



# Law Library of Congress **GLOBAL LEGAL MONITOR**

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## **Featured Topics:**

[Attorneys and Judges](#) / [Banks and Financial Institutions](#) / [Border Zones](#) / [Budget](#) / [Capital Punishment](#) / [Communications and Electronic Information](#) / [Criminal Law](#) / [Defense](#) / [Education](#) / [Elections and Politics](#) / [Employment Law](#) / [Environmental Law](#) / [Family Law](#) / [Government Ethics](#) / [Government Organization](#) / [Health Law & Regulation](#) / [Human Rights](#) / [Immigration and Nationality Law](#) / [Intellectual Property](#) / [International Relations](#) / [Public Welfare](#) / [Religion](#) / [Science and Technology](#) / [Taxation](#) / [Terrorism](#) / [Trade and Commerce](#) / [War](#)

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## **Countries and International Organizations covered in this issue:**

|                   |  |   |
|-------------------|--|---|
| ASEAN             | India  | Nigeria   |
| Australia         | International Court of Justice (ICJ)             | Pakistan  |
| Austria           | International Criminal Tribunal of Rwanda (ICTR) | Peru  |
| Bahamas           | Iran   | Portugal  |
| Bangladesh        | Iraq   | Romania   |
| Brazil            | Israel   | Russia  |
| Canada            | Italy  | Rwanda  |
| China             | Japan  | Sudan   |
| Columbia          | Kenya  | Switzerland   |
| Costa Rica        | Korea, North                                     | Taiwan  |
| Cuba              | Korea, South                                     | Thailand  |
| Egypt             | Lesotho  | Turkmenistan  |
| England and Wales | Libya  | United Nations                                      |
| Estonia           | Malawi   | United Nations High Commission for Refugees (UNHCR) |
| Ethiopia          | Mexico   | United States                                       |
| European Union    | Nepal  | Uzbekistan  |
| Fiji              | Netherlands                                      | Zimbabwe  |
| France            | Nicaragua  |   |
| Germany           |  |   |
| Great Britain     |  |   |
| Hong Kong         |  |   |

## Greetings from the Law Librarian

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Sincerely,

Rubens Medina  
Law Librarian of Congress

## GLOBAL LEGAL MONITOR

### Table of Contents

#### Attorneys and Judges

Korea, North ..... First Law Firm

#### Banks and Financial Institutions

Canada ..... Largest Bank Closing U.S. Accounts

#### Border Zones

International Court of Justice (ICJ) ..... Roadblock  
Dispute Between Argentina and Uruguay

#### Budget

Nigeria ..... Fiscal Responsibility Bill Championed

#### Capital Punishment

France ..... Constitutional Ban on the Death Penalty  
Peru ..... Referendum on Death Penalty

#### Communications and Electronic Information

Estonia ..... New Broadcasting Law  
European Union ..... Imposition of Sanctions on  
Sellers of Violent Games to Children  
Iran ..... Regulation to Control Internet Sites  
Netherlands ..... Traffic Data Storage  
UNHCR/Italy .... Press Conduct Code Recommended  
Uzbekistan ..... New Media Law

#### Criminal Law

Bahamas ..... Baggage Handlers Arrested in U.S. on  
Drug Smuggling Charges  
Bangladesh ..... High Court Sentences Former  
President  
Columbia ... Accusatorial Justice System Still Facing  
Implementation Challenges  
Cuba ..... Life Sentence Sought for Reputed  
Colombian Drug Lord, Despite Lack of Evidence  
Fiji ..... Coup Leader and Troops Granted Immunity  
Germany ..... Forfeiture of Criminal Assets  
Iran .... Death Sentence for Producing and Publishing  
Pornographic Films  
Iraq ..... 24,000 Detainees Not Referred to Court  
Israel ..... Sexual Harassment of Minors  
Kenya ..... Witness Protection Act  
Taiwan ..... Detention Law Amended  
United States ..... Right to Jury Trial on Prison  
Sentencing

#### Defense

Japan ..... Self-Defense Ministry Established

Taiwan ..... Bipartisan National Defense Bill

#### Education

Japan ..... New Education Basic Law  
Malawi ..... Schools to Teach Democracy, Human  
Rights

#### Elections and Politics

Israel ..... Regulation of Election Campaign  
Propaganda  
Romania .... New Law on Elections for the European  
Parliament  
Sudan ..... New Political Parties Law Controversy  
Thailand ..... Prosecution of Voting Fraud  
Turkmenistan .... First Law on Presidential Elections

#### Employment Law

China ..... Draft Promotion of Employment Law

#### Environmental Law

United Nations ..... Mediterranean Nations Unite to  
Adopt Fishing Conservation Measures  
Zimbabwe ..... Intensified Anti-Poaching Program  
Planned

#### Family Law

Brazil ..... Gay Couples Closer to Right to Adopt  
Costa Rica ..... New Regulation on Adoptions  
Germany ..... New Parental Benefits to Improve  
Birth Rate

#### Government Ethics

China ..... Communiqué on Corruption  
European Union .... Possible Regulation of Lobbying  
at the EU Level

#### Government Organization

Bangladesh ..... Separation of Judiciary from the  
Executive Branch  
Bangladesh ..... State of Emergency Declared  
Egypt ..... Parliament Approves Amending the  
Constitution  
India ..... Response to Clamor to Check Judicial  
Activism  
Maldives ..... Parliament Rejects Establishing a  
Supreme Islamic Judicial Council  
Mexico ..... Creation of National Police Force  
Nepal ..... New Interim Constitution, Parliament



United States ... President Formalizes Authority Over Agency “Guidance Documents”  
 Uzbekistan ..... Constitutional Reform

### Health Law & Regulation

France ..... Decree Authorizes “Designer Babies” in Exceptional Cases  
 Hong Kong ..... New Anti-Smoking Laws Enforced  
 Mexico ..... Universal Health Insurance  
 United States ..... Governor Orders Human Papillomavirus Vaccines for Girls  
 United States ..... Maryland Health Care Law Ruled Preempted by Federal Law

### Human Rights

Australia ..... Extradition of Australian Citizen for War Crimes  
 Austria ..... Minority Rights  
 Ethiopia ..... Death Sentence for Genocide Upheld  
 France ..... Legal Right to Housing  
 Rwanda/ICTR ..... Tribunal Upholds Life Sentence

### Immigration and Nationality Law

Mexico ..... Recommendation Regarding Undocumented Immigrants  
 Russia .... New Rules for Employment of Foreigners

### Intellectual Property

Korea, South .. Starbucks vs. Starpreya in Trademark Dispute  
 United States ..... Patent Licenses May Seek Declaration of Patent Invalidity Without First Violating License Agreement

### International Relations

Libya ..... Threat of a European Boycott  
 Nicaragua/Iran ... Full Diplomatic Relations & MOU  
 Portugal/India ..... Treaties Signed

### Public Welfare

Israel ..... Benefits for Needy Holocaust Survivors  
 Lesotho .... New Policy to Help Orphans, Vulnerable Children

### Religion

Egypt ..... Withdrawal of Book Justifying Killing of Christians  
 England and Wales ..... Religious Hatred and the Racial and Religious Hatred Act 2006

Great Britain ..... Catholic Adoption Agencies Not Exempted from Anti-Discrimination Laws  
 India ..... Anti-Conversion Law

### Science and Technology

China ..... Draft Regulations on Software and IC Industry Development

### Taxation

China ..... Land Use Tax Increased  
 Taiwan ..... Proposed Tax Deductions Rejected

### Terrorism

European Union ..... Court of First Instance Set to Re-Examine Inclusion of the Kurdistan Worker’s Party (PKK) on the EU List of Terrorist Organizations  
 European Union ..... Possible Sanctions Against EU Members That Cooperated with CIA on Renditions  
 Netherlands ..... Amendment to Prevent Terrorists from Abusing Income Transparency Law  
 Pakistan ..... Death Sentences in Assassination Convictions Upheld  
 Switzerland ..... Trial of Five Al Qaeda Supporters Begins

### Trade and Commerce

ASEAN ..... Agreements Signed  
 Brazil ..... Reinsurance Market Opened  
 Canada ..... Farmers to Vote on Barley Monopoly  
 China ..... Trial Measures on Brand Protection  
 Costa Rica ..... PAC Legislators Give 87 Reasons for Opposition to U.S.-CAFTA  
 European Union ..... No Consensus Reached on Binding EU Code on Arms Exports  
 Great Britain ..... New Companies Act 2006  
 Mexico ..... President Signs Accord to Limit Rising Tortilla Prices  
 Taiwan ..... Royalties for Foreign Technology Duty-Free

### War

Netherlands ..... Code of Conduct for Armed Forces Personnel  
 United Nations/Nepal .. Political Mission Established



## Attorneys and Judges

### KOREA, NORTH – First Law Firm

The Pyongyang Law Office, an independent corporate body that is the first of its kind in North Korea, has begun operations to provide foreigners with legal services. It provides legal information on foreign-related matters, the Kaesong Industrial Zone, the Kungangsan Tourist Zone, and other subjects. It also holds legal consultations concerning the selection of investment projects and the establishment and operation of foreign businesses. ([Pyongyang Law Office Opens](#), Korean News, Jan. 11, 2007.)

(Sayuri Umeda)



## **Banks and Financial Institutions**

### **CANADA – Largest Bank Closing U.S. Accounts**

Unlike the United States, Canada has only a handful of chartered banks that account for the vast majority of banking transactions. These national banks offer many services that a smaller bank could not. For example, the chartered banks offer both U.S. dollar checking and savings accounts. These accounts are mostly used by persons having business dealings in the U.S. and by foreigners who prefer to send funds to their families in the easily converted U.S. dollars. However, Canada's largest bank, the Royal Bank of Canada, has recently closed the U.S. accounts of hundreds of persons and decided not to offer any new U.S. accounts. This decision was reportedly made to comply with U.S. Treasury Department rules dealing with U.S. currency that are largely designed to prevent foreign money laundering. Several European banks have been fined for not following these rules, and the Royal Bank does not want to risk losing all of its U.S. business. The Royal Bank reportedly has over 600,000 U.S. accounts. Because U.S.-dollar checks are cleared in the United States, the United States has full jurisdiction to regulate their use.

Immigrant groups have been most critical of the Royal Bank's decision. Canadian dollars are not so easily converted in some countries. However, at least the Bank of Nova Scotia and the Toronto-Dominion Bank are still offering U.S. accounts to persons who can meet the "know-your-client" requirements and produce the proper forms of identification required by U.S. law. (Tavia Grant & Alex Dobrato, *Canada: US Antiterror Rules Cited in Closing US-Dollar Accounts of Dual Citizens*, *Toronto Globe and Mail*, Jan. 17, 2007, at A1.) (Stephen Clarke)



## Border Zones

### INTERNATIONAL COURT OF JUSTICE – Roadblock Dispute Between Argentina and Uruguay

On January 23, 2007, the International Court of Justice (ICJ) in The Hague rejected by a vote of fourteen of the fifteen judges provisional measures for equitable relief sought by Uruguay. Uruguay had asked the Court to compel the Argentine government to take concrete action to bring an end to the roadblocks that residents of Entre Rios are maintaining along the border with Uruguay because of the construction of the Botnia paper mill in Fray Bentos.

The ICJ has decided that the circumstances, as they currently appear, do not justify the use of the Court's powers to order measures for equitable relief. The ICJ also ruled that the blockades "are not causing irreparable damages" to Uruguay, as Uruguay had argued in presenting its case. It then indicated that "there is no urgency to adopt the measures that Uruguay has requested."

The ICJ's lack of jurisdiction had been one of the grounds of Argentina's defense in the presentation that it made to the judges in December 2006. The specialists on the Argentine team argued that the attributes of the Court do not include ruling on traffic blockades and that its intervention had been sought by both countries to rule on the substantive issue: whether the paper mills had been authorized unilaterally by Uruguay and whether they would pollute the environment. The Court did not declare that it lacked jurisdiction, but instead ruled that, based on the evidence presented by Uruguay, it cannot grant the provisional measures requested.

The ruling was Argentina's first international success after a long list of failures in the dispute over the paper mills. In July 2006, the ICJ had rejected, by a vote of fourteen to one, Argentina's request for provisional measures to halt construction of the plants in Fray Bentos. In September, a Mercosur tribunal had said that Argentina should have taken action to prevent the setting up of roadblocks, and in November the World Bank approved loans for the construction of the plants. (Papeleras: La Haya rechazó los pedidos de Uruguay por los cortes de ruta, Clarin, Jan. 23, 2007.)

(Graciela Rodriguez-Ferrand)



# Budget

## NIGERIA – Fiscal Responsibility Bill Championed

A fiscal responsibility bill (FRB) is pending before the Nigerian National Assembly. Initiated in 2004, the FRB is aimed at ensuring “transparency, accountability and probity in revenue generation and expenditure of government agencies, parastatals and government at the federal and state levels” (AbdulWahab Abdulah, [Public Accountability : Fiscal Responsibility to the Rescue, Vanguard](#), Oct. 13, 2006). In a two-part article that appeared in *The Independent* (Lagos) on December 11 and December 12, 2006, Eze Onyekpere, a Nigerian lawyer and Executive Director of Socio-Economic Rights Initiative (SERI), considers aspects of the bill in detail. Some of the highlights of his comments are as follows.

In general, the FRB seeks to curb the pattern of unregulated borrowing in Nigeria that resulted in unsustainable debts and the repayment of large sums as debt service and interest payments, by setting stringent conditions of borrowing. The FRB proposes a Fiscal Responsibility Council to monitor debt sustainability, in collaboration with the Debt Management Office and other agencies, and assigns the Minister of Finance and the Central Bank of Nigeria various roles for the regulation of borrowing.

The FRB’s Medium Term Expenditure Framework (MTEF) will introduce predictability to the budgeting process “to the extent that budgets will no longer be drawn up as mere wish lists but as programmes and projects that will be implemented once contained in the Appropriation Act or Law.” The bill also promotes popular participation by proposing that public hearings be held in preparation for the MTEF. According to Onyekpere, “[t]his is the first law that is contemplating an official space for civil society and other non governmental actors in the preparation of budgets.”

The FRB will also help bring budgetary corruption and abuse of budgetary resources “directly within the purview of criminal laws,” in Onyekpere’s view, because it “establishes offenses and penalties relating to acts of omission and commission in the budgeting process for a variety of public officers.” In addition, the FRB promotes accountability and transparency by setting forth a number of disclosure requirements regarding spending agencies’ financial dealings and the government’s fiscal affairs.

