to have committed the acts “reasonably and in good faith.” The provision was part of emergency regulations that were applied in southern Thailand, and Alston argued the rule allowed those acting for the state to “get away with murder.” The threshold for use of lethal force under human rights law is that it is prohibited unless needed to protect life, a stricter standard.

In July 2005, the emergency laws were put into effect for three provinces, following unrest in the part of Thailand that borders Malaysia. On July 18, 2006, they were extended for three months. Thailand became a party to the International Covenant on Civil and Political Rights in 1996; that agreement permits some exceptions during states of emergency but includes a provision specifically forbidding measures that impinge on safeguards against killings. (*UN Expert Calls on Thailand to Repeal Emergency Rules That Violate Human Rights*, UN NEWS, July 18, 2006; *Thailand Extends Emergency State for Southernmost Provinces*, XINHUA, July 18, 2006, LEXIS/NEXIS, Asiapc Library, Curnws File.)  
(Constance A. Johnson)

### **UNITED ARAB EMIRATES – Law on Human Trafficking**

A governmental committee in the United Arab Emirates has approved a draft law imposing up to life imprisonment for crimes involving human trafficking. A government source declared that the draft law criminalizes all types of sexual exploitation, forced labor, enslavement, and other similar practices, as well as illegal trafficking in human organs. ([Law on Human Trafficking](#), AL-JAZEERA, July 10, 2006.)  
(Issam Saliba)

### **UNITED NATIONS HUMAN RIGHTS COUNCIL – Document on Disappearances Adopted**

On June 29, 2006, ten days after the opening of its first session, the United Nations Human Rights Council adopted an important document, the International Convention for the Protection of All Persons from Enforced Disappearances. This Convention, designed to prevent and punish enforced disappearances, a crime estimated to involve 40,000 cases from sixty countries, defines disappearances as crimes and as crimes against humanity where such acts are widespread. In addition, it affirms the rights of any victim to know the truth about the circumstances of an enforced disappearance, of others to know the fate of the disappeared person, and of all to seek, receive, and impart information to this end. Each State Party should take appropriate measures to ensure that enforced disappearance constitutes an offense



punishable in a manner that considers the seriousness of the crime. The Convention will now be sent to the U.N. General Assembly for adoption. (*UN Human Rights Council Adopts Documents on Disappearances and Indigenous Peoples*, UNNews, June 29, 2006; *Human Rights Council Concludes First Session*, HR COUNCIL MEDIA, June 30, 2006.)  
(Constance A. Johnson)

### **UNITED STATES – Domestic Surveillance Program Ruled Unlawful**

On August 17, a federal judge ruled that the U.S. National Security Agency violated federal law and the U.S. Constitution by engaging in electronic surveillance of Americans' international telephone calls and Internet communications without obtaining a warrant or other judicial authorization. Judge Anna Diggs Taylor of the U.S. District Court for the Eastern District of Michigan ruled that the government's "Terrorist Surveillance Program" violates the Foreign Intelligence Surveillance Act (FISA). She also ruled that the government's failure to comply with FISA violated the Fourth Amendment of the U.S. Constitution, which prohibits unreasonable searches and seizures. Judge Taylor further ruled that the program violates the First Amendment by chilling plaintiffs' freedom of association. Additionally, Judge Taylor ruled that the FISA violation also violated the Constitutional separation of powers. Judge Taylor dismissed one claim by plaintiffs relating to the government's data-mining activities, because she found that that claim could not be adjudicated without exposing classified government information. President Bush released a statement indicating the government would appeal the decision. ([American Civil Liberties Union v. National Security Agency/Central Security Service](#), No. 06-CV-10204 (E.D. Mich.); [White House News Release](#), August 17, 2006.)  
(Luis Acosta)



## Immigration and Nationality Law

### **AUSTRALIA – High Court Denies Citizenship to Children Born to Foreign Parents**

The Australian High Court handed down its decision in the case of *Koroitamana v Commonwealth of Australia* on June 14, 2006. The applicants in this case were two children born in Australia of Fijian parents. Neither parent is an Australian citizen or permanent resident. The applicants have not resided in Australia for over ten consecutive years and therefore are only eligible to remain in Australia on renewable “bridging visas.” Should their visas not be renewed, the applicants are liable for detention and deportation from Australia. They are eligible for Fijian citizenship upon registration by their parents with the appropriate authorities in Fiji. The parents refused to register the applicants as Fijian citizens and therefore at the time of the decision the applicants were not citizens of any country.

The applicants contended that because they were born in Australia and had no allegiance to any other country (not yet having Fijian citizenship), they could not be considered “aliens” under Australian law. The applicants did not contend they were “stateless” (and therefore able to be treated as stateless under Australian law) as they were members of the Australian community.

The High Court affirmed the decision of the Federal Court, finding that the Australian Government may treat the applicants as aliens for the purposes of Australian law, because being born in Australia is insufficient to prevent a person from falling within the meaning of “alien” within the Constitution (s51(xix)). (*Koroitamana v Commonwealth of Australia* [2006] HCA 28 (June 14, 2006).)  
(Lisa White)

### **EUROPEAN UNION – Fingerprints on EU Passports**

In 2004, the EU Members reached an agreement to introduce electronic passports with biometric data. On June 29, 2006, the European Commission announced that travel documents issued by late August will carry facial features and by 2009 a new type of biometric data will be included in the form of two fingerprints. The Commission added that it needed more time and more advanced technology to protect the fingerprints, which are more sensitive than other biometric features. The EU will be the first area worldwide to apply this new technology. The electronic passport chip will carry a digital photograph, name, date of birth, nationality, and other data.

EU Members that successfully meet the biometric data requirement and that are already in the U.S. visa-free travel scheme will be allowed by the United States to remain within this scheme. Among the original fifteen EU Members, only Greece is outside this visa-free system. The Commission is exerting pressure on the U.S. administration to use the same criteria for all EU Members or else face the imposition of retaliatory measures.





The biometric passport data will be entered into an EU-wide database. This has raised privacy concerns among civil rights activists. (*Brussels Unveils Plan to Use Fingerprints on EU Passports*, EUOBSERVER, June 29, 2006.)  
(Theresa Papademetriou)

### **EUROPEAN UNION – Future Creation of Border Squads**

In response to the immigration crisis faced by EU Member States, especially Malta and Spain, due to a large influx of migrants from Africa, the European Commission recently announced its plan to establish rapid reaction teams of border squads. The teams will be formed on the basis of lists of experts provided by the Member States. The squads will be ready to be sent to problem areas within ten days after a request is placed. Their mission will include patrolling the border and checking and stamping travel documents. Another initiative approved by the Commission related to illegal immigration is the requirement to register the arrival and departure of non-EU citizens who visit the EU. It is believed this will enable the EU to identify those who overstay their visas, which heretofore it has not been able to do. ([EU Plans Emergency Border Squads](#), BBC NEWS, July 19, 2006.)  
(Theresa Papademetriou)

### **EUROPEAN UNION – National Restrictions on Immigrant Children Permissible**

On June 28, 2006, the European Court of Justice (ECJ) ruled that EU Members have the right to impose restrictions on children over the age of twelve who seek to immigrate to the EU for reunification purposes. The case was brought before the ECJ by the European Parliament, which argued that national laws that restrict the right of children over twelve to join their families are infringing upon fundamental human rights. The Court argued that such laws are not discriminatory because children younger than twelve years old need their families, whereas those who are older “will not necessarily remain for a long time with their parents.” It should be noted that the ECJ held that respect for family life creates “no individual right to be allowed to enter the territory of a state and should not be interpreted as denying member states a certain margin of appreciation when they examine applications for family reunification.” (*EU Court Allows National Restrictions on Immigrant Children*, EUOBSERVER, June 28, 2006.)  
(Theresa Papademetriou)

### **LITHUANIA – New Possibilities for Acquisition of Citizenship**

On July 17, 2006, the Parliament of Lithuania amended the Citizenship Law, allowing the President of Lithuania to grant Lithuanian citizenship by way of derogation in cases affecting the public interest or in order to promote Lithuania in the international arena. The amendment substantially expands the possibilities for granting Lithuanian citizenship by this means; under the previous law, it could be given only “to persons who made a significant contribution to strengthening the Lithuanian state and to boosting Lithuania’s power and its image in the international community.”



The amendment allowed the President to reconsider a previously declined request to grant Lithuanian citizenship to American basketball player Kathryn Douglas, the leader of the Vilnius basketball club Teo. Acquisition of Lithuanian citizenship will make her eligible to represent Lithuania at the World Women's Basketball Championship in Brazil in August. Without Lithuanian citizenship, the basketball player cannot play for the Lithuanian national team. The amendment was initiated by a group of famous Lithuanian athletes, politicians, scientists, and actors, who urged the legislature to amend the law in behalf of Douglas. (*President Reconsidered US Basketball Player's Application for Lithuanian Citizenship*, BNS [Baltic News Service], July 19, 2006.)  
(Peter Roudik)

### **PORTUGAL/EUROPEAN UNION – Legal Immigration**

The Portuguese presidency of the European Union, scheduled for the second half of 2007, will give priority to the fight against illegal immigration, said Portuguese Interior Minister, Antonio Costa, during the Euro-African Conference on Migration and Development in Rabat, Morocco. Costa further emphasized that regulated immigration is a factor in the economic, social, and cultural enrichment of EU members States and that it is essential to work to promote legal immigration and manage migratory flows in a balanced way. (*Migration to Be Priority for Portuguese EU Presidency – Minister*, DIARIO DE NOTICIAS, July 12, 2006, Open Source Center, No. EUP20060713950113.)  
(Eduardo Soares)

### **RUSSIAN FEDERATION – Dual Citizenship Prohibited**

On July 5, 2006, the State Duma (Russian legislature) passed amendments to several legislative acts dealing with the issues of citizenship and civil service, prohibiting all elected officials, members of all elected local, regional, and federal institutions, governors, members of the Security Council members of the Accounting Chamber (the Russian version of the U.S. GAO), and all other government employees from keeping the citizenship of another state in addition to Russian citizenship. Even though the law enters into force immediately, it does not affect incumbent officials and will apply only to members of legislative bodies of the next convocation. The mandates of those elected officials who keep their foreign citizenship will be terminated as soon as information on their foreign citizenship becomes available. Government employees have until December 2007 to resign or denounce their foreign citizenship before being investigated and fired. This action taken by the Duma, which purports to be aimed at protecting the Russian national interest and state secrets, appears to be in contradiction with the current practice of ignoring dual citizenship and foreign citizenship of Russian nationals who reside in Russia or who emigrated after 1991. ([\*Federal Law of the Russian Federation on Amendments to Federal Legislation No. 67-FZ\*](#), ROSSIISKAIA GAZETA, July 14, 2006.)  
(Peter Roudik)