The FRB also enhances rule of law by providing that liabilities arising by reason of court judgments will be stated separately in appropriation bills. Past practice, Onyekpere notes, has been for governments to treat such liabilities as if they were not financial obligations to be met on time, with the result that “many persons who secured judgments against the government have been unable to reap the fruits of the judgment.” (Eze Onyekpere, [The Imperative of Fiscal Responsibility Act \(1\)](#), *The Independent* (Lagos), Dec. 11, 2006; Eze Onyekpere, [The Imperative of Fiscal Responsibility Act \(2\)](#), *The Independent*, Dec. 12, 2006.)

(Wendy Zeldin)





# Capital Punishment

## FRANCE – Constitutional Ban on the Death Penalty

French President Jacques Chirac intends to make the death penalty ban harder to overturn by enshrining it in the Constitution. He has called for amending the French Constitution to incorporate the definitive abolition of the death penalty. It was originally banned by a law promulgated on October 9, 1981. The amendment, which is said to contain only one sentence providing that “[n]o one can be condemned to death,” must first be adopted by both chambers of the legislature. It then will be presented to a special joint session of both chambers scheduled for February 26, 2007. It must be adopted by a three-fifths majority of the votes cast. (Christophe Jakubyszyn, *La peine de mort sera interdite par la Constitution*, *Le Monde*, Dec. 28, 2006, at 8.) (Nicole Atwill)

## PERU – Referendum on Death Penalty

President Alan Garcia of Peru recently promoted an amendment to the Peruvian Constitution to allow a referendum on the issue of adoption of the death penalty, after the Congress had rejected the proposal. Some legal experts argue that the use of capital punishment would breach the American Convention on Human Rights, which Peru has signed. Although the majority of the population supports the president’s view, the Peruvian Congress has voted to shelve the bill indefinitely.

The issue has been inflamed by a recent ruling of the Inter-American Court of Human Rights that PEN\$20million (about US\$6.5 million) in compensation be paid to the families of Shining Path guerrillas killed by government forces. The fact that the names of these forty-one suspected and convicted guerrillas are part of a new monument to the victims of the political violence has enraged many Peruvians.

Garcia may have been defeated on this emotional issue in parliament, but it appears that his insistence on a referendum on capital punishment is likely to boost his popularity with the general public. (*Pena capital no se decide en las calles*, *El Comercio*, Jan. 22, 2007.) (Graciela Rodriguez-Ferrand)



## Communications and Electronic Information

### ESTONIA – New Broadcasting Law

On January 18, 2007, the Estonian Parliament adopted a new Law on National Broadcasting, which provides for the merger of Estonian Television and Estonian Radio to create a new public organization, the Estonian National Broadcasting Company. The new body would be the legal successor of the public-service television and radio organizations. The highest governing body of the national broadcasting company will be the Council of the National Broadcasting Company, which will consist of politicians and experts. Under the Law, the Council is to include five members of Parliament, one from each parliamentary group, appointed for a period lasting until the end of the parliament's tenure, and four experts, whose term will be limited by five years. (11:11 RFE/RL Newline, Part II, Jan. 19, 2007.)  
(Peter Roudik)

### EUROPEAN UNION - Imposition of Sanctions on Sellers of Violent Video Games to Children

Currently, the video game industry in Europe has its own rating system for video and computer games based on EU guidelines. According to the EU Observer, the European Commission intends to introduce rules requiring Member States to impose sanctions on those retailers that sell violent video games to children under the age of sixteen. The final cut-off age has not been disclosed. Member States will be free to determine which video and computer games meet the standards. It appears that this initiative was announced due to an extremely violent event that occurred in November 2006 in Germany in which an eighteen-year-old video game fanatic injured eleven students and killed himself. (Brussels to File EU Sanctions for Violent Games Sale, EU Observer, Jan. 11, 2007.)  
(Theresa Papademetriou)

### IRAN – Regulation to Control Internet Sites

The Ministry of Guidance and Culture has introduced regulations requiring Web sites and Web logs to register within two months and observe all the relevant laws and regulations. The Ministry's Web site shows the form that must be filled out by the applicants.

According to the regulations, publication of classified documents of the private sector is forbidden. Web sites are prohibited from publishing information in any form, including vocal, pictorial, caricature, projections, film, and other forms related to the following activities:

1. Practicing atheism, rejecting the weakening of Islamic principles and values, insulting Islam and its sanctity, or insulting Imam Khomeini or his leadership;
2. Insulting divine religions, sacred books, the prophets, innocents, or sacred persons;
3. Encouraging acts against the security, dignity, and interests of the Islamic Republic;
4. Distorting the statements made by Imam Khomeini or leaders of the Islamic Republic or distorting facts about the Islamic Republic and insulting its values;



5. Taking any action against the Constitution, spreading disunity, or adopting any measure intended to create disappointment or loss of hope with respect to the legitimacy and efficiency of the Islamic Republic;
  6. Insulting religious minorities;
  7. Disclosing classified military, security, political, government, or private documents;
  8. Encouraging what is forbidden, lewdness, or statements inconsistent with chastity and good public morals;
  9. Insulting real or juridical persons;
  10. Accessing private and personal information of other persons without their written permission;
  11. Engaging in illegal economic activities such as money laundering, etc.;
  12. Publicizing or guiding illegal information agencies;
  13. Training or introduction of any illegal activities known as filtering;
  14. Spreading false information;
  15. Creating an agency to illegally pass on information in connection with the subjects listed above; and
  16. Engaging in any illegal or illegitimate activity in violation of laws and regulations.
- (Islamic Republic Introduces Regulation to Control Internet Sites, *Iran Times*, No. 1834, Jan. 5, 2007, at 5 & 11.)  
(Gholam H. Vafai)

### **NETHERLANDS – Traffic Data Storage**

The Government of the Netherlands recently drafted a bill that would oblige telecommunications and Internet service providers to keep details of customer behavior for one and a half years. Making “traffic data” – phone numbers, e-mail addresses, places of origin of calls, the length of conversations – easily available, it is argued, can be of use to investigators in combating terrorism and serious crime. European ministers of interior and justice reached agreement in 2005 on the obligation to store traffic data for a minimum of six and maximum of twenty-four months. It is on this basis that the Dutch Government has proposed the eighteen-month period of traffic data storage.

Many Dutch telecom and Internet companies have protested the move. They had expected that a retention period of one year at most would be imposed. They object on the grounds of privacy concerns, problems associated with protecting large quantities of stored information, and higher costs, and maintain that the need for a long storage period has never been proved.

The government wants the bill to be before the Second Chamber (the lower house of the States-General, the Dutch Parliament) in the next few months, to enable adjustment of the telecom law at the end of 2007. (Netherlands Government Seeks to Retain Telecom Traffic Data for 1.5 Years, *NRC Handelsblad*, Jan. 20, 2007, Open Source Center EUP2007012102400.)  
(Wendy Zeldin)



**UNHCR/ITALY – Press Conduct Code Recommended**

The United Nations High Commission for Refugees (UNHCR) on January 19, 2007, recommended that a code of conduct be adopted for the press in Italy. The call for reform came following a quadruple murder case in northern Italy in which the Italian media had unfairly focused on one Tunisian immigrant as a suspect. Walter Irvine, from the Rome office of the UNHCR, said that a “self-discipline charter for the press in matters of immigration and asylum” should be drafted by a working group. The UNHCR also complained that the press in Italy often uses the terms “immigrants,” “refugees,” and “illegals” interchangeably and that alarmist headlines encourage the public identification of Arab immigrants with terrorists.

In response, Renzo Santelli of the federation of journalists in the country said, “[w]e agree entirely. ... It’s a question of civility. ... Non-EU members are not second-class citizens. ... We want to meet the (UNHCR) because we are absolutely not opposed to a charter of this kind.” (UNHCR Condemns Italian Press for Wrongly Accusing Tunisian of Murder, AFP, Jan. 19, 2007, Open Source Center No. EUP20070119102002.)  
(Constance A. Johnson)

**UZBEKISTAN – New Media Law**

On January 15, 2007, amendments to the Law on Mass Media entered into force in Uzbekistan. They tighten state control over the press and ban legal entities in which foreigners hold a stake of at least thirty percent from setting up media outlets in the country. The new legislation makes all media outlets responsible for the “objectivity” of their coverage and sets stringent guidelines for covering religious extremism and separatism. The amendments emphasize the duty of state prosecutors to monitor the application of the Law and empower prosecution offices with the right to initiate the cancellation of a media outlet license. (Law on Mass Media of the Uzbek Republic, *Narodnoe Slovo* (official newspaper of the legislature and Government of the Republic of Uzbekistan), Jan. 16, 2007, No. 11, at 1.)  
(Peter Roudik)



## Criminal Law

### **BAHAMAS – Baggage Handlers Arrested in U.S. on Drug Smuggling Charges**

Five Bahamian baggage handlers were recently arrested in the United States and charged with illegally smuggling illegal drugs into the United States. The handlers worked at an airport in Nassau that has a pre-clearance facility. Passengers on flights from this airport must clear U.S. customs and immigration before they board. Flights that have been pre-cleared can land in the United States and passengers can disembark as if they were on a domestic flight within the United States. The five handlers were arrested after they came to the United States for training exercises.

Evidence against the five had apparently been gathered through a joint operation of Bahamian and American police officials. However, the Government of the Bahamas has denied that it committed any improper actions and was unaware that the handlers would be arrested upon their arrival in the United States. Some Bahamian critics have argued that the five should have been arrested and tried in the Bahamas if the local police had evidence against them. However, the Government has stated that the handlers were not lured into traveling to the United States and that the United States has the sovereign right to enforce its laws within its borders. (Tameka Lundy, Bahamas Attorney General Denies ‘Collusion’ with US on Arrest of Airport Workers, Bahama Journal, Jan. 7, 2007, at A1.) (Stephen Clarke)

### **BANGLADESH – High Court Sentences Former President**

On December 14, 2006, Hussain Mohammad Ershad, former President of Bangladesh, was sentenced to two years of imprisonment by the High Court of Bangladesh. He was found guilty of misappropriating 330 million Taka (US\$4.71 million) in a scheme that involved buying Japanese boats and water purification machines during his 1982 to 1990 presidency.

According to part V, chapter 1, section 66(2) (d), of the Constitution of Bangladesh, a person is disqualified from being a candidate in elections for Members of Parliament if he or she has been convicted of a criminal offense involving moral turpitude, been sentenced to imprisonment for a term of not less than two years, and a period of five years has not passed since his or her release. Therefore, the Deputy Attorney General stated that if the sentence of the High Court is not overturned by the Supreme Court, Ershad will not be able to be a candidate in the parliamentary elections.

However, Ershad’s attorney argues that there is no such bar, because the Constitution states that there will be no bar to running for office if five years have elapsed since a person’s release from imprisonment. Ershad had been imprisoned earlier during the handling of the case and was released in 2001. ([HC Rejects Ershad’s Appeal, Hands Him 2yrs Behind Bars](#), The Daily Star, Dec. 15, 2006; [Ershad Gets Two-Year Jail Term](#), The Dawn, Dec. 15, 2006;



Bangladesh High Court Sentences Former President in Japanese Boat Purchase Case, People's Daily Online, Dec. 14, 2006.)  
(Krishan Nehra and Shameema A. Rahman)

### **COLUMBIA – Accusatorial Justice System Still Facing Implementation Challenges**

The third phase of the new accusatorial criminal justice system has been implemented in Colombia and seventy-five percent of the country is now covered by it. The system is designed to speed up the administration of justice through oral public hearings. The accusatorial criminal justice system went into effect on January 1, 2007, in the judicial districts of Tolima, Huila, Caqueta, Narino, Putumayo, Meta, Guainia, Guaviare, Vichada, Amazonas, and Antioquia and Cundinamarca. It is scheduled to be implemented in the remaining districts of Barranquilla, Cartagena, Casanare, Cucuta, Monteria, Quibdo, Pamplona, Riohacha, Santa Marta, Sincelejo, and Valledupar by January 2008.

The accusatorial criminal justice system has been in effect for two years now, and although several experts regard it as a step backward in the administration of justice, others feel that it has a great many virtues. One of the major criticisms of the system is that it is useful only for minor cases and crimes in which individuals are caught red-handed. According to experts, this system has failed. The backlog of cases has increased, causing both the old system and the current one to collapse. It is argued that although the system is speedy, it has been applied to cases that have no relevance, whereas the major investigations have not made it to the prosecution stage.

The Chairman of the Superior Council of the Judiciary, Hernando Torres Corredor, defends the system, however, voicing the opinion that “this is a judicial mechanism that is right in front of all the citizens.” The judge argues that although at first priority was given to cases of flagrante delicto, right now the districts of Bogota and the coffee-growing belt are beginning to prosecute crimes that have a major social impact. In response to criticisms over logistical problems, Torres Corredor explains that there are already properly trained judges, prosecutors, and public defenders and that in capital cities the courtrooms are ready and the computer technology is in place. He does admit that adjustments need to be made in the system, but he emphasizes that since it went into effect, the judges safeguarding civil rights and hearing cases have conducted 210,000 public hearings. In order to make this system effective, additional resources need to be allocated in order to strengthen the investigation side. In addition, judges and prosecutors need more training; all judicial offices need to be completely outfitted, and a new mindset needs to be created in future attorneys and judges. (Continua el debate por el Sistema Penal Acusatorio, El Pais, Jan. 3, 2007.)  
(Graciela Rodriguez-Ferrand)



## **CUBA – Life Sentence Sought for Reputed Colombian Drug Lord, Despite Lack of Evidence**

A Cuban prosecutor has asked for a sentence of life in prison for an alleged Colombian drug trafficker jailed in Havana, based on complaints from U.S., Colombian, and Panamanian officials, but not, it has been argued, on any allegations of trafficking within Cuba. The decision of the Cuban prosecutor was harshly criticized by Miami attorney Oscar Rodríguez, who said his client, Hernando Gómez Bustamante, was arrested in Havana on charges of carrying false identification documents, not drug trafficking. “There's something fishy here,” Rodríguez said. “Cuba's intentions are very dark ... They're going to condemn him using Internet clippings.” Rodríguez provided *El Nuevo Herald* [published in Miami, a partner publication of *The Miami Herald*] with documents he said came from the People's Provincial Tribunal of Havana. In them, Cuban prosecutor Isabel Bárzaga requests a life sentence but does not refer to any drug trafficking by Gómez on the island. The documents only cite reports from the U.S. Drug Enforcement Agency (DEA) and the Colombian and Panamanian governments linking Gómez to drug smuggling in those countries as well as Mexico. Bárzaga's report also asks that Gómez be sentenced on charges of using false identification documents.

As an example of what he calls the Cuban government's weak evidence against Gómez, Rodríguez said that one of the key witnesses expected to testify is a government official who will explain how he obtained information on Gómez from the Internet. According to Rodríguez, the trial could begin in February 2007. Gómez has a separate lawyer in Cuba.