### SWEDEN – Centre Party Proposes Green Card Program

The Swedish Centre Party has proposed that Sweden introduce a green card program to promote economic immigration. The program would allow 20,000 immigrants a year to find work in Sweden and receive Swedish permanent residence permits. The Swedish political parties that are part of the non-socialist coalition (to which the Centre Party belongs) have agreed to support the proposal. The Centre Party wants to go one step further, however, and allow a quota of immigrants to receive residence permits even if they have not found work in Sweden. The criteria for receiving a green card would include age, education, work experience, and language skills. The Centre Party is also proposing that foreign students who are studying in Sweden be allowed to stay in Sweden to work after completing their studies. ([Centern Vill Ha "Green Card"](#), DAGENS NYHETER, July 6, 2006.)  
(Linda Forslund)

### UNITED KINGDOM – New Uniformed Border-Control Force

The Government of the United Kingdom has announced that it intends to double its budget on immigration enforcement to £280 million (approximately US \$500 million) by the end of 2010. This money will be used in part to fund a new uniformed border-control force to provide for a “better, more forceful, more effective, more visible border enforcement.” These measures were announced in response to ongoing criticisms that the UK’s border control is ineffective and inadequate. The measures go in hand with current laws that provide it is illegal to employ illegal immigrants and with the series of amendments to them aimed at reducing the number of “bogus” asylum seekers coming to the UK. ([Reid Plans Border-Control Force](#), BBC NEWS, July 24, 2006.)  
(Clare Feikert)

### UNITED NATIONS – Regulations on Sea Rescues

The United Nations High Commission on Refugees (UNHCR) announced new regulations on June 30, 2006, to reinforce rescue mechanisms for those in peril at sea. The new provisions, effective July 1, are amendments to the 1974 International Convention for the Safety of Life at Sea and the 1979 International Convention on Maritime Search and Rescue. Under these amendments, countries are obliged to let rescued persons disembark, so that ships that perform rescues are not responsible for extended care of those rescued. UNHCR spokesman Ron Redmond, speaking at a news briefing in Geneva, said:

Vessels fulfilling their humanitarian duty have encountered problems as states have occasionally refused to let some migrants and refugees rescued at sea disembark, especially when they lacked proper documentation. ... This state of affairs put shipowners and companies in a very difficult situation, even threatening the integrity of the time-honoured humanitarian tradition to assist those in peril at sea.



The UNHCR is concerned with sea rescues because out of the thousands of migrants searching for new homes who are at risk each year on vessels that are not seaworthy, some are refugees seeking protection from persecution. The agency and the U.N. International Maritime Organization are planning to issue an information leaflet on relevant legal provisions for shipmasters, ship owners, government authorities, insurance companies, and other parties involved in maritime rescues. (*UN Refugee Agency Backs New Steps to Rescue Migrants in Peril at Sea*, UNNEWS, June 30, 2006.)  
(Constance A. Johnson)



## International Relations

### AMAZON – Defending the Region

On July 13, 2006, the First Ministerial Meeting on Defense and Integral Safety of the Amazon was held in Bogotá, Colombia. Participants included the Secretary-General of the Amazon Cooperation Treaty Organization (ACTO) and the Ministers of Defense from Brazil, Bolivia, Colombia, Ecuador, Guyana, Peru, Suriname, and Venezuela, the countries that compose the Amazon region. They discussed such topics as illicit trafficking in drugs, weapons and explosives, and animal and plant species and resources; control and interdiction of air and fluvial space; and transnational organized crime. The Ministers are planning to adopt a common security policy aimed at preserving the region to avoid its becoming a haven for narcotics and weapons trafficking and terrorism.

ACTO is a multilateral organism with its headquarters in Brasília, Brazil. It was established in 2003 to strengthen and implement the objectives of the Amazon Cooperation Treaty, which seeks to promote joint actions for the harmonious development of the region. (*Países da Amazônia Buscam Acordo para Proteger Região*, GLOBO ONLINE, July 13, 2006; Press Release, *Organização do Tratado de Cooperação Amazônica* (July 13, 2006).) (Eduardo Soares)

### BANGLADESH/INDIA -- Extradition Treaty in Process

The Government of Bangladesh has decided to sign an extradition treaty with India to hand over foreign individuals accused of committing crimes to their respective countries. A draft of the extradition treaty, prepared by the Indian Government, has been sent to Bangladesh for review. The concerned authorities of both countries will fix a time for signing of the treaty after completion of the review.

Law Minister Moudud Ahmed of Bangladesh has stated that about 5,000 foreign nationals, including 980 from Myanmar and India, are currently jailed in different prisons in Bangladesh. According to a recent news report, the Government of Bangladesh has submitted to the Indian Government a list of Bangladeshis accused of having committed crimes. The Government of Bangladesh claims that the listed individuals have taken refuge in India to avoid arrest in Bangladesh. (Deepak Acharjee, *Extradition Treaty with India in the Offer*, THE INDEPENDENT, Internet Edition, June 18, 2006.) (Shameema Rahman)

### COMMONWEALTH CARIBBEAN – Barbados and Chile Agreement on Diplomatic Waivers

The Governments of Barbados and Chile have entered into a visa waiver agreement for holders of diplomatic and official passports. (2006 BARB. GAZ. No. 16, Supp.) This agreement does not apply to private sector travelers who are still required to obtain travel visas. (Stephen Clarke)



## **GEORGIA, REPUBLIC OF – Peacekeeping Operations Terminated**

On July 18, 2006, the Parliament of Georgia unanimously passed the binding Resolution on Peacekeeping Operations in Conflict Zones. The Resolution requires that the Government of Georgia immediately start the process of removal of Russian peacekeeping forces from Georgian territory. At present, these forces, numbering about 1,400 people, are located in the separatist regions of Abkhazia and North Ossetia. The Resolution states that the continuation of peacekeeping operations in these regions is not viable because of the intrusion of Russian troops, which are involved in the operations, into Georgian national affairs, thereby undermining the implementation of a peace-building plan prepared by the Georgian Government and approved by the Organization for Security and Cooperation in Europe and the Council of Europe. According to the Resolution, the Government is to begin changing the format of the peacekeeping process in these areas, transforming it into an international police operation and guaranteeing non-use of force in relations with the breakaway regions. A decision of the Executive Committee of the Commonwealth of Independent States, of which Georgia is a member and which sanctioned the operation initially, is required to end the participation of Russian forces in the peacekeeping operations. ([\*Resolution of the Parliament of the Republic of Georgia on Peacekeeping Operations in Conflict Zones\*](#), 182 SVOBODNAIA GRUZIIA [OFFICIAL GAZETTE], July 19, 2006.) (Peter Roudik)

## **UNITED KINGDOM – Amendment to Remove U.S.-Favored Designation from Extradition Law**

The United Kingdom recently overhauled its century-old extradition laws and replaced them with a simpler, more streamlined system, with the aim of providing the legislative framework for the implementation of the European Arrest Warrant and reducing the waiting times to extradite individuals. The Extradition Act 2003 created two categories into which the UK's extradition partners are placed by the Secretary of State by an Order in Council, based on their relationship with the UK, extradition procedures negotiated between the UK and the partner, and a number of other criteria. Category One primarily serves to implement the European Arrest Warrant and create a "fast track" extradition procedure for Member States of the Council of Europe. While the extradition process for Category Two countries is considerably smoother than under the previous extradition laws, it can be further streamlined by the removal of the requirement for prima facie evidence by an Order in Council, as has been the case with the United States. However, under an amendment approved in the House of Lords, the United States risks losing this benefit through a section in the Police and Justice Bill (2005-6) that would remove its Category Two designation and once again require that prima facie evidence be shown and that a British judge make such a determination. (Extradition Act 2003, c. 33; Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 S.I. 2003/3334; and the Police and Justice Bill (2005-6) bill number 139.) (Clare Feikert)



## **VENEZUELA/ARAB LEAGUE – Member Status and Support for U.N. Security Council Seat**

On July 19, 2006, Venezuela was granted observer member status in the Arab League, which is also expected to support Venezuela's bid for a U.N. Security Council seat. These two developments coincide with the second Arab-South American Summit, which recently took place in Caracas. Membership in the Arab League will be formalized in September, when Venezuela joins its neighbor Brazil and several Organization of the Petroleum Exporting Countries (OPEC) partners in the twenty-two-nation group. More than 10 million people of Arab descent live in South America, most of them in Brazil. President Hugo Chavez also secured Arab League support for Venezuela's U.N. Security Council bid. (Jody Nesbitt, [Venezuela Receives Arab League Support for UN Security Council Seat](#), VENEZUELANALYSIS.COM, July 20, 2006.)

(Graciela Rodriguez-Ferrand)



# Taxation

## SOUTH AFRICA – Business Tax Amnesty Law

On June 20, 2006, South Africa's National Assembly passed the Small Business Tax Amnesty and Amendment of Taxation Laws Bill. The legislation has been forwarded to the National Council of Provinces. Under the amnesty, an incremental levy will be imposed on declared income, up to a maximum level of five percent, based on declarations of income for the 2005/6 tax year. A two-percent rate will be applied to taxable income of R35,000-R100,000 (about US\$5,000-\$14,000); a three-percent rate to R100,000-R250,000 (about US\$14,000-\$36,000); a four-percent rate to R250,000-R500,000 (about US\$36,000-\$71,000); and a five-percent rate to R500,000 or above. This scheme replaces the original plan to impose a ten-percent flat rate on previously undeclared income. The amnesty will begin on August 1, 2006, and will remain in place until May 31, 2007. Companies with an annual turnover of less than R10 million are permitted to participate in the scheme.

The legislation further introduces adjustments to tax brackets for qualifying small businesses with turnover of less than R14 million, (about US\$2 million) up from R6 million (about US\$854,000); a 150% deduction for R&D expenditure; a reduction in the transfer duty for companies and trusts from ten percent to eight percent with effect from March 1, 2006; and a proposal for an anti-avoidance rule in relation to the purchase of a company's shares by a subsidiary. (Robert Lee, [South African Assembly Approves Business Tax Amnesty Law](#), TAX-NEWS.COM, June 22, 2006.)  
(Ruth Levush)





# Terrorism

## AUSTRALIA – Pakistan-Born Architect Convicted of Terrorism

On June 19, 2006, the Sydney, Australia, Supreme Court convicted a Pakistan-born architect, Faheem Khalid Lodhi, age thirty-six, of plotting a “jihad” bombing campaign in Sydney. He was found guilty of three of four terrorism-related charges, for which he could face life imprisonment. This is believed to be the first significant conviction made under the new terrorism law in Australia. The convict was accused of planning in 2003 to blow up the electrical grid in the city of Sydney and several defense sites.