Considered one of the top leaders of Colombia's North Valley cartel, Gómez is wanted by the U.S. DEA. The U.S. and Colombian governments have offered a total of US\$5 million for information leading to his arrest; Panama has legal proceedings against him as well. Gómez is reportedly willing to surrender to U.S. authorities. However, Cuba has refused to extradite Gómez to his native Colombia since his 2004 arrest at Havana's international airport, where he arrived on a Venezuelan airliner, allegedly carrying a Mexican passport under a false name. Cuba has never explained its refusal to extradite Gómez if he has not engaged in any drug trafficking on the island. (Cuba Seeks Life for Reputed Drug Lord, *The Miami Herald*, Jan. 18, 2007.)

(Gustavo Guerra)

## **FIJI – Coup Leader and Troops Granted Immunity**

Fiji's President Ratu Josefa Iloilo has signed the Immunity (Fiji Military Government Intervention) Decree, thereby validating declarations and decisions made by his military-coup-backed government and the military since the December 5, 2006, coup and granting the army immunity from civil or criminal liability or military disciplinary proceedings. A gazette released by interim Attorney-General Aiyaz Sayed-Khaiyum on January 19, 2007, supports the military's actions. ([News Briefs, Mon – Jan 20-22 '07](#), Fiji Government Online Portal (last visited Jan. 22, 2007); media reports have cited the decree as the Immunity (Fiji Military Government Intervention) Decree; Fiji President Signs Immunity Decree, *Fijilive.com*, Jan. 19, 2007.)

(Lisa White)





**GERMANY – Forfeiture of Criminal Assets**

On October 24, 2006, Germany amended its Code of Criminal Procedure (last re-promulgated on April 7, 1987, Bundesgesetzblatt I at 1074, as amended) and its Code of Criminal Law (last re-promulgated on November 13, 1998, Bundesgesetzblatt I at 3322, as amended), to allow the government to retain the confiscated proceeds of crimes that cannot be handed over to the crime victims. The Amending Act (Bundesgesetzblatt 2006 I at 2350) provides that the government becomes the owner of the seized assets if the victim does not claim them within three years of the final conviction of the offender. Before this reform, the government often had to return to the criminal the proceeds of a crime that had been seized for the benefit of the victim. This was the case, in particular, when the victim could not be found or did not claim compensation.

(Edith Palmer)

**IRAN – Death Sentence for Producing and Publishing Pornographic Films**

Iran's Islamic House of Representatives voted 175 in favor and 2 against approving a Single-Urgency Bill [a bill considered not as high a priority in the legislature as a Double Urgency Bill] providing for imposition of the death sentence on individuals convicted of involvement in producing and publishing pornographic films in which an Iranian woman plays the leading role. The principal agents of the crime will be prosecuted according to a criminal law provision mandating the death penalty for "spreading corruption on earth."

The bill, amending a law of 1993 applicable to individuals involved in illegal audio-visual activities, raises the punishment for these types of activities to death. According to one provision of the bill, in cases where persons use a pornographic video or film to threaten or coerce a woman to commit adultery or any illegitimate sexual act, both the adulterer and the adulteress will receive the death penalty. The bill also provides that persons using such pornographic videos or films to retaliate against a party for or to prevent a party from filing a law suit will be sentenced to seventy-four lashes and imprisonment for a term of five to ten years. (Production and Publication of Pornographic Films to Receive Death Sentence, Iran Times, Jan. 5, 2007, at 5 & 11.)

(Gholam H. Vafai)

**IRAQ – 24,000 Detainees Not Referred to Court**

On January 17, 2007, an official with the Iraqi Ministry of Justice said that 24,000 prisoners in detention centers at the Ministry of Interior, the Ministry of Defense, and the multinational forces have not been referred to the judicial authority. He added that 14,447 of these detainees are in the custody of the multinational forces, 8,303 in the custody of the Ministry of Interior, and 1,346 in the custody of the Ministry of Defense. (Twenty-Four Thousand Detainees Not Referred to Court [in Arabic], Al-Sharq al-Awsat, Jan. 16, 2007.)

(Issam Saliba)





### **ISRAEL – Sexual Harassment of Minors**

On January 8, 2007, the Knesset (Israel's parliament) passed an amendment to the Law for Prevention of Sexual Harassment, 5757-1998. Repeated proposals and statements centering on the sexuality of a minor or helpless person where relationships of authority, dependence, education, or professional treatment are prohibited by law. In the case of minors younger than fifteen years of age, the 2007 amendment extends the prohibition to situations where harassment occurs even in the absence of the above types of relationships. (Law for Prevention of Sexual Harassment (Amendment No. 4) 5767-2007, and the 2006 bill, the Knesset Web site.)  
(Ruth Levush)

### **KENYA – Witness Protection Act**

In December 2006, President Emilio Mwai Kibaki of Kenya signed into law the Witness Protection Act. It provides for the protection of witnesses, including whistleblowers, who give evidence in criminal cases or statements to the police or other law enforcement agencies, shielding them from possible victimization by concealing their identities. The protection program is applicable only to witnesses who will testify in cases already in court. Proposed legislative amendments that would have extended the protection regime to witnesses appearing before quasi-judicial bodies as well, such as commissions of inquiry or parliamentary committees, were rejected.

Under the Act, the Attorney General (AG) may give a witness a different identity at taxpayers' cost that includes new birth and marriage certificates, ID, passport, and even a new home, as well as accommodation, counseling and vocational training, financial assistance, or other types of support. The Act vests the High Court with the authority to order that the necessary new entries be made in the register of births, deaths, and marriages. Critics of the Act contend that it gives the AG even greater power over the fate of witnesses who might be testifying against the state. Moreover, according to Macharia Nderitu, a lawyer who is also a program officer at the International Commission of Jurists, Kenya chapter, the Act does not stipulate a time frame within which the AG must act, leaving potential witnesses vulnerable until the AG goes to court. In addition, he stated, it "gives the AG the right to go to court without offering protection to a witness who may feel vulnerable were he or she to make an application." These features of the Act, in his view, make a case for establishment of an oversight tribunal or at least for review of the discretion as applied by the AG.

Considerations used in determining whether a person should be accorded witness protection include the nature of the risk posed to them by testifying and whether the witness would pose a danger to society if shielded, based on his or her background or character. Any person convicted under the Act of blowing the cover of a witness protected under the program will be subject to a sentence of seven years' imprisonment. (Alex Ndegwa, [Now Kibaki Assents to New Law on Witness Protection](#), The Standard (Nairobi), Jan. 2, 2007; Kenya: Whiff of Fresh Air for Whistle Blowers, The Nation (Nairobi), Jan. 3, 2007.)  
(Wendy Zeldin)



**TAIWAN – Detention Law Amended**

On December 27, 2006, an amendment to the Detention Law of the Republic of China (on Taiwan) was promulgated. A new provision, article 27-1, stipulates that a defendant may send correspondence to and receive it from any person. However, when there are “special reasons,” the court or prosecutor may restrict the defendant to only sending correspondence to and receiving it from his or her closest relatives and family members. (Amendment to Detention Law, 6722 The Gazette of the Office of the President (Dec. 27, 2006), Global Legal Information Network No. 187426.)

(Wendy Zeldin)

**UNITED STATES – Right to Jury Trial on Prison Sentencing**

On January 22, the United States Supreme Court ruled that that a California law on criminal sentencing violated the constitutional right to a jury by allowing judges rather than juries to engage in fact-finding on the aggravating circumstances used to enhance prison sentences.

The Sixth Amendment to the U.S. Constitution guarantees the right to a jury trial for criminal defendants. In prior cases, the Supreme Court established that the Sixth Amendment requires juries, not judges, to engage in any fact-finding that may increase a defendant's sentence, and that such facts must be established beyond a reasonable doubt, not by a mere preponderance of the evidence.

California's "determinate sentencing law" prescribes three precise terms of imprisonment for most offenses -- a lower, middle, and upper term sentence -- and requires the court to impose the middle term unless aggravating or mitigating circumstances warrant imposing the upper or lower term. John Cunningham was convicted in California of sexual abuse of a child under the age of 14, for which offense the California law assigned a lower term sentence of 6 years, a middle term sentence of 12 years, or an upper term sentence of 16 years. At a post-trial sentencing hearing, the trial judge, applying a preponderance of the evidence standard, found aggravating circumstances that warranted imposing the upper term sentence of 16 years. Cunningham lost his appeals within the California state court system, and petitioned for review by the U.S. Supreme Court, which accepted the case.

In its January 22 ruling, the Court held that the California sentencing law violated Cunningham's rights under the Sixth Amendment by allowing facts that increased the length of his sentence from 12 to 16 years to be found by the judge rather than by a jury. The Court ruled that California must revise its sentencing law to conform to the Court's Sixth Amendment rulings that assign such fact-finding to juries and require them to apply a "beyond a reasonable doubt" standard. ([Cunningham v. California](#), No. 05-6551 (Jan. 22, 2007).)

(Luis Acosta)



## Defense

### **JAPAN – Self-Defense Ministry Established**

The Japanese Diet (parliament) amended the Self-Defense Agency Establishment Law on December 15, 2006. The new title of the law is the Self-Defense Ministry Establishment Law. The Agency was upgraded to Ministry on January 9, 2007, based on the new law. The Law gives more power to the new ministry than it held before. Deployment of troops of Self-Defense Forces (SDF) is no longer an exceptional activity but one of the SDF's regular possible missions. (Bōeichō kara bōeishō e [From Self Defense Agency to Self Defense Ministry], Yomiuri Newspaper, Dec. 14, 2006.)  
(Sayuri Umeda)

### **TAIWAN – Bipartisan National Defense Bill**

It was reported on December 14, 2006, that a number of Taiwan legislators, including members of both the ruling party and the opposition, have promoted the passage of a bipartisan national defense reform bill that would fill gaps in the two major national defense laws implemented on March 1, 2002 – the National Defense Law and the National Defense Organization Law – and move Taiwan's military more towards “specialized” transformation. The bill, which is based on these two prior laws, would revise an estimated six national defense laws and regulations.

The main reforms cover the following areas: strengthening of combined operations, organizational adjustment, realization of specialization in military appointments, advancement of military education, and implementation of national defense independence. A detailed report on the bill, covering these five areas as well as other topics, was published in the October 2006 issue of Chien-tuan K'o-chi (Defense Technology Monthly). (Taiwan Report on Bipartisan Defense Bill on Combined Operations, Specialization, OSC Report, Dec. 14, 2006, Open Source Center No. 20061214103001; Michael Chase, [Defense Reform and Civilian Control in Taiwan](#), 6:22 China Brief 7-9 (Nov. 8, 2006).)  
(Wendy Zeldin)



# Education

## **JAPAN – New Education Basic Law**

The new Education Basic Law, which was promulgated on December 22, 2006, sets forth basic policies for education in Japan. Other education-related laws and regulations are interpreted as they comport with it. The old law had been enacted in 1947, when Japan was under the Allied Occupation. Opponents of the new Law claimed that the state should not force on pupils the values of respect for Japanese tradition and culture and promotion of a sense of public morals, principles that are newly introduced in the Law. (Kyōiku kihon hō kaisei an kyō seiritsu e [Education Basic Law will be enacted today], Sankei Newspaper, Dec. 15, 2006 (on file with author).)

(Sayuri Umeda)

## **MALAWI – Schools to Teach Democracy, Human Rights**

On January 5, 2007, Malawi's Ministry of Education announced immediate implementation of a new primary school curriculum. It will include discussion of a number of new topics, such as HIV and AIDS, environmental degradation, multiparty democracy, human rights, good governance and accountability, gender issues, and rapid population growth. The new curriculum, which was developed with technical and financial support from the British Government's Department for International Development, the Canadian International Development Agency, the Japanese International Cooperation Agency, UNICEF, the United States' Agency for International Development, and the World Bank, among others, applies to both government-run and private schools.

The curriculum will be implemented in stages. To date, 12,500 teachers have been trained in the new material, in addition to 466 Primary Education Advisors who will provide teacher support. (Bright Sonani, [Government Introduces New Primary School Curriculum](#), Nation Online, Jan. 8, 2007.)

(Constance A. Johnson)



## Elections and Politics

### ISRAEL – Regulation of Election Campaign Propaganda

On January 9, 2009, the Knesset (Israel's parliament) passed the Election (Methods of Propaganda) (Amendment No. 23) Law, 5767-2007. The Law extends the prohibition of publication of election poll results from twenty-four hours prior to elections to a period starting at the end of the last Friday prior to elections. In Israel, elections usually take place on Tuesdays, so the extension will generally entail a period of three days. According to the explanatory notes for the bill, the extension of the prohibition was designed to prevent misleading of the public and to guarantee the right to elect and to be elected freely. The concern that the amendment is attempting to address is based on the view that results of polls are often perceived by the public as an exact forecasting of election results and therefore may potentially mislead the public.

The amendment further imposes the obligation on whoever broadcasts or publishes, during the above prohibited period, the results of an election poll that was published before the start of that period, to clearly state that the poll is not up to date and cannot serve as an indication of voting patterns or public positions on the date of the broadcast or the publication. (Election (Methods of Propaganda) (Amendment No. 23) Law, 5767-2007, and bill of 5766-2006, the Knesset Web site.)  
(Ruth Levush)

### ROMANIA – New Law on Elections for the European Parliament

On January 17, 2007, the President of Romania promulgated the Law on Organization of Elections for the European Parliament (EP). The Law establishes a five-percent electoral threshold for the EP. The lists of candidates submitted by political parties, organizations, and alliances must be accompanied by 200,000 signatures, while an independent candidate will need 100,000 signatures to be registered. The electoral campaign will last thirty days in a single electoral district. At present, Romania is represented in the EP by thirty-five delegates whose status was upgraded from observer to parliamentarian by the European Council when Romania became a full member of the European Union on January 1, 2007. A similar change affected eighteen Bulgarian colleagues.