The jury rejected the defendant’s plea that he was planning for future business ventures when he used a false name to buy maps of the Sydney grid and inquired about purchasing chemicals to make bombs. The indictment said that Lodhi, who denied the counts lodged against him, was preparing to commit terrorist acts with the intent to advance a political, religious, or ideological cause, namely, jihad. Prosecutors had linked Lodhi, also known as Abu Hamza, to Willie Brigitte, a Frenchman suspected of links with Al Qaeda who was deported in 2003. The two allegedly had been trained together by Lashkar-I-Taiba in Pakistan. At his conviction, Lodhi showed no emotion and stated “this country is my country” and “[t]he killing of innocent people is not part of Islam.” ([Architect Found Guilty in Sydney Terror Case](#), THE DAWN, June 20, 2006.)

(Krishan Nehra)

## EUROPEAN UNION – Removal of Names from EU Terrorist List

On July 13, 2006, the Court of First Instance of the European Union issued two judgments rejecting petitions by two individuals to have their names removed from the terrorist list compiled by the EU. Due to the inclusion of their names on the list, the individuals’ assets were frozen. The Court held that it lacked jurisdiction to deal with the issue and recommended that the parties concerned bring the matter before the domestic courts. (*EU Court Rules it Has No Jurisdiction to Remove Individuals from EU Terror List*, Brussels LE SOIR, July 13, 2006, Open Source Center No. EUP20060713024003.)

(Theresa Papademetriou)

## ICELAND – New National Security Department Proposed

The Icelandic Minister of Justice has proposed the creation of a new National Security Department. The Department would be in charge of monitoring organized crime and preventing terrorism and would have the authority to monitor communications and individuals. The new department would be set up within the National Police force, but would operate in secret under the supervision of the Icelandic Parliament and the courts. (ICELAND REVIEW ONLINE, [Ministry of Justice Proposes ‘National Security Department,’](#) June 30, 2006.)

(Linda Forslund)



### **ISRAEL – Extension of Declaration on Special Homeland Security Emergency**

On July 19, 2006, the Knesset's (parliamentary) Committee on National Security and International Affairs approved the Israeli Government's request to extend without a time limit the declaration of a special homeland security emergency. The Committee decided, however, to request the Minister of Defense to appear before it within two weeks to explain the need for the extension.

Approval of the request is based on authorization accorded by the Civil Defense Law, No. 32 of 5711-1951, which requires the government to notify the Committee of declarations of special homeland security emergencies. The Law empowers the committee to request the Prime Minister, the Minister of Defense, or the Israel Defense Forces' (IDF) Chief of Staff to appear before it for confirmation of such declarations. According to the Law, once a declaration of a special homeland security emergency is made, the IDF Chief of Staff, his deputy, and other specified high-ranking military officers may issue, to the extent necessary, orders for the protection or saving of human life and property. Such orders may include the duty to stay in specific locations such as bomb shelters, the closing of educational institutions, and the use of certain personal equipment for purposes of civil defense. (Civil Defense Law, No. 32 of 5711-1951, 5 LAWS OF THE STATE OF ISRAEL 72, as amended; Gideon Alon, [The Knesset Approved Extension of the Special Homeland Security Emergency](#), HAARETZ ONLINE (last visited July 21, 2006).)

(Ruth Levush)

### **ISRAEL – Temporary Authority for Investigating Terrorism Suspects**

On June 27, 2006, the Knesset (Israel's Parliament) passed a temporary provision regulating the authority of investigative officers in interrogating detainees suspected of committing security offenses against state security linked to terrorist activity. The provision stipulates that an authorized officer may detain a suspect for a period of up to forty-eight hours before bringing him before a judge if he is convinced that interruption of the investigation will result in real harm to it and foil the prevention of harm to human life. A suspect may be detained for up to seventy-two hours without being brought before a judge with the approval of the head of the investigation department in the Israeli Defense Force or his deputy. The provision also authorizes a judge to order the arrest of a suspect for a period of up to twenty days. Any request for extension of a period of over thirty-five days requires the approval of the Attorney General. Furthermore, the Court may conduct a hearing on the extension of the arrest in the absence of the suspect, at the request of the State and upon the provision of convincing evidence that interruption of the interrogation in order to bring the suspect to court will result in serious harm to the investigation and hamper efforts to prevent life-endangering and security offenses.

The provision is effective for a period of a year and a half. The Minister of Justice is under an obligation to report to the Knesset Committee for Constitution and Law once every six months on the status of the law's implementation. (*Criminal Law Procedure (Arrest of a Suspect in Security Offense)* (Temporary Provision), 5766-2006, Knesset Web site (last visited July 19, 2006).)

(Ruth Levush)



### ITALY – Terrorism Trial in Cremona: Four Sentences

In an international terrorism trial, the Court of Assizes in Cremona, Italy, issued four sentences and two acquittals on July 15, 2006. All of the accused were charged with the crimes of international terrorism and facilitation of illegal immigration. The most serious penalty, ten years and six months of imprisonment, was imposed on Mourad Trabelsi, the former imam of the mosque in Cremona. Faical Boughanemi, who “was supposed to carry out two attacks to which the finishing touches were never put, on the cathedral in the same city, and on the subway in Rome,” received a sentence of eight years’ imprisonment. Nourddine Drissi, who was discovered after the September 11, 2001, attacks, was sentenced to seven and a half years of imprisonment and the fourth person to two years and four months’ imprisonment. (*Italian Court Sentences Former Cremona Imam on Terrorism Charge*, LA REPUBBLICA, July 16, 2006, Open Source Center No. EUP 20060718025002; [Terrorismo: 4 condanne a Cremona](#), ANSA, July 15, 2006.)

(Grazyna Kolondra, Visiting Scholar in Residence)

### RUSSIAN FEDERATION – Terrorist Organizations Officially Defined

On July 18, 2006, the Prime Minister of Russia signed a government resolution ordering the publication in the Russian official gazette of the list of organizations that are either prohibited or recognized as terrorist organizations in Russia. Seventeen organizations are included on the list. For the most part, the list remains unchanged from the original 2003 compilation. Only two organizations have been added recently. Except for one local organization operating in the territory of Chechnya, all terrorist groups included on the list are foreign-based. Hezbollah and Hamas are not included and are not recognized as terrorist organizations in Russia. Recommendations provided by the Supreme Court of Russia are the basis for inclusion of an organization on the list, which is run by the Federal Security Bureau (FSB).

As stated in the resolution, publication of the list is aimed at assisting Russian banks to fight money laundering. A similar list of organizations and individuals known to have committed extremist activities is prepared annually by the Russian Financial Monitoring Service (FMS). This list consists of twenty-three names and is regularly updated. The present version is the fourteenth edition and is classified as being “for business purposes only.” Because the FMS list is based on information provided by the Prosecutor General’s office concerning all terrorism-related charges, it also includes the names of Russian regional nationalistic organizations, which are excluded from the FSB list. Under the existing law, banks are to stop the operations of a listed organization for two days and inform the FMS, which can extend the block for five more days to investigate the transaction. ([Government Resolution No. 1014-p of July 14, 2006](#), ROSSIISKAIA GAZETA, July 18, 2006.)

(Peter Roudik)



## Trade and Commerce

### CHINA – Intellectual Property Protection Hotlines Launched

On June 28, 2006, China opened hotlines in twelve provinces and municipalities to record complaints regarding infringements of intellectual property rights. According to an official at the State Office of Intellectual Property Protection, there will be more hotlines available in China by the end of 2006, and all the hotlines will share the same telephone number, i.e.12312.

Liu Zhengang, Head of the Beijing Municipal Office of Intellectual Property Protection, speaking at the inauguration of the 12312 hotline in Beijing, explained that Intellectual Property Protection Complaint Centers (IPR Complaint Centers) would verify the authenticity of information recorded through the hotlines, sort out the cases, and convey them to the relevant departments, which will handle the cases and report results back to the IPR Complaint Centers. The IPR Complaint Centers will then write reports and submit them to the higher authorities. ([IPR Complaint Hotlines Open](#), XINHUA NEWS AGENCY, June 29, 2006.)

(Rui Geissler)

### CHINA – Ten Departments Join Forces in Anti-Piracy Campaign

On July 14, 2006, China issued a statement regarding a new campaign, the largest of its kind in recent years, to curb piracy in the audio-video and software production industry. Ten departments, including the National Anti-Piracy Office, the Ministry of Culture, the Ministry of Public Security, the Ministry of Construction and Supervision, the State Administration for Industry and Commerce, and the General Administration of Press and Publication, have joined the campaign.

From July 15 to August 15, 2006, all vendors of pirated discs and software will be urged to relinquish this "illegal but profitable" business and submit self-check reports every week to the local market investigators. Publications with contents threatening public security and social stability or with illegal publication numbers are also on the crackdown list. ([Departments Join Forces in Anti-Piracy Campaign](#), CHINA DAILY, July 15, 2006.)

(Rui Geissler)

### GUERNSEY – Laws Passed to Meet International Standards in Intellectual Property

Guernsey has passed laws in the area of intellectual property to bring it in line with international standards of intellectual property protection and make the Island more attractive to high technology companies. With the appointment of a new registrar of intellectual property, the laws permit the registration of intellectual property rights. The registration of intellectual property previously had to occur in the UK. New legislation has also been passed in the areas of copyright, performers' rights, database rights, and trademarks. Guernsey is considering additional legislation that would govern patents and innovation warranties; bio-technology and plant variety rights; and geographical indicators. (States of Guernsey, *Intellectual Property*,

Tracking Legal Developments From  
Around the World



<http://www.gov.gg/ccm/navigation/government/law-officers/legislation/intellectual-property>  
(last visited July 19, 2006.)  
(Clare Feikert)

### **HONG KONG – Football Fever Leaves Legal Hangover**

Legal action has been initiated by the Fédération Internationale de Football Association (FIFA) and Hong Kong Cable Television against five bars for airing broadcasts of 2006 World Cup matches without appropriate copyright permission. (Press Release, Cable & Satellite Broadcasting Association of Asia, [FIFA and CASBAA Initiate Legal Action Against Infringing Bars](#) (July 20, 2006).)  
(Lisa White)

### **JAPAN – Law on Competition Between Government and Private Sectors**

Japan's Diet [Parliament] enacted the Law Concerning Introduction of Competition Between Public and Private Sectors on June 2, 2006. Private companies may compete for bidding on services involving the matching of employers and job seekers, public pension premium collection, and prison management. (*Kyōsō no dōnyū ni yoru kōkyō sâbisu no kaikaku ni kansuru hōritsu [The Law Concerning Introduction of Competition Between Public and Private Sectors]*, Law No. 51 of 2006.)  
(Sayuri Umeda)