Although the delegates are allowed to vote in plenary sessions and give speeches during the sessions and committee meetings, they are not considered members of the Parliament yet because they were not elected according to the established procedure. The delegates' term will last only five months, until May 13, when elections will be held. Romania and Bulgaria were allowed to replace some of the delegation members with new observers during the transfer. The newly appointed members of the EP will preserve their mandates within the Romanian Parliament during the pre-election period. (Romanians Will Elect European Parliamentarians, ACT Media Daily Bulletin, Jan. 18, 2007.)  
(Peter Roudik)



**SUDAN – New Political Parties Law Controversy**

On January 22, 2007, Sudan's National Assembly endorsed a draft Law on Political Parties. Members of one party, the National Democratic Alliance (NDA), walked out of the Assembly in protest over one of the provisions. Article 19 of the proposed law permits the banning of a political party from participation in elections, the freezing of its assets, or its dissolution. These steps could be taken if two-thirds of the members of the legislature petition the Constitutional Court to do so. NDA members argued that the provision was anti-democratic. The next step is for the bill to be sent to the President for signature, after which it will be published in the official gazette. (Sudanese Spokesman: New Elections Law Aims to Block Violent Groups, Omduman, Jan. 22, 2007, Open Source Center No. AFP2007012238001.) (Constance A. Johnson)

**THAILAND – Prosecution of Voting Fraud**

A prosecution for voting fraud (in relation to elections in April 2006) has been launched in the Thai Constitutional Court. The Court is also considering whether to disband the Thai Rak Thai Party, as well as its main rival the Democrat Party, over claims of wrongdoing during last year's April elections. The Thai Rak Thai Party governed Thailand until a September 19, 2006, military coup. ([Fraud Trial Against Thai Rak Thai Begins](#), ABC Radio, Asia Pacific Radio, Jan. 17, 2007.) (Lisa White)

**TURKMENISTAN – First Law on Presidential Elections**

On December 28, 2006, the first Turkmen Law on Election of the President was published. No such law existed in the country before, because the previous leader of the nation, who died in December 2006, had ruled the Republic of Turkmenistan since 1990 and was declared to be president for life. According to the new document, the election of the President will be conducted by popular vote, and the winner has to receive more than fifty percent of the votes. The President is elected for a five-year term, with no term limit established by the Law. International and domestic observers and mass media representatives are allowed to monitor the elections and ballot count; however, a special procedure for the observers' participation is to be approved by the government. Elections and individual campaigns of the candidates will be financed from the national budget.

Candidates for election are selected by the People's Council, a gathering of 2,507 individuals representing major power institutions and public associations, personally selected by the previous Turkmen President and irregularly called for public approval of major presidential initiatives. In order to be registered, the candidates need to secure two thirds of the votes of the People's Council members. The Law states that candidates must be citizens of Turkmenistan who were born in the Republic and are not younger than forty and not older than seventy years, who know the state language and have resided permanently in Turkmenistan in the last fifteen years, and who work in state bodies, public organizations, or branches of the national economy. Among other requirements established by the new Law is the necessity "to gain high respect and



be recognized as worthy of election.” The People’s Assembly chose six candidates for the elections scheduled for February 11, 2007. (Law on Election of the President, *Neitralnyi Turkmenistan* (official newspaper of the Government of the Republic of Turkmenistan), Dec. 28, 2006, No. 316, at 1.)  
(Peter Roudik)



# Employment Law

## CHINA – Draft Promotion of Employment Law

On January 10, 2007, an executive meeting of the State Council (Cabinet) of the People's Republic of China passed in principle a draft law on the promotion of employment. The meeting held that it is necessary to formulate a special law to institutionalize principles and policies on this issue, given that, because of China's huge population, employment pressures will not soon disappear. The draft covers various aspects of employment, with provisions on principles, mechanisms, government responsibility, policy support, the labor market, vocational education and training, employment service and assistance, supervision and inspection, and legal responsibility. After further revision, the draft law is to be submitted to the Standing Committee of the National People's Congress for discussion. (China to Promote Employment, Expand RMB Business in Hong Kong, Xinhua, Jan. 10, 2007, Open Source Center No. CPP20070110968127.) (Wendy Zeldin)





## Environmental Law

### UNITED NATIONS – Mediterranean Nations Unite to Adopt Fishing Conservation Measures

At a meeting of the United Nations Food and Agriculture Organization's General Fisheries Commission for the Mediterranean, nations with borders on the Mediterranean Sea united to pass measures to conserve dwindling fish populations. One of the main measures agreed upon is the shape of the mesh holes in nets that are used to trawl the bottom of the sea in order to allow juvenile fish to pass through them to return to the wild and breed. The Mediterranean nations also agreed to a common set of measures on the capacity of the fishing fleets and their impact on shared fish stocks as an aid to "address the management of multi-species fisheries." The measures will apply to Albania, Algeria, Bulgaria, Croatia, Cyprus, Egypt, Greece, Israel, Italy, Japan, Lebanon, Libya, Malta, Monaco, Morocco, Romania, Slovenia, Serbia, Spain, Syria, Tunisia, and Turkey as well as nations of the European Union. (Mediterranean Fishing Nations Adopt Conservation Measures, News Wire, Jan. 22, 2007.) (Clare Feikert)

### ZIMBABWE – Intensified Anti-Poaching Program Planned

In 2007, the Parks and Wildlife Management Authority (PWMA) of the Government of Zimbabwe reportedly will intensify anti-poaching and law enforcement activities to better protect the country's wildlife. PWMA Director-General Dr Morris Mtsambiwa stated on January 2, 2007, that his department would soon undertake staff training and the procurement of the requisite equipment and vehicles for all of its rangers and anti-poaching units. Aside from improving the efficiency of the PWMA's protection mechanisms and obtaining communications radios and other more advanced equipment, Mtsambiwa declared, the PWMA will also establish a protective zone for rhinoceroses in the Gonarezhou National Park, which now forms part of the Great Limpopo Transfrontier Park.

Mtsambia stated that plans for the establishment of the zone were at an advanced stage, with the Chitsa people (who settled in the park at the height of farm occupations and who comprise more than 700 families) being "the only stumbling block." The Chitsa claim that the Gonarezhou area is ancestral land from which they were forcibly removed in colonial times, and they have been staying there ever since. "As soon as they move out [to alternative land arranged for them, at the end of the cropping season], we will move in with our rhinos," Mtsambiwa stated. He also revealed that the PWMA would proceed with certain commercialization projects, including refurbishment of lodges in various parks and business ventures. The PWMA is also working on proposals in connection with the upcoming June 2007 meeting of the Convention on International Trade in Endangered Species. "We know there are countries who will make proposals to try to derail our internal ivory trading," Mtsambiwa said, and "[w]e will make the relevant preparations to defend our position." ([Parks Authority to Intensify Anti-Poaching Program](#), African Conservation Articles and Press Releases, Jan. 5, 2007.) (Wendy Zeldin)



## Family Law

### **BRAZIL – Gay Couples Closer to Right to Adopt**

Child adoption by gay couples in Brazil may become easier now that a report prepared by the Special Commission on Adoption Law of the Chamber of Deputies was approved in January 2007. According to the report, heterosexual and homosexual couples will have equal adoption rights, something that does not exist in the Children and Adolescent Statute, which only mentions that persons twenty-one years of age or older may adopt jointly or individually, without further stipulations being set forth. The report still needs to be submitted for discussion and a vote at the plenary session of the Chamber of Deputies.

The subject of equal adoption rights homosexuals gained attention in December 2006 when a five-year-old girl was registered by two fathers in the city of Catanduvas, São Paulo, making them the third gay couple in Brazil to obtain the joint registration of an adopted child. (Lisa Guedes, *Casais Gays Podem Estar Mais Perto de Garantir o Direito à Adoção*, O Globo Online, Jan. 16, 2007.)  
(Eduardo Soares)

### **COSTA RICA – New Regulation on Adoptions**

The National Infancy Board (NIB) issued a new Regulation on the Procedures for National and International Adoptions on January 8, 2007. It uses as the legal framework for this Regulation, the 1990 Convention on the Rights of Children, the 1995 Convention on the Protection of Children and Cooperation on the subject of International Adoption, and the Family Code of Costa Rica contained in Law No. 5476 of 1973. Playing a role in all adoptions undertaken in Costa Rica will be the NIB Board of Directors, its Executive Presidency, the Department of Adoptions, and national and regional adoption councils. In addition, for international adoptions, the following units of the NIB will be involved: the Technical Management Office, the National Council of Adoptions, local offices, the Department of Adoptions, and the Department of Accreditation.

Foreigners wishing to adopt a Costa Rican child must present an application through an international adoption agency in the country of their residence that is authorized by the National Council of Adoptions, and a bilateral or multilateral international treaty on this subject must exist between the country of the adoptive parents and Costa Rica. Article 45 specifies all documents that must be presented with applications, and the functions and powers of all Costa Rican offices involved in international adoptions are indicated in Articles 48 through 57. The Regulation provides for post-adoption follow-up for both national and international adoptions. In the case of the latter, the procedure will be done by the Costa Rican Department of Adoptions for a period of two years through reports submitted by authorities every six months. These reports must contain information about the child's assimilation to the new cultural and physical environments; routines of eating, sleeping, and other physical conditions; family organization, discipline, and



tolerance; physical and socio-economic development of the child; and psychological and educational evaluations. (*La Gaceta*, Jan. 12, 2007, at 41-49; GLIN ID #188456)  
(Sandra A. Sawicki)

### **GERMANY – New Parental Benefits to Improve Birth Rate**

For children born on or after January 1, 2007, Germany provides a new support payment that aims at encouraging one of the parents to stay at home and care for the infant by granting a payment of two thirds of the parent's salary for a year. This new payment is based on the Act Introducing a Parental Allowance of December 5, 2006 (*Bundesgesetzblatt I* at 2748) and it differs from previous children's allowances by focusing on the parent who loses income while taking care of the child, instead of giving an allowance for the child.

The new law intends to make it easier for women with professional incomes to have children, by lessening the financial loss that they incur by staying at home to take care of an infant. The legislature expects that this new measure will have a beneficial effect on the German birth rate of currently 1.3. (U. Rasche, *Elternwohl und Kindeswohl*, *Frankfurter Allgemeine Zeitung*, Jan. 5, 2007, at 1.) The monthly stipend for the child-caring parent is capped at €1,800 per month (about US\$2300) and it is fully taxable. For low-income parents, the parental allowance is larger than two thirds of the income, and for non-wage-earning parents a monthly stipend of €300 (about US\$390) is granted. To encourage both parents to take care of the child, the parent's allowance can be received for an additional two months if the other parent takes this time off from work to care for the child.  
(Edith Palmer)



## Government Ethics

### CHINA – Communiqué on Corruption

The Central Discipline Inspection Commission (CDIC) of the Chinese Communist Party (CCP) issued a communiqué on January 10, 2007, at the end of its three-day Seventh Plenary Session. The session reviewed the work carried out in 2006 and outlined anti-corruption and party-building work for 2007. The communiqué covers six main areas at which efforts to combat anti-corruption and build a “clean” party will be directed; at the same time, these areas reflect the kinds of problems currently encountered in official conduct. Some of the topics covered are as follows.

The communiqué indicates that certain specific activities engaged in by officials will be “seriously dealt with.” These include the purchase of commercial housing at prices far lower than market prices by taking advantage of an official post; the occupation and use of borrowed houses and vehicles and failure to return them; participation in gambling or seeking to obtain illicit money in activities like gambling; seeking illegal profits by using others to invest in the stock market; and seeking other forms of illegal earnings for oneself and relatives and friends. The communiqué further states that the CCP “will stringently investigate and handle” cases of government and business collusion, money-for-power favors, illegal granting and writing off of loans, illicit approval of land sales and mining projects, misuse of state-owned assets in restructuring state-owned enterprises, and fraud involving public tenders. It calls for laws and regulations on market competition to be improved and for a long-term mechanism to combat commercial bribery to be established.

The communiqué urges a coordinated effort by relevant departments to “strike hard” at the production of fake or inferior-quality food and drugs; at illegal price rises in agricultural products; and at illegal factory pollution discharges. It further states that workplace safety will be a priority, efforts to eradicate unreasonable educational fees will be increased, and misdeeds in the medicine trade and medical services will be more stringently dealt with.

The communiqué calls for deepening of institutional reforms, including reforms in personnel management, the judicial structure and work mechanisms, and the administrative examination and approval system, among others. It also states that the supervision of leading cadres should be strengthened and efforts should be made to further promote internal Party democracy and transparency. It avers that supervision by citizens, the non-communist political parties and non-party-member personages, and the news media should be enhanced. (China Focus: CPC Discipline Watchdog Vows to Intensify Fight Against Corruption, Xinhua, Jan. 10, 2007, Open Source Center No. CPP20070110968120.)

(Wendy Zeldin)



## EUROPEAN UNION - Possible Regulation of Lobbying at the EU Level

Currently there are close to 15,000 lobbyists working in Brussels whose modus operandi is completely unregulated and the public has scant information on their business practices. In May 2006, the European Commission published a Green Paper on the European Transparency Initiative in order to generate debate on disclosure of beneficiaries of Community funds and whether and how to regulate lobbying, among other issues. The Green Paper introduced the concepts of a registry with critical information on lobbyists and a common code of conduct for lobbyists.

Based on the feedback received, the Commission is taking concrete steps towards regulating lobbying at the European Union level. The term “lobbying” will be defined rather broadly, encompassing a wide range of activities carried out in order to represent special interests and with the intent to affect the policy and decision-making of EU institutions. The notion of a common code of conduct for lobbyists was warmly endorsed, along with the idea of possible sanctions in case of false registration or violation of the code rules. The Commission also supports the idea of a Web-based registration system and plans to introduce such measures in the spring of 2007. (Press Release SPEECH/07/17, Lobbying: Political Transparency and Representation of Interest, [Speech by Slim Kallas, Vice President of the European Commission Responsible for Administrative Affairs, Audit and Anti-Fraud, European Transparency Initiative \(1st RETI Seminar\) \(Jan. 18, 2007\).](#))  
(Theresa Papademetriou)



## Government Organization

### BANGALDESH – Separation of Judiciary from the Executive Branch

On January 16 the interim President, Professor Iazuddin Ahmed, signed four new regulations that separate the country's subordinate judiciary from the executive branch. Article 22 of the constitution of Bangladesh guarantees independence of the judiciary, but since its adoption in 1972 the law has never been implemented and lower court judges have remained under the control of the executive branch. The new rules are the Judicial Service Commission Rule, the Bangladesh Judicial Service Pay Commission Rule 2007, the Bangladesh Judicial Service (Service Constitution, Composition, Recruitment, Suspension, Dismissal and Removal) Rules 2007, and the Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Condition) Rules 2007. The new rules became effective through publication in the Official Gazette of Bangladesh on January 16, 2007. (Asian Human Rights Commission, [Bangladesh: Formal Separation of Judiciary Must Now Be Made Reality](#) (Jan. 22, 2007).) (Shameema Rahman)

### BANGLADESH – State of Emergency Declared

The Interim President of Bangladesh, Iajuddin Ahmed, declared a state of emergency in the country and stepped down as leader of Bangladesh's caretaker government on January 11, 2007. President Ahmed had taken on the responsibility of head of the interim administration on October 29, 2006. In his address for the nation on January 11, President Ahmed mentioned that the current political crisis in Bangladesh is not favorable to holding a free and fair election on the scheduled date. The United Nations and the European Commission have also decided to suspend the election observation mission to Bangladesh. (Somini Sengupta, [In Bangladesh, State of Emergency and Election Delay](#), New York Times (Jan. 11, 2007).)

The Constitution of Bangladesh requires holding elections within three months of the end of a government's term. The previous parliament dissolved on October 27, 2006, and according to the constitution, the deadline for parliamentary election was January 2007. However, when a state of emergency exists, the Constitution allows the President to make executive orders to suspend a number of constitutional rights, including freedom of movement, freedom of assembly, freedom of speech, freedom from occupation, and the right to property. In addition, the government has postponed the January 2007 parliamentary election due to the state of emergency situation in Bangladesh. (Joshua Pantesco, [Bangladesh President Declares State of Emergency as Controversial Election Looms](#), Jurist (Jan. 11, 2007).) (Shameema A. Rahman)

### EGYPT – Parliament Approves Amending the Constitution

The Egyptian People's Assembly approved, by a majority vote of 316 members, proposals made by Egyptian President Husni Mubarak to amend thirty-four articles of the Constitution. The vote took place in a contentious session held on January 17, 2007. The speaker, Dr. Ahmed Fathi Sourour, declared the passage of the proposals in principle without



disclosing the number of the members who voted against them. The proposals have been referred to the Constitutional and Legislative Committee to prepare a report on the changes within a two-month period. (Parliament Approves Amending the Constitution, Al-Sharq al-Awsat, Jan. 18, 2007.)  
(Issam Saliba)

### **INDIA – Response to Clamor to Check Judicial Activism**

Recent verdicts of the Supreme Court of India, especially on the president's power to grant clemency and the governmental power to establish reservation quotas in service and education institutions for religious minorities, have been perceived, both within and outside the government, as instances of judicial over-activism. On December 17, 2006, the Law Minister, H.R. Bhardwaj, in an attempt to allay such fears and support the judiciary, stated that judges were doing their job and that "adverse" court orders should not be construed as judicial activism.

In further stating that the power of judicial review is "the very soul of the Constitution," Bhardwaj affirmed that the judges are only carrying out their duty by reviewing various orders of the government or laws passed by the parliament. Thus, he maintained, there is no overstepping when a court order is adverse, nor is there a need to gag the courts. If, in enacting laws, the parliament is carrying out its constitutional responsibility, the courts similarly are performing their constitutional function in reviewing challenges to the law, he emphasized. In response to the point that heightened media focus on certain recent high-profile cases had resulted in retrial and conviction, he said that the media was fully entitled to report what it perceived as miscarriages of justice, but should pay attention uniformly to all cases, not merely the high-profile ones. (Adverse Orders Not Judicial Activism, Says Bhardwaj, The Hindu, Dec. 18, 2006.)  
(Krishan Nehra)

### **MALDIVES – Parliament Rejects Establishing a Supreme Islamic Judicial Council**

On December 11, 2006, the Maldives Interim Constitutional Parliament (the Special Majlis) rejected a proposal to set up an Iran-style Supreme Islamic Council with power over all other state institutions. Mohamed Naeem, a Member of Parliament for the government's Dhivehi Raiyyithunge Party (DRP), moved the proposal of the Islamic Party, Adhaalath (Justice), because the latter has no elected member in the parliament.

The proposal, first initiated by Adhaalath in August 2006 with a view to constituting "a free and independent scholars' council" overseeing all organs of the government, created a row over the role of religion in the democratic society of the Maldives. Opposition leader Hamid Abdul Ghaafor of the Maldivian Democratic Party (MDP) countered the proposal with the statement: "Adhaalath must seriously think about what they are doing when they are proposing these things." The proposal came only days after a wave of press and government commentaries about a rise in Islamic extremism in the country, which, according to the foreign Minister of





Maldives, had made the island more vulnerable to fundamentalist preaching. (Supreme Islamic Council Rejected, The Minivan News, Dec. 11, 2006.)  
(Krishan Nehra)

### **MEXICO – Creation of National Police Force**

Genaro García Luna, Mexico's Secretary of Federal Public Security, announced that the Federal Government will give priority to the battle against common crimes, in view of the fact that nearly ninety-five percent of the crimes committed in the country have nothing to do with federal crimes. To carry out the new policy, the Federal Government will create a national police force, to be made up of currently existing different security forces. The new institution, called the Federal Police Corps, will comprise the Federal Preventive Police (PFP), the Federal Investigation Agency (AFI), the Tax and Customs Police, and agents of the National Institute of Migration (INM).

Secretary García Luna also announced the reorganization of the federal Secretariat of Public Security (SSP), which will contain four newly created Undersecretariats: for Strategy and Police Intelligence; for Prevention, Citizen Participation, and Human Rights; for the Federal Penitentiary System; and for Institutional Development and Innovation. This reorganization will be achieved by amending internal regulations, but the creation of the Federal Police Corps will require legal and constitutional amendments, which are going to be submitted to the Federal Congress. (Crean Policía Nacional, Reforma, Dec. 21, 2006.)  
(Norma C. Gutiérrez)

### **NEPAL – New Interim Constitution, Parliament**

The Interim Constitution 2063 of Nepal was ratified by the country's interim parliament on January 15, 2007, making it formally in effect. The document had been approved by the Nepali Council of Ministers on January 14 and sent to the (former) House of Representatives the same day. The House was dissolved shortly after promulgating the document; the interim parliament was established immediately thereafter. The new unicameral body includes for the first time former rebel Maoists, who will hold twenty-five percent (83) of its 330 seats. In the words of one Nepali newspaper editor,

Nepalis have a new Constitution, a new national anthem, and a new 'coat of arms' in other word[s] 'emblem' or 'insignia' or 'logo.' Millions of Nepalis previously deprived of citizenship will have citizenship. Nepal is heading to nationhood rewriting ... ground rules anew. Nepalis are making themselves citizens rather than the subjects of a king.

([Siddhi B. Ranjitkar, The Interim Constitution: Its Features and Flaws](#) [Opinion], Scoop, Dec. 29, 2006.)

The Interim Constitution was drafted by eight political parties. Among other features, the historic document institutionalizes inclusive democracy by ending Nepal's monarchy and





establishes such principles as the right to education, health, and employment, and social security. The section on fundamental rights includes clauses on women's rights and on untouchability and caste discrimination. A National Human Rights Commission is to be set up as a constitutional body. The document also enshrines religious secularism.

The Interim Constitution provides for a Constituent Assembly (CA) comprising 425 members, to be convened for two years from the date of its first meeting, as well as a CA Court to investigate complaints regarding elections to the CA. The first meeting of the CA will decide the monarchy's fate.

Executive power rests with a Council of Ministers, and the Prime Minister exercises the executive powers of the head of state. The Prime Minister will also head a Constitutional Council (to include the Chief Justice, Speaker of the House of Representatives, and three Ministers assigned by the Prime Minister) and a Security Council. Critics have pointed out that there is no provision for removal of the Prime Minister from office or for a checks-and-balance system, and that the Prime Minister is made "almost supreme," with the power to influence the entire state mechanism and the Constitutional Council having no control over him, as almost half of its members are his appointees.

A two-thirds majority vote of parliamentarians is required to amend the Constitution. For any issue of national significance, a referendum will be held. In addition, a new oath of office is mandated for justices of the Supreme Court, appellate courts, and district courts. ([Highlights of the Interim Constitution–2063](#), eKantipur.com, Dec. 16, 2006; Nepali Interim Parliament Ratifies Interim Constitution, Xinhua, Jan. 15, 2007, Open Source Center No. CPP20070115968146; AFP: Maoists Set to Enter Parliament as Nepal Cabinet Approves Interim Constitution, AFP, Jan. 14, 2007, Open Source Center No. JPP20070114063005; Nepal Maoists Dissolve 'People's Government,' Courts, Himalayan Times, Jan. 18, 2007, Open Source Center No. SAP20070118950026.)  
(Wendy Zeldin)

### **UNITED STATES – President Formalizes Authority Over Agency “Guidance Documents”**

On January 18, the Bush Administration issued formal requirements for federal agencies issuing “guidance documents,” which are agency documents issued outside the formal regulatory rulemaking process to explain agency policies or interpretations of legal, regulatory, or technical issues. The new requirements are set forth in President Bush's Executive Order 13422, and in the Office of Management and Budget's (OMB's) “Final Bulletin for Agency Good Guidance Practices.”

President Bush's Executive Order 13422 amends President Bill Clinton's 1993 Executive Order 12866, which provided for the President's review and oversight of regulatory activities. President Bush's order provides that each agency shall designate a political appointee of the President to serve as the agency's Regulatory Policy Officer, and states that no rulemaking shall commence without the approval of the agency's Regulatory Policy Office or the head of the



agency. It requires agencies to estimate the combined aggregate costs and benefits of all their planned regulations for a calendar year to enable prioritization. With respect to “significant guidance documents” (those with an annual effect of \$100 million or more, or otherwise meeting the definition of “significant”), each agency is required to provide advance notification to OMB’s Office of Information and Regulatory Affairs (OIRA), which may in turn request a copy of the draft guidance document, and may notify the agency that additional consultation with OIRA is required before issuance. Executive Order 13422 also amends the prior Executive Order by including as a “principle of regulation” that “[e]ach agency shall identify in writing the specific *market failure (such as externalities, market power, lack of information)* or other specific problem that it intends to address . . . to enable assessment of whether any new regulation is warranted.” (Emphasis added.)

OMB’s “Final Bulletin for Agency Good Guidance Practices” supplements Executive Order 13422 by setting forth additional instructions for agencies issuing guidance documents. It provides that agencies should develop written procedures for the approval of significant guidance documents to ensure that they are approved by appropriate senior agency officials. It sets forth standard elements that should be included in guidance documents. It specifies that agencies should maintain an electronic list of all significant guidance documents on their Web sites, and provides that agencies should provide a means for the public to electronically submit comments and requests for reconsideration, modification, or rescission. OMB’s Bulletin also states that with respect to *economically* significant guidance documents, notices should be published in the Federal Register announcing how to access and provide comment on draft versions of the guidance documents. ([Final Bulletin for Agency Good Guidance Practices](#), Jan. 18, 2007, 72 Fed. Reg. 3432 (Jan. 25, 2007); [Executive Order 13422](#), Jan. 18, 2007, 72 Fed. Reg. 2763 (Jan. 23, 2007), amending [Executive Order 12866](#), Sept. 30, 1993, 58 Fed. Reg. 51735 (Oct. 4, 1993).) (Luis Acosta)

## UZBEKISTAN – Constitutional Reform

In November 2006, Oliy Mazhlis, the Uzbek legislature, adopted amendments to the nation’s Constitution and Political Parties Act. According to these amendments, a proportional electoral system will be established in the country as of the next election cycle, which is scheduled for 2008. The new provisions stipulate that the lower chamber of the legislature will consist of political party factions, and each party leader will be granted a position as a Chamber Vice-Speaker. Although the definitions of parliamentary majority, parliamentary coalition, and opposition are included in the law, those are not institutionalized and their legal status is not defined. None of the rights specified by the law for the opposition go beyond regular parliamentary functions such as proposing alternative versions of a legislative bill or including in the parliamentary record the opinion of the opposition representative.

In order to strengthen discipline within political parties, members of the legislature are not allowed to change or cancel their party affiliation. Because members are elected under a national party list, they must vacate the seat and have the next person on the electoral list of the same party substitute for them if they break off ties with their party. The previous constitutional



provision, which allowed such legislators to remain as independent members, has been cancelled. Regarding the scope of political activities of the parties and their eligibility to be included on the national ballot, the Act states that parties' programs and platforms will depend on the course and tasks of the government. This provision is interpreted differently by various legal analysts. Some say that it prohibits any party activities that contradict the main government policy; others, however, believe that it allows discussion of those issues that are the focus of government activities during campaigns. The next campaign will show how these provisions are implemented.

Newly passed amendments also change the structure of the executive branch of government. For the most part, they follow similar changes adopted in Russia two years ago aimed at building "vertical power," which strengthened the power of the Russian President. Now, the appointment of the Prime Minister of Uzbekistan, whose candidacy is recommended by the President, will become the subject of consultations with all party factions represented in the Parliament. Although the new procedure is unlike the previous one that contained no consultation with the Parliament, there is no requirement obligating the President to follow the opinion of the political parties that are consulted. Taking into account that the appointment requires a simple majority vote of all members of the 220-seat legislature, and that the 100-seat upper chamber is almost entirely controlled by the President, there is almost no doubt that a presidential appointee will be approved by the legislature.

If the legislature does not agree with the President's choice for Prime Minister and rejects the candidate three times, the new Constitution gives the President the right to dissolve the Parliament. New elections will be conducted within a three-month period. The Parliament and the individual factions of parties represented in it are given the right to petition the President with a recommendation to dismiss the Prime Minister. If such an initiative is supported by the majority of the lower chamber, the President may initiate the no-confidence vote. Also, the Prime Minister may be dismissed by the President without parliamentary involvement. For the first time in Uzbek history, the Constitution enumerates situations when the President may relieve the Prime Minister of his duties. These are upon the Prime Minister's request, when he or she is not able to perform a Prime Minister's duties, in case of disagreements within the government, or when the Prime Minister has committed actions contradictory to the Uzbek Constitution, laws, and presidential decrees. In the latter case, the Constitution does not specify whether the Prime Minister will be held legally responsible for his actions.

A similar procedure was introduced for appointment of provincial governors. Candidates are to be presented by the President to the provincial representative body for final approval. The President has the right to dismiss a provincial legislature in case of non-confirmation of the candidate. (Amendments to the Constitution of the Uzbek Republic, *Narodnoe Slovo* (official newspaper of the legislature and Government of the Republic of Uzbekistan), Dec. 2, 2006, No. 233, at 1-2.)  
(Peter Roudik)



## Health Law & Regulation

### FRANCE – Decree Authorizes “Designer Babies” in Exceptional Cases

A Decree of December 22, 2006, on pre-implantation genetic diagnosis (PGD), sets forth the conditions under which PGD can be used to help conceive a child without a specific genetic disorder in order to treat an older sibling suffering from that disorder. The Decree is one of several adopted to implement the Bioethics Law of August 6, 2004.

The Biomedicine Agency, a public organization under the supervision of the Minister of Health and covering the four areas of transplantation, procreation, embryology, and genetics, will authorize the procedure under strict conditions and on an experimental basis. The main criteria to be considered before the procedure can be approved are the incurable nature of the illness leading to likely death during the first years of life and the possibility of conclusive improvement of the health of the sick child. (Décret N° 2006-1661 du 22 Décembre 2006 relatif au diagnostic prénatal et au diagnostic biologique effectué à partir de cellules prélevées sur l’embryon in vitro et modifiant le code de la santé publique, Legifrance Web site.)

(Nicole Atwill)

### HONG KONG – New Anti-Smoking Laws Enforced

Hong Kong has enforced its tough new anti-smoking laws and has summonsed a worker in relation to breaking those laws while in a public market (the Ngau Tau Kok wet market). (Tobacco Control Office, Department of Health, Hong Kong Special Administrative Region; [First Smoker Summonsed Under New Laws](#), RTHK, Jan. 9, 2007.)

(Lisa White)

### MEXICO – Universal Health Insurance

President Felipe Calderón of Mexico launched “health insurance of the new generation,” which will be the principal social program of his term. This health insurance will provide medical care to all children born after December 1, 2006, which is the date the new government was initiated. The program will protect the children of families that are not covered by any institution, such as the Mexican Institute of Social Security (IMSS) and the Institute of Social Security Services for Civil Servants (ISSSTE). Operation of this program will entail coordination of all the institutions in the health care sector of the country, that is, the IMSS, the ISSSTE, the National System for the Integral Development of the Family (DIF), and the States’ Secretariat of Health. According to the Federal Secretariat of Health, in the five weeks since its inception, 2,400 children had been registered. (Arranca Calderón Seguro Universal, Reforma, Jan. 9, 2007.)

(Norma C. Gutiérrez)



**UNITED STATES – Governor Orders Human Papillomavirus Vaccines for Girls**

On February 2, 2007, Texas Governor Rick Perry issued an executive order ordering the vaccination of girls in Texas for Human Papillomavirus (HPV). The Governor's order states that "HPV is the most common sexually transmitted infection-causing cancer in females in the United States," and that the vaccine has proven very successful, if administered before infection occurs, at preventing such cancers. The order further states that the vaccine would be made available through the Texas Vaccines for Children program to subsidize the cost for those families which qualified.

The order directs the Texas Health and Human Services Executive Commissioner to "adopt rules that mandate the age appropriate vaccination of all female children for HPV prior to admission to the sixth grade." The order also provides an option to parents to opt out of having their child vaccinated. The order notes that the Advisory Committee on Immunization Practices, and the Centers for Disease Control and Prevention, both recommend the HPV vaccine for females who are nine through 26 years old.

According to news reports, this order makes Texas the first state to institute such childhood vaccinations for HPV, although a number of other states have considered similar measures in their state legislatures, and such a measure was recently defeated in the Michigan legislature. The order effectively took the matter out of the hands of the Texas legislature, where the issue has been controversial due to HPV's classification as a sexually transmitted disease. ([Executive Order RP65](#), Governor of the State of Texas (Feb 2, 2007).) (Gary Robinson)

**UNITED STATES – Maryland Health Care Law Ruled Preempted by Federal Law**

A federal circuit court on January 17 ruled that the State of Maryland's Fair Share Health Care Fund Act (the "Fair Share Act") violated the federal Employee Retirement Income Security Act of 1974 ("ERISA").

In the United States, employers often provide health insurance as an employee benefit, and low-income persons not otherwise insured receive health care through Medicaid, a federal program funded in part by state governments. In 2006, Maryland, concerned with rising Medicaid costs, enacted the Fair Share Act, which required corporations with more than 10,000 employees in the state – as a practical matter, only Wal-Mart – to spend at least 8% of the total wages paid to employees in Maryland on health insurance costs, or pay the difference to the state to reimburse it for its Medicaid expenditures. Maryland legislators maintained that the state's rising Medicaid costs were directly attributable to the comparatively low level of health insurance benefits provided by Wal-Mart to its employees. The Retail Industry Leaders Association, of which Wal-Mart is a member, challenged the law, arguing that it was preempted by ERISA, a federal law that provides uniform national standards for certain aspects of employee benefit plans, including health care plans. The federal district court, agreeing that the Fair Share Act was preempted by ERISA, enjoined its enforcement.



Judge Paul Niemeyer, writing for the U.S. Court of Appeals for the Fourth Circuit, noted Supreme Court precedent finding that ERISA’s preemption provision was intended “to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government.” The court found that the Maryland Fair Share Act fell squarely under ERISA’s preemption of state mandates affecting how employers structure their employee benefit plans. It therefore affirmed the district court’s judgment enjoining enforcement of the Maryland law. ([Retail Industry Leaders Association v. Fielder](#), No. 06-1840 (4<sup>th</sup> Cir. 2007).)  
(Gary Robinson)





## Human Rights

### **AUSTRALIA – Extradition of Australian Citizen for War Crimes**

A Sydney, Australia, man has consented to his extradition to Croatia to face a war-crimes trial. Consent by Mr. Anum Gudeji (who holds dual Australian-Croatian citizenship) avoids the requirement for an extradition hearing. However, consent by the federal government is still required. ([Croat Agrees to Extradition](#), NEWS.com.au, Jan. 11, 2007.)  
(Lisa White)

### **AUSTRIA – Minority Rights**

Austria is a German-speaking country with several ethnic minorities that speak other languages. One of these minorities is the Slovenes in parts of Carinthia. For years, a dispute has raged on whether topographical signs in certain parts of Carinthia had to be bilingual, giving the name of the village or city not only in German but also in Slovene. The latest event in this dispute is a decision of the Austrian Constitutional Court of December 13, 2006 (Docket no. V 81/06 – 14). In this decision, the Court voided a Carinthian regulation that provided that the topographical signs of certain ethnically mixed communities would be in German, but that underneath the main sign, a smaller sign would give the name in Slovenian. The Court rejected this solution as violating various Austrian laws and regulations that implemented article 7 of the State Treaty of Vienna for the reestablishment of an independent and democratic Austria of May 15, 1955 (6 U.S. T. 2369; 217 U.N.T.S 223). The treaty with Austria was concluded by the United States and its allies of World War II, and it freed Austria from the post-World War occupation regime and granted it sovereignty. However, one of the few limitations that the treaty imposed on Austria was the stipulation that topographical signs in ethnically mixed areas had to be bilingual.  
(Edith Palmer)

### **ETHIOPIA – Death Sentence for Genocide Upheld**

It was reported on January 3, 2007, that Ethiopia's Federal Supreme Court (FSC) had upheld the death sentence for Major Melaku Tefera, who had been convicted by the Federal High Court (FHC) on December 8, 2006, for commission of the crime of genocide during the former military regime. In its ruling, the FSC stated that Melaku, who had been the administrator of the former Gondar Province, had ordered the unlawful execution of 971 citizens and had caused the permanent disability of eighty-three others during his tenure. The FSC verdict reiterated that Melaku "had indeed committed genocide since he ordered the killing of people who were members of opposition political parties by abusing his political power and authority inappropriately." It further stated that Melaku's claim to be "not guilty," presented in his appeal, was "groundless," because his personal involvement in unlawful executions has been substantiated by evidence. Therefore, the FSC declared, the verdict passed by the FHC against Melaku will be put into effect. (Federal Supreme Court Upholds Major Melaku Death Sentence, The Ethiopian Herald, Jan. 3, 2007.)  
(Wendy Zeldin)



## FRANCE – Legal Right to Housing

The French government is drafting a law that will recognize a citizen's legal right to housing. French Prime Minister Dominique de Villepin said that the government wants the right to housing to become legally enforceable by the end of 2008 for "those facing the greatest struggles, in particular the homeless, but also low-income workers and single mothers raising children." In 2012, the right would be further extended to "all individuals or all families housed in unhealthy or unfit conditions." The Prime Minister also added that the law will "determine which entity will be in charge of guaranteeing the legal right to housing." The draft is expected to go to parliament as early as February 2007.

President Jacques Chirac used his New Year's address to ask the government to take swift action in this area. The homelessness issue has recently received a lot of attention after an advocacy group, "the Children of Don Quixote," set up pink tents to house the homeless in several major towns throughout France, including Paris, Lyons, Nice, and Toulouse. There are about 86,500 homeless people in France, according to government statistics. (French Prime Minister Web site, [The Legal Right to Housing: The Government Prepares a Draft Bill](#) (Jan. 3, 2007); Bertrand Bissuel, Lors des derniers voeux du quinquennat, M. Chirac a fixé cinq "enjeux majeurs" de la campagne 2007, *Le Monde*, Jan. 2, 2007, at 8.) (Nicole Atwill)

## RWANDA/ICTR – Tribunal Upholds Life Sentence

On January 16, 2007, the appeals chamber of the International Criminal Tribunal for Rwanda (ICTR) upheld the life imprisonment sentence for former government official Emmanuel Nindabahizi. The war crimes tribunal had originally sentenced him for his actions in the genocide in Rwanda in 1994. The ICTR, which sits in Arusha, Tanzania, reviewed the 2004 conviction of the former Rwandan finance minister for genocide and for extermination as a crime against humanity stemming from events in Gitwa Hill, part of Kibuye Prefecture in western Rwanda, in April 1994. At the first trial, evidence was presented to show that thousands of Tutsis had taken refuge there and were murdered by Hutus who were urged by Nindabahizi to attack them. The former minister also was accused of distributing weapons and providing transportation for the attackers. While the ICTR appeals judges overturned the convictions for genocide and murder as a crime against humanity in connection with one particular killing at a road block, they stated that Nindabahizi's overall criminal conduct was so serious that the life sentence should remain. The former minister had pled not guilty to the original charges; he had been arrested in Belgium in 2001 and subsequently transferred to the U.N. detention center in Arusha. No decision has yet been made as to where he will serve his sentence. (Press Release, ICTR, [Appeals Chamber Confirms Nindabahizi's Sentence to Life Imprisonment](#) (Jan. 16, 2007); Rwanda: UN Genocide Tribunal Upholds Life Sentence for Ex-Finance Minister, UN News, Jan. 16, 2007.) (Constance A. Johnson)





## Immigration and Nationality Law

### MEXICO -- Recommendation Regarding Undocumented Immigrants

On November 17, 2006, the President of the National Commission of Human Rights of Mexico, José Luis Soberanes Fernández, signed General Recommendation No. 13/2006 on the Practice of Verification of Illegal Immigrants. The General Recommendation was directed to

the Secretaries of the Interior, of National Defense, of the Navy, the Attorney General of the Republic, governors of all states in the Mexican Federation, and the head of the Federal District government. It states that these officials must give express instructions to the public servants in these entities and in the Federal Agency of Investigation to abstain from carrying out immigration verification practices outside of the law, against foreigners in the national territory and, in addition, to cease immediately all detentions derived from them, and to collaborate with Mexico's National Migration Institute (NMI) when required by law.

In background notes, Soberanes Fernández states that between January 2005 and September 2006, the National Commission of Human Rights processed dozens of complaints concerning illegal immigration verifications attributed to these authorities. Fifty cases alleging violations of the human rights of the undocumented immigrants were ordered to undergo conciliation with the NMI. Authorities against whom the charges were made accepted the solutions resulting from this process. The President of the Commission emphasized that undocumented immigrants are usually defenseless and prone to abuse and violations of human rights, especially in the case of women and children.

The General Recommendation cites several legal instruments that support it: the Political Constitution of Mexico (articles 1, 11, 14, and 16); the General Law of Population of Mexico (articles 7, 64, 151, and 156; and article 196 of its Regulation); the International Convention on Elimination of All Forms of Racial Discrimination; the United Nations Declaration on the same subject; Convention 111 of the International Labor Organization on Discrimination in Employment; the Convention on the Elimination of All Forms of Discrimination against Women; the International Pact of Civil and Political Rights; the American Convention on Human Rights; and the Convention on the Conditions of Foreigners; among others.

The General Recommendation indicates that the only authorities empowered by the laws of Mexico to exercise acts of immigration review towards foreigners in the country are the NMI and the Federal Preventive Police. No other federal, state, or municipal institution has the authority to carry out immigration verifications. (*Diario oficial de la federación*, Dec. 11, 2006, at 75-82; GLIN ID # 189311)  
(Sandra A. Sawicki)



**RUSSIA – New Rules for Employment of Foreigners**

On January 15, 2007, the Regulation of the Russian Federation Government, aimed at implementing the provisions of newly passed amendments to Russian migration legislation that restrict labor activities of foreign individuals in Russia, entered into force. This regulation establishes a new procedure for the issuance of work permits for those individuals who are visiting Russia without a visa who are not subject to labor quotas applicable to foreigners. If such individuals want to work in Russia, they have to submit an employment application to a migration service agency with accompanying documents, including a proof of registration as a taxpayer and a certificate proving that they are HIV negative and have no drug addiction. A work permit will then be issued within ten days, provided the foreign individual is eighteen years of age or older. After receiving the permit, the foreigner is free to look for employment. If employment is not found within ninety days of arrival in the country, the foreigner must leave Russia. The only job-related restriction included in the government regulation is the prohibition on foreigners selling alcoholic beverages and medicines in the retail market. (Government Regulation No. 681, Rossiiskaia Gazeta (official newspaper of the Russian Government), Nov. 16, 2006.)

(Peter Roudik)



## Intellectual Property

### **KOREA, SOUTH – Starbucks vs. Starpreya in Trademark Dispute**

The Supreme Court of South Korea affirmed the patent court's ruling against Starbucks Corporation in a trademark dispute with a local company, Elpreya. Elpreya registered the trademark "Starpreya" and a logo. The logo uses a green donut-shaped rim with the mark. The fonts are different, but, except for the "preya" part of the trademark, the outer rim design is almost the same as that of the Starbucks logo. The Starbucks logo has a mermaid against a black background; Starpreya has a portrait of a goddess against a black background. The patent court stated in March 2005 that both of the trade names are composed of two combined words that are not likely to be used detached from the other; that the common word "star" is a general term; and that the characters inside the logos are different. (Shohyo sosho [Trademark case], Chosun Newspaper, Jan, 13, 2007.)  
(Sayuri Umeda)

### **UNITED STATES – Patent Licensees May Seek Declaration of Patent Invalidity Without First Violating License Agreement**

On January 9, the Supreme Court ruled that, contrary to lower court precedent, a licensee paying royalties under a patent license agreement may seek a declaratory judgment in federal court that the patent is invalid, unenforceable, or not being infringed.

The U.S. Court of Appeals for the Federal Circuit, which enjoys exclusive intermediate appellate jurisdiction over patent matters, had previously held that under the "case or controversy" requirement of Article III of the U.S. Constitution, which limits the jurisdiction of federal courts to concrete disputes between parties, patent licensees who wished to challenge the validity of a patent had to first violate their licensing agreement before filing suit.

Petitioner MedImmune, Inc., entered into a license agreement with respondent Genentech, Inc. to use a technology for which Genentech was seeking a patent, and agreed to pay royalties on sales of "licensed products" under the agreement. After Genentech's patent application was granted, it demanded that MedImmune make royalty payments under the agreement, which MedImmune agreed to do "under protest and with reservation of all [its] rights." MedImmune filed suit for declaratory relief that the patent was invalid and royalties were not due under the contract. The district court granted Genentech's motion to dismiss for lack of subject-matter jurisdiction, relying on the Federal Circuit's case law providing that a patent licensee cannot establish an Article III case or controversy without violating the agreement. The Federal Circuit affirmed, and the Supreme Court granted certiorari to review the case.

The Court held that the case or controversy requirement under Article III does not prohibit suits on the validity, enforceability, or noninfringement of patents by parties paying royalties under a licensing agreement. The Court ruled that because a patent licensee's payment



of royalties is coerced by a threatened enforcement action by the patent-holder, the courts possess "case or controversy" jurisdiction over a declaratory judgment action to resolve a dispute over the patent. ([MedImmune, Inc. v. Genentech, Inc.](#), No. 05-608 (Jan. 9, 2007).)  
(Luis Acosta)



## International Relations

### LIBYA – Threat of a European Boycott

On January 18, 2007, the European Parliament sent Libya a stern warning threatening to reconsider the relationships between its Member States and Libya if Libya did not release the five Bulgarian nurses and a Palestinian physician who are facing the death penalty in that country. The European Parliament urged its members to reconsider their relationships with Libya in every respect to ensure the release of the nurses, after Bulgaria became a member of the European Union in January. (Threat of a European Boycott [in Arabic], Al-Sharq al-Awsat, Jan. 19, 2007.)

(Issam Saliba)

### NICARAGUA/IRAN – Full Diplomatic Relations & MOU

On the occasion of Iranian President Mahmud Ahmadinejad's visit to Nicaragua to attend the presidential inauguration of President Daniel Ortega, the Nicaraguan Secretary of Foreign Relations, Samuel Santos, announced that Nicaragua and Iran will re-open embassies in their respective capitals. The Presidents of both nations signed a Memorandum of Understanding calling for the eradication of poverty and illiteracy in Nicaragua. The Memorandum also includes the cooperation of Iran in the construction of a dam for the production of hydroelectric energy, the construction of irrigation systems, studies on the construction of ports, automobile assembly projects, cement industry projects, housing construction, agricultural industry, education, and free trade. (Filadelfo Alemán, Presidente Iraní Ofrece Amplio Apoyo a Nicaragua & Irán y Nicaragua Firman Memorando de Entendimiento, La Prensa, Jan. 14, 2007.) (Norma C. Gutiérrez)

### PORTUGAL/INDIA – Treaties Signed

On January 11, 2007, during a visit to India, Portuguese President Anibal Cavaco Silva and Indian Prime Minister Manmohan Singh held talks on a bilateral extradition treaty. A treaty was subsequently signed by Portuguese Minister of State for Foreign Affairs Joao Gomes Cravinho and Indian Minister of State for External Affairs Anand Sharma. The treaty aims to control transnational crimes, providing for the prosecution of fugitives from the law and the handing over of such criminals to their country of origin.

The two countries also signed agreements involving cooperation in the fields of culture, education, language, science and technology, sports, and media as well as cooperation between the youth of the two countries. ([India, Portugal Sign Extradition Treaty, Three Pacts](#), mangalorean.com, Jan. 12, 2007; [India, Portugal Sign Extradition Treaty](#), THE TIMES OF INDIA ONLINE, Jan. 12, 2007.)

(Eduardo Soares)



## Public Welfare

### ISRAEL – Benefits for Needy Holocaust Survivors

On January 2, 2007, the Knesset (Israel's parliament) passed the Benefits for Needy Holocaust Survivors Law, 5767-2007. The Law authorizes the grant of various benefits to applicants recognized as "needy holocaust survivors." Such benefits include public housing, exemption from dues imposed on TV holders, and a subsidy of fifteen percent of the average personal yearly income. In addition, the Minister of Justice is authorized to put a cap on the fees that can be paid to attorneys for handling applications under this Law. The Law defines "a needy holocaust survivor" as a person who is an Israeli citizen and resident and who, although having received some holocaust survivor payments under German law, is not entitled to a monthly stipend from the Federal Republic of Germany or to benefits under a list of four other specified Israeli laws. (Needy Holocaust Survivors Law, 5767-2007, the Knesset Web site.)  
(Ruth Levush)

### LESOTHO – New Policy to Help Orphans, Vulnerable Children

On January 3, 2007, it was reported that the Lesotho government has approved a policy to care for its growing population of orphans and vulnerable children (OVC). According to Itumeleng Kimane, a senior lecturer at the National University of Lesotho, who compiled a report on OVC for the government in 2004:

The policy comes at a time when, irrespective of gender, orphaned children are exposed to various forms of abuse and exploitation, including ... prostitution, sexual abuse, child labour, early marriage, maltreatment and neglect by caretakers, poor health and inability to access and afford essential services.

Kimane stated that there are 180,000 OVC in Lesotho, more than half of whom were estimated to have lost their parents to HIV/AIDS. Reportedly about one in five adults in Lesotho is infected with HIV.

The policy complements the Child Welfare and Protection Bill, expected to be enacted in 2007, which consolidates and reforms the current legislation on child welfare and protection. The policy will reportedly cost about US\$1.3 million a year for the next five years. It seeks to provide free education, health services, and sports and recreation facilities for the children and establish small-scale businesses to make them and their caregivers economically self-sufficient. Implementation of the policy has already begun, according to Sefora Makepe Tsiu, UNICEF's Social Policy Officer, and a new national system to register orphans is to become operational soon.

The policy also includes provisions to regulate places of safety. At present these may be makeshift homes set up by individuals and operated without any guidelines, described as often exposing children to "further vulnerability, abuse and neglect." In addition, the government



must now ensure that all actions concerning OVC, no matter which institution, court, administrative authority, or legislature undertakes them, observe the principle of “the best interest of the child.” (New Policy to Help Orphans and Vulnerable Children, UN Integrated Regional Information Networks NEWS, Jan. 3, 2007.)  
(Wendy Zeldin)





## Religion

### EGYPT – Withdrawal of Book Justifying Killing of Christians

The Egyptian Ministry of Religious Affairs declared on January 17, 2006, that it had decided to withdraw the copies of a book it published that includes statements justifying the killing of Christians. The Ministry said that the content of the book is completely wrong and contradicts the teachings of Islam. It also confirmed that the Ministry is sensitive to protecting the feelings of the Christians in Egypt and their religious beliefs. (Withdrawal of a Book Permitting the Killing of Christians [in Arabic], An-Nahar, Jan. 17, 2007.)  
(Issam Saliba)

### ENGLAND AND WALES – Religious Hatred and the Racial and Religious Hatred Act 2006

In 2006, the British government extended the offense of incitement of racial hatred to cover religious hatred. The Act, which is due to come into force in early 2007, provides that it is an offense to “knowingly use threatening, abusive, or insulting words or behaviour with the intention or likelihood to stir up religious hatred.” In combination with the upcoming implementation of this Act and the attacks on Muslims after the July 7, 2005, bomb attacks in London, the Association of Chief Police Officers implemented a program to record the religion of hate crime victims. The statistics show that Jewish individuals are four more times more likely to be subject to an attack due to their religion than Muslim individuals. The aim of recording these statistics is to obtain “a clear picture of alleged community tensions around the country.” (Racial and Religious Hatred Act 2006, c. 1; Tom Harper & Ben Leapman, [Jews Far More Likely to Be Victims of Faith Hatred Than Muslims](#), The Sunday Telegraph (London), Dec. 17, 2006.)  
(Clare Feikert)

### GREAT BRITAIN – Catholic Adoption Agencies Not Exempted from Anti-Discrimination Laws

Despite strong lobbying from Catholic groups in Great Britain protesting efforts to have Catholic adoption agencies comply with the new anti-discrimination Equality Act and handle adoptions of infants and children by gay couples, Prime Minister Tony Blair has announced that there will be no exemption. Protestors had argued that Catholic adoption agencies could continue their policy of referring gay couples to other agencies; however, the Prime Minister has stated that “there can be no exemptions for faith-based adoption agencies offering public funded services from regulations that prevent discrimination.” ([No Exemption from Gay Rights Law](#), BBC News, Jan. 28, 2007.)  
(Clare Feikert)



**INDIA – Anti-Conversion Law**

The state assembly of the Indian state of Himachal Pradesh passed legislation named the “Freedom of Religion Bill” on December 29, 2006. Under the legislation, anyone found guilty of forcibly converting another person to any faith except Hinduism could be put in prison for up to two years and/or fined up to 25,000 rupees (US\$565). It also requires a person wishing to convert to another religion to give at least 30 days prior notice to the district government. Failure to provide such notice would subject the individual to a fine of 1,000 rupees (US\$23). The bill is now awaiting the signature of the governor to become law. In India, eight state legislatures including Himachal Pradesh have passed similar legislation, and five states have signed such bills into law. (*Himachal Pradesh Passes Anti-Conversion Legislation*, DailyIndia.com (Dec. 30, 2006).)

(Shameema Rahman)



## Science and Technology

### CHINA – Draft Regulations on Software and IC Industry Development

China's Ministry of Information Industry has drafted a twelve-chapter set of regulations on the development of software and integrated circuit industries. The contents comprise general provisions, plan guidance, tax incentives, technology innovation and industrialization, market promotion, investment and financing, safeguarding of talent, standards and intellectual property, promotion of ventures, industrial bases, industrial administration, and legal liability. ([MII Finishes Draft of Regulations on Software and IC Industries Development](#), Jan. 11, 2007; Bu Chanpin Si Chen Ying fu sizhang jiedu ruanjian yu jicheng dianlu chanye fazhan guanjian zhengce [Chen Ying, Deputy Head of the [Information] Product [Management] Department of the Ministry [of Information Industry], Explains Key Policies of Software and Integrated Circuit Industry Development], Jan. 9, 2007.)  
(Wendy Zeldin)



# Taxation

## CHINA – Land Use Tax Increased

On December 31, 2006, the State Council (Cabinet) issued the Decision on Amendments to the Interim Regulations of the People's Republic of China on Land Use Tax in Cities and Towns; the Decision was effective as of January 1, 2007. The Interim Regulations were promulgated by the State Council on September 27, 1988. The aim of the amendments is to increase tax revenue from land used for construction purposes and to constrain overheating in the market for such land.

One of the amendments adds a definition of “units” and “individuals” to an article stipulating that units and individuals that use land in cities, towns, and industrial and mining areas will be land-use taxpayers and pay land-use tax. A second amendment revises the annual land use tax rates per square meter. For example, in large cities, the rate will be from 1.5 to 30 yuan (about US\$0.19 to \$3.86) (it was formerly from 0.5 to 10 yuan), whereas in county towns, organic towns, and industrial and mining areas it will range from 0.6 to 12 yuan (about US\$0.08 to \$1.55) (formerly 0.2 to 4 yuan).

The third amendment states that the implementation measures for the Interim Regulations will be formulated by people's governments of provinces, autonomous regions, and municipalities under the direct control of the Central Government; it omits references to interpretation of the Interim Regulations resting with the Ministry of Finance (MOF) and to reporting of the implementation measures to the MOF for the record contained in the previous regulations. (The State Council Makes Use of Taxation Policy to Tighten Macro-Control on Land, 1 *iSinolaw Weekly* (Jan. 1-Jan. 7, 2007), Webmaster @isinolaw.com; Zhonghua Renmin Gongheguo cheng zhen tudi shiyong shui zhanxing tiaoli, Zhonghua Renmin Gongheguo xianxing falü xingzheng fagui huibian [Collection of Current Laws and Administrative Regulations of the People's Republic of China] 1174 (2002); Provisional Regulations of the PRC on Land Use Taxes Applicable to Cities and Towns, 5 Statutes and Regulations of the People's Republic of China 880927 (1987-).)  
(Wendy Zeldin)

## TAIWAN – Proposed Tax Deductions Rejected

On December 18, 2006, Taiwan's Ministry of Finance (MOF) pledged it would initiate tax reform measures in early 2007, but rejected a proposed legislative amendment to article 17 of the Tax Law that would have made it easier for Taiwan taxpayers to take deductions from their taxable income. The bill, which was proposed on December 18, listed a wide range of expenses as tax deductible, including rent, financial support for culture-related activities, book purchases, tuition for continuing education courses, expenses for information technology equipment, and childbirth expenses. According to an MOF estimate, if the legislation became law, it would cost the national coffers some NT\$70 billion (about US\$2.1 billion) in tax revenue. Minister of Finance Ho Chih-chin contended that setting forth tax-deductible expenses at random was not



the way to alleviate the tax burden, particularly since “[r]ight now, about 12.5 million people out of Taiwan’s 23 million do not have to pay taxes in the first place,” so that “[l]isting different expenses as deductible makes no difference to them.” The MOF is currently drafting a proposed overhaul of the tax system, to be submitted within three months, which Ho stated would be a better means of reducing the tax burden. The proposal reportedly calls for better control of tax incentives, reduction of tax rates, and broadening of the tax base.

In a related development, during the week before the above-mentioned amendment to the Tax Law was proposed, the legislature’s Finance Committee passed a bill proposing an increased tax deduction for children receiving a college education. Under the bill, a deduction of NT\$25,000 (about US\$770) would be allowed for each child receiving a college education as well as for each child between three to five years of age. The current deduction is NT\$25,000 for each household. It is estimated that the measure, if adopted, could cost the treasury NT\$4 billion (about US\$123 million) in tax revenue. (Ministry of Finance Pledges Tax Reforms, *The China Post*, Dec. 19, 2006, Open Source Center No. CPP20061219968015.)  
(Wendy Zeldin)



## Terrorism

### **EUROPEAN UNION - Court of First Instance Set to Re-Examine Inclusion of the Kurdistan Worker's Party (PKK) on the EU List of Terrorist Organizations**

In 2002, the Council of the European Union included the Kurdistan Worker's Party (PKK) on a list of terrorist organizations and ordered the freezing of its funds. An action was subsequently filed before the Court of First Instance to annul the decision. The applicants were Mr. Osman Ocalan, on behalf of the PKK, and Mr. Serif Vanly, on behalf of the Kurdistan National Progress Party (KNK). In February 2005, the Court declared the case inadmissible, on the grounds that the KNK was not individually affected by the Council's decision. It also had ruled that Ocalan had not proven that he represented the PKK, because according to statements made before the Court, the PKK no longer existed. Both applicants appealed their case before the European Court of Justice (ECJ).

On January 18, 2007, the ECJ decided that the Court of First Instance rightfully dismissed Vanly's application on behalf of the KNK, because it failed to satisfy the requirements for annulment. However, the ECJ did not agree with the lower court's dismissal of the case based on the ground of inadmissibility of the Ocalan application. The ECJ held that the Court of First instance wrongly concluded that the PKK did not exist and consequently that it could not be represented. Regarding the PKK's legal standing before the Court, the ECJ held that because the organization was subject to restrictive measures, it could not be argued that it lacked existence to contest such measures at the EU level.

Consequently, the ECJ remanded the case to the Court of First Instance, which must rule on the merits of the Ocalan application in order for the PKK to be kept on the list. (Rapid Press Release CJE/07/3, [The Court of First Instance Must Reexamine the Inclusion of the PKK on a List of Terrorist Organizations](#) (Jan. 18, 2007).)  
(Theresa Papademetriou)

### **EUROPEAN UNION - Possible Sanctions Against EU Members That Cooperated with CIA on Renditions**

In its final report adopted on January 23, 2007, the EU parliamentary committee assigned to investigate the U.S. Central Intelligence Agency's activities in Europe urged the imposition of sanctions against those Member States that assisted the CIA in its efforts to capture, detain, and interrogate alleged terrorists in secret camps. The report also criticizes the EU Council for lying to parliamentarians and urges the Council and the European Commission to begin hearings and punish EU Members "in case of a serious and persistent breach of human rights." Among the countries mentioned in the report are Austria, Italy, Poland, and the United Kingdom. The Committee was also critical of the Council for failing to provide key documents on renditions flights. (MEPs Roast EU Members and Solana for "Lies" on CIA, EU Observer, Jan. 23, 2007.)  
(Theresa Papademetriou)



## **NETHERLANDS – Amendment to Prevent Terrorists from Abusing Income Transparency Law**

It was reported on January 10, 2007, that the Dutch law on disclosure of top incomes of public officials is being amended by the Minister of Interior on the advice of the Netherlands' national counterterrorism coordinator, to prevent terrorists from being to easily deduce from the compulsory disclosure of such income which ministers and officials receive extra protection. A 2006 amendment to that law means that the "Balkenende norm" (named after Jan Peter Balkenende, Prime Minister of the Netherlands) for maximum pay for (semi-)public sector employees, which was €158,000 (about US\$205,500) in 2005 with 1,080 such employees earning more than that figure, will rise. Three ministers (Finance, Economic Affairs, and Foreign Affairs) were among those personages receiving the higher-than-average salary. The Interior Ministry is to determine in mid-February the level of the norm applicable to the reporting for 2006.

Ministers are compensated, for example, for the obligatory use of armored official cars, even outside working hours and, due to a change in Dutch tax legislation in effect from January 1, 2006, through which present and future security costs incurred were thenceforth to be recorded, the compensation was "to increase considerably." Thus, "[b]ecause the security measures for some ministers and top officials are included in the compensation, it becomes clear at a stroke to the outside world to whom the extra protection applies." (Netherlands Seeks to Prevent Terrorists from Abusing Income Transparency Law, NRC Handelsblad, Jan. 10, 2007, Open Source Center No. EUP20070111024006.)

(Wendy Zeldin)

## **PAKISTAN – Death Sentences in Assassination Convictions Upheld**

On September 25, 2006, the Supreme Court (SC) of Pakistan dismissed the appeals of all twelve convicts charged with the attempt to assassinate President Pervez Musharraf. The SC upheld the death penalty sentences awarded to them in a trial by a military court. The twelve had been arrested for their involvement in two abortive assassination attempts on the life of the President in December 2003.

The military court that conducted the trial had held the accused to be guilty of the charge and awarded all of them the death penalty. Subsequently, the Lahore High Court (LHC) dismissed the defendants' challenge against conviction and the sentences handed down by the military court on the ground that, under article 199 of the Constitution of Pakistan, the LHC had no appellate jurisdiction for issuance of writs against orders passed by military courts.

In their final appeal before the SC, the appellants impugned the order of the LHC on the ground that they should have been charged under section 131 of the Pakistan Penal Code, 1860, for an offense relating to mutiny. In dismissing the twelve appeals, the SC observed, "[f]or reasons to be recorded later, the impugned order of the Lahore High Court is maintained and,





consequently, the appeals are dismissed.” (Apex Court Upholds Death Sentence, The Dawn, Sept. 26, 2006.)  
(Krishan Nehra)

### **SWITZERLAND – Trial of Five Al Qaeda Supporters Begins**

On January 22, 2007, the first trial against Al Qaeda supporters in Switzerland commenced before the Federal Criminal Court of Switzerland, with the Swiss federal prosecutor bringing charges against five citizens of Yemen, one Iraqi, and one Somali. Three of the accused from Yemen allegedly had assisted Al Qaeda members, among them Abdullah al Rimi, who participated in the attacks on the U.S.S. Cole in October 2000 and in the Attentat of May 12, 2003, in Riyadh. One of these accused had prepared false passports for al Rimi, to be used in planned terrorist attacks on U.S. military aircraft in Ad-Dauha. The other two defendants have been accused of having assisted al Rimi through telephone calls and email communications, and also a small financial donation. The entire group had been active in human trafficking, smuggling illegal aliens into Switzerland, for which offenses they are also being charged. (Erster Prozess im Umfeld von Al-Kaida, Associated Press Worldstream - German, Jan. 5, 2007, LEXIS, NEWS Library, Zeitng File.)  
(Edith Palmer)



## Trade and Commerce

### ASEAN – Agreements Signed

On January 13, 2007, the first official day of the Twelfth Association of Southeast Asian Nations (ASEAN) Summit (January 10-15), leaders of the ten member countries (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam) signed five agreements in Cebu, the Philippines. Under the Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015, they agreed to turn their region into a free-trade zone by that date, in a two-stage process entailing integration by the six richer nations in 2010, followed by integration of the other member states. Also in connection with the creation of an ASEAN economic community, the leaders pledged to deepen energy cooperation to combat the effects of long-term high oil prices. The leaders signed the ASEAN Convention on Counterterrorism, which legally binds the member states to share information and provides for joint training against terrorism and cross-border crime. They also inked the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers and the Cebu Declaration Towards One Caring and Sharing Community. In addition, the body agreed to discuss a plan for a more cohesive organization that could sanction or even expel non-compliant members – the Cebu Declaration on the Blueprint for the ASEAN Charter. Heretofore ASEAN has operated by consensus, and while the member states have reportedly long supported having a joint charter, the new proposal to institute formal voting instead, as well as the possibility of sanctions or expulsion, may meet with opposition. ([ASEAN Leaders Sign Five Agreements at the 12th ASEAN Summit, Cebu, the Philippines](#), 13 January 2007 ASEAN Bulletin, Jan. 13, 2007; [Gloria Macapagal-Arroyo, Chairperson's Statement of the 12th ASEAN Summit: One Caring and Sharing Community](#) (Jan. 13, 2007).)

On January 14, at the Tenth ASEAN-China Summit, the two sides signed an agreement on opening up key services sectors, a move “towards creating what could be the world’s biggest free trade zone.” The agreement will become effective in July and is reportedly viewed as “a vital step” in the establishment of a China-ASEAN free trade area by 2015. (China-Asean Deal on Services, *The Financial Times*, Jan. 15, 2007, at A1). Aside from conducting free trade agreement negotiations with China, ASEAN is conducting such talks with Japan, the Republic of Korea, India, Australia and New Zealand. At the summit, ASEAN and China also reached agreement on a five-year Plan of Action to augment cooperation in information and communications technology. The Plan is the implementation of the Beijing Declaration on ASEAN-China ICT Cooperative Partnership for Common Development adopted in May 2005. ([ASEAN and China Enhance Cooperation in ICT](#), Cebu, the Philippines, ASEAN Bulletin, Jan. 14, 2007; Gloria Macapagal-Arroyo, id.) (Wendy Zeldin)

### BRAZIL –Reinsurance Market Opened

On January 15, 2007, Brazil enacted Complementary Law No. 126, which promotes the opening of the reinsurance market in the country. The new law enables the private sector,



domestic and international, to participate in a segment that has been a monopoly of the government company Instituto de Resseguros do Brasil since 1939.

Aiming at increasing the competitiveness of the sector, the Law further defines the rules for actions involving joint insurance (the sharing of the risk of an insurance policy between two or more insurance companies) and retrocession (the transfer of the risks between reinsurance companies). (Alencar Sanciona Lei que Abre Mercado de Resseguros, JURID, Jan. 15, 2007.) (Eduardo Soares)

### **CANADA – Farmers to Vote on Barley Monopoly**

In recent years, there have been numerous disputes between Canada and the United States over trade in grains such as corn and wheat. Many of the United States' complaints have involved the operations of the Canadian Wheat Board (CWB). This state trading enterprise has a monopoly over wheat and barley that requires Canadian farmers to sell these grains to it. U.S. producers have often complained that the CWB unfairly subsidizes its exports. On the other hand, many Canadian farmers have long complained that they could get higher prices for their products if they were allowed to sell them on the open market. In January 2007, the Canadian government announced that it would conduct a poll to see if farmers want the CWB to keep its monopoly on barley trading. The poll will have three questions. Farmers will be asked whether they want to: 1) keep the monopoly; 2) have the CWB operate as an optional marketing enterprise; or 3) stop the CWB from selling barley altogether. The CWB has stated that the inclusion of the second option will render the vote "meaningless," as it will create the unrealistic expectation that the CWB will be able to offer the same returns if it loses its monopoly. (CWB, [Barley Plebiscite Meaningless with Three Options](#), CWB Web site, Jan. 22, 2007). Votes in the mail-in poll are due by March 6, 2007.

The poll will not affect the CWB's monopoly over wheat, and because barley only accounts for about ten percent of its revenues, the CWB is not likely to be substantially affected by the outcome. However, the Conservative government, which has strong western representation, has indicated it intends to hold another vote on wheat after the middle of 2008. The poll will not be binding, and the minority Conservative government will need some opposition support to make needed legislative changes to the Canadian Wheat Board Act (R.S.C. c. C-24 (1985), as amended). (Roberta Rampton, [Ottawa Gives Farmers Three Choices in CWB Vote](#), Reuters, Jan. 22, 2007.) (Stephen Clarke)

### **CHINA – Trial Measures on Brand Protection**

China's Ministry of Commerce (MOFCOM) issued the Trial Measures on the Appraisal and Protection of Brands in the Commercial Sphere on January 8, 2007, effective the same day. The Measures seek to give "special protection" to the intellectual property rights of commercial brands. The measures stipulate that imported goods infringing the intellectual property rights of brands granted by the MOC and harming the foreign trade process will be banned by the



MOFCOM. They further provide that if an enterprise having a brand granted by the MOFCOM encounters unfair competition or domain name disputes, the MOFCOM will coordinate with related agencies for a settlement in order to strengthen brand protection and transfer criminal suspects to judicial organs. If an enterprise with an MOFCOM-granted brand seriously harms consumer rights, has major problems with quality or safety-related accidents, seriously infringes on others' intellectual property rights, seriously disrupts market order, or engages in trickery and other improper methods to gain a brand name by fraud, MOFCOM will cancel the brand name and the enterprise will not be allowed to apply for a brand appraisal for a period of one to three years. ([MOFCOM Releases Trial Measures on Brand Protection and Appraisal, Intellectual Property Protection in China](#), Jan. 10, 2007; Shangwu lingyu pinpai pingding yu baohu banfa (shi xing) [Measures on the Appraisal and Protection of Brands in the Commercial Sphere (for Trial Implementation)], Ministry of Commerce Web site, Jan. 9, 2007.)  
(Wendy Zeldin)

### **COSTA RICA – PAC Legislators Give 87 Reasons for Opposition to U.S.-CAFTA**

Legislators of the Citizens Action Party (PAC) of Costa Rica who are members of the legislature's Committee on International Affairs presented a minority negative assessment of the ratification of the U.S.-Central America Free Trade Agreement (CAFTA). The report consists of 530 pages explaining under eight-seven headings the reasons why the U.S.-CAFTA is not good for the country. Among these reasons is the asymmetry between the United States and Costa Rica, which, according to the legislators, was not taken into account in a reasonable manner when the treaty was negotiated. (Esteban A. Mata Fonseca, PAC Expone 87 Razones Contra el TLC, La Prensa Libre, Jan. 11, 2007.)  
(Norma C. Gutiérrez)

### **EUROPEAN UNION - No Consensus Reached on Binding EU Code on Arms Exports**

A move spearheaded by the 2006 Finnish EU Presidency and the European Parliament to revive the new binding version of the 1989 EU Code on Arms Exports has been stalled by France. On January 17, 2007, a large number of Members of the European Parliament endorsed an initiative to put the EU Code on Arms Exports back on the agenda. However, France, which is considered among the top arms exporters to China, stated that the plan can go forward only on condition that the EU reviews the arms embargo imposed on China in the aftermath of the 1989 massacre in Tiananmen Square. The Parliament as well as Members of the EU Council disagree with France's stance on the EU Code and argue that there is no link between the two issues. It appears that the new draft will not be revisited until 2008. (France Blocking Plan for EU Code on Arms Exports, EU Observer, Jan. 18, 2007.)  
(Theresa Papademetriou)

### **GREAT BRITAIN – New Companies Act 2006**

In November 2006, the British Government enacted a new Companies Act that substantively overhauls the existing company law, containing more than 1,300 sections in over 760 pages. The new Act revises a number of fundamentals of company law provisions,



including how a company can be formed, how companies can make decisions, and safeguards to ensure accountability from company officers. The Act also, for the first time, provides that individuals disqualified from being a company director in another jurisdiction may be prohibited by the Secretary of State from being a director in Great Britain. The majority of the new legislation will be gradually brought into effect over the upcoming year by secondary legislation. (Companies Act 2006, c. 46.)  
(Clare Feikert)

### **MEXICO -- President Signs Accord to Limit Rising Tortilla Prices**

On January 18, 2007, President Felipe Calderon signed an accord with businesses to rein in soaring tortilla prices and protect Mexico's poor from speculative sellers and a surge in the cost of corn driven by the U.S. ethanol industry. The price of tortillas, which are a staple of the Mexican diet and especially crucial for the poor, rose by fourteen percent in 2006, more than three times the inflation rate. Prices have continued to surge in 2007.

The accord limits tortilla prices to 8.50 pesos (US\$0.78) per kilogram; some stores have been charging as much as 10 pesos (US\$0.91) per kilo. The pact also calls for the use of existing laws to impose prison sentences of up to ten years on company officials found hoarding corn. It also raises quotas for duty-free corn imports, most of which are expected to come from the United States, to 750,000 metric tons (826,733 U.S. tons). The measure is to be reviewed on April 30, 2007, for possible modifications.

“The unjustifiable price rise of this product threatens the economy of millions of families,” Calderon said. “We won't tolerate speculators or monopolists. We will apply the law with firmness and punish those who take advantage of people's need.”

Although the price rise is partly attributed to U.S. ethanol plants using up corn supplies and pushing prices as high as \$3.40 a bushel, the highest in more than a decade, Calderon also blames price gouging by Mexican middlemen. “The increases in the international corn market do not justify the tortilla hikes in this country in the last weeks,” he stated. Under the accord, the price of corn flour will be limited to 5 pesos (US\$0.46) per kilo; the price of corn itself is not to exceed 3.5 pesos (\$0.32) per kilo.

The agreement was signed by Mexico's major supermarket chains and tortilla bakers, including the world's largest tortilla maker, Gruma SA, based in Monterrey, Mexico. (El Presidente Calderón en la Firma del Acuerdo para Estabilizar el Precio de la Tortilla [President Calderon Signs Accord to Limit Rising Tortilla Prices], official Web site of the President of Mexico