### **JAPAN – Promotion of Advanced Technology of Mid-and Small-Size Companies**

The Law Concerning Promotion of Advanced Basic Technology of Mid- and Small-Size Companies was enacted by the Japanese Diet [Parliament] on April 26, 2006, and became effective on June 13, 2006. The Law provides measures to facilitate financing of mid- and small-size companies and reduce patent examination application fees for them. (*Chūshō kigyō no mono dukuri kiban gijutsu no kōdoka ni kansuru hōritsu [Law Concerning Promotion of Advanced Base Technology of Mid- and Small-Size Companies]*, Law No. 33 of 2006.)  
(Sayuri Umeda)

### **KAZAKHSTAN – New Law on Concessions**

On July 6, 2006, the President of Kazakhstan, Nursultan Nazarbaev, signed into law the Concessions Act. The document regulates public transactions related to concessions and defines conditions and procedures for implementation and termination of concession agreements. The Law also stipulates guarantees and state support for franchise holders. The Law specifies a concession regime for private roads and other urban infrastructure projects, granting legal entities the right to temporary possession and use of facilities owned by the state. That regime creates a legal framework for private investment in accordance with international standards and allows new forms of private sector participation, such as operating concessions and build-operate-transfer arrangements. (*Kazakh Leader Signs Concession Bill*, BBC MONITORING, July 11, 2006.)  
(Peter Roudik, 7-9861)



### **MERCOSUR – Brazilian President Comments on Venezuela’s Entry**

On July 4, 2006, Venezuela signed the protocol of adherence to Mercosur (Mercado Común del Sur), which establishes a four-year term for Venezuela’s full incorporation in the economic bloc founded in 1991 by Brazil, Argentina, Paraguay, and Uruguay as a Customs Union with the purpose of promoting free trade and a more fluid movement of goods, people, and currency among these countries. Brazilian President Luiz Inácio Lula da Silva was quoted as saying during the ceremony that formalized the entrance of the new partner to the bloc that Mercosur will not give up ideological discussions because of Venezuela’s membership and that the membership will also not affect the relations of the South Cone countries with the United States. Lula also acknowledged that the smaller countries of the bloc, especially Uruguay and Paraguay, need to benefit from measures to correct the differences between the economies of Mercosur Member States and that it is imperative for the bloc help the poorer countries achieve development. ([Mercosul, Venezuela Consolida Participação](#), VEJA ON-LINE, July 5, 2006, 2006); Ilmar Franco, *Lula Diz Que Ingresso da Venezuela Não Afetará Relações do Mercosul Com os EUA*, GLOBO ONLINE, July 4, 2006.)  
(Eduardo Soares)

### **MERCOSUR – Searching for Improvement**

Mercosur Member States met during the month of July in the city of Córdoba, Argentina, to discuss means to improve the bloc and to overcome differences between their economies. During the meeting, the Argentinean Government transferred the Mercosur presidency to Brazil.

Brazil and Argentina have similar concerns about the needs of Paraguay and Uruguay, the smaller economies of the bloc, and are working together to resolve the economic issues involved and to help improve the economies of Paraguay and Uruguay.

In the six months of its presidency of Mercosur, Argentina focused on the incorporation of Venezuela as a fifth full country member and on reaching definitive agreement on a date for the Common Customs Code to come into force, an issue that has been pending for the last ten years. (*Argentina Sediara Cúpula do Mercosul em Busca de Aperfeiçoamento*, GLOBO ONLINE, July 18, 2006.)  
(Eduardo Soares)

### **SAUDI ARABIA – Licensing of Tour Guides Started**

The Supreme Commission for Tourism started to issue tour guide licenses to Saudi applicants who meet the professional requirements. The licensing program covers three groups of tour guides: national-level general guides, regional guides for each of the Kingdom’s regions, and site guides for specific tourist sites promoted by the Kingdom. Prince Sultan bin Salman bin Abdul Aziz, the Secretary General of the Supreme Commission for Tourism, became the first Saudi in the Kingdom to receive a tour guide license.



The program came into existence in implementation of the state-approved National Tourism Development Strategy to encourage tourism in Saudi Arabia. It started by allowing tourism and travel agencies in the Kingdom to operate in accordance with specific conditions and controls. ([\*HRH Prince Sultan Bin Salman Receives 1st Tourism Guide License: Saudi Arabia Starts Licensing Tour Guides\*](#), AL-RIYADH NEWSPAPER, July 17, 2006.)

(Dr. Abdullah F. Ansary)

### **SPAIN - AIR SAFETY**

On May 5, 2006, King Juan Carlos of Spain, through Royal Decree 547/2006, approved specific measures related to safety of aircraft of third countries using airports located in the Spanish territory.

Previously, Law 21/2003 of July 7, 2003, on air safety, established the general legal system of aeronautical inspection, to preserve not only the safety, but also the order and fluidity of the air traffic and air transportation, according to the principles and norms of international law that regulate civil aviation. This new Royal Decree (547/2006) expands the provisions of Law 21/2003 by incorporating into the national legal system Guideline 2004/36/CE of the European Parliament and Council of 21 April 2004, related to safety of aircraft of third countries using airports of the (European Economic) Community and which establishes common criteria for the harmonized application of the international norms of safety, for the procedures of inspection of the aircraft on airstrips, and measures of immobilization on land when serious threat to safety is detected.

This Royal Decree (547/2006) establishes provisions related to inspection of the operational safety of aircraft of third countries and, therefore, this action is included in the exclusive jurisdiction granted to the State by article 149.1.20 of the Constitution in matter of transit and air transportation. (Boletín Oficial del Estado, May 12, 2006, pp. 18181-184)

(Dario Ferreira)

### **VIETNAM – Competition Council**

The Competition Council of the Socialist Republic of Vietnam (SRV) was inaugurated on July 4, 2006. It comprises eleven members and is chaired by the Deputy Minister of Trade, Phan The Rue. After the opening ceremonies, the Council proceeded to discuss a three-year action plan, work regulations, operational funds, and Council staffing. The National Assembly adopted the Competition Law on December 3, 2004, and it became effective on July 1, 2005. To help implement the Law, the SRV Government issued Decree No. 05/2006/ND-CP on January 9, 2006, on the establishment of the Competition Council as well as on its functions, tasks, rights, and organizational structure. The Council will address restrictions on competition, such as monopolies and agreements to restrict competition. It will reportedly make its operational regulations public in August. (*A Competition Council*, VIETNAM ECONOMIC NEWS, July 12, 2006.)

(Wendy Zeldin)



## VIETNAM – Draft Decree on Foreign Exchange

The Ordinance on Foreign Exchange of the Socialist Republic of Vietnam entered into effect on June 1, 2006. The State Bank of Vietnam recently issued a draft decree to guide the implementation of the Ordinance. It consists of ten chapters and sixty-two articles covering all aspects of foreign exchange activities. It is reportedly more transparent and inclusive than the existing one.

One new feature of the draft decree is the loosening of capital transactions. Although Vietnamese companies are generally recipients of foreign investment, some Vietnamese companies have invested abroad, and with Vietnam about to join the World Trade Organization, the likelihood of Vietnamese companies and individuals receiving foreign capital and investing abroad is enhanced. According to the draft decree, Vietnamese corporate capital invested abroad would be managed using registered accounts; indirect investment would be managed based on registration of securities. To encourage Vietnamese companies to invest abroad, the draft decree permits corporations and individual businesses to use their own foreign currency or to apply for a loan for overseas investment. Individuals would be allowed to borrow from foreign organizations to conduct foreign investment activities, but those loans would have to be registered with the State Bank of Vietnam.

The draft decree states that foreign companies that want to issue securities in Vietnam can do so, but the securities must be valued in Vietnamese *dong*. The businesses can exchange the securities for foreign currency and transfer those monies abroad within a limited period of time. The actual length of the “limited period of time” is under review. Whether direct investment capital accounts and indirect investment capital accounts should or should not be linked is also being debated.

Another noteworthy provision in the draft decree is on currency transactions. It states that Vietnamese organizations and individuals that obtain an income from abroad must place that money into a domestic account within a certain period of time. (*Letting Currency Flow*, VIETNAM ECONOMIC NEWS, June 16, 2006.)  
(Wendy Zeldin)

## WORLD TRADE ORGANIZATION – Agreement on Regional Trade Agreements

On July 10, 2006, the Negotiating Group on Rules of the World Trade Organization (WTO) formally approved a new Transparency Mechanism for Regional Trade Agreements. The mechanism provides for early announcement of regional trade agreements (RTAs) (which include bilateral free trade agreements between countries not in the same region) as well as a series of notification requirements for WTO Members signatory to RTAs. On the basis of a “factual presentation” on each RTA prepared by the WTO Secretariat, the Members will consider a notified RTA at one formal meeting for each. The Committee on Regional Trade Agreements, under article 24 of the General Agreement on Tariffs and Trade (GATT) and article 5 of the General Agreement on Trade in Services (GATS), will examine most of the RTAs.





However the Committee on Trade and Development will discuss those forged between developing countries (“South-South” RTAs that fall under the Enabling Clause, i.e., the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, adopted under GATT in 1979). The Negotiating Group on Rules has forwarded its decision on the transparency mechanism to the Trade Negotiations Committee.

WTO Members have reportedly been debating the relationship between WTO rules and bilateral and regional free trade agreements for years, but have been unable to agree on a definition of what constitutes “substantially all the trade “ in GATT article 24’s stipulation that free trade areas eliminate “duties and other restrictive regulations of commerce...[on] substantially all the trade” among parties to them. Nor have they been able to agree on how to establish an RTA’s consistency with WTO rules. The transparency mechanism, which will be implemented on a provisional basis, is not designed to help in this regard, but simply establishes a common set of procedures for examining the agreements. It has been estimated that more than half of world trade is carried out under RTAs, and virtually all WTO Members are parties to one or more of them, with almost 200 RTAs now in force having been notified to the GATT/WTO. ([Lamy Welcomes WTO Agreement on Regional Trade Agreements](#), WTO: 2006 NEWS ITEMS, July 10, 2006; [Members Reach Consensus in Principle on RTA Transparency Mechanism](#), 10:24 BRIDGES, July 5, 2006; WTO Negotiating Group on Rules, [Transparency Mechanism for Regional Trade Agreements: Draft Decision, JOB\(06\)59/Rev.5](#), June 29, 2006.)  
(Wendy Zeldin)



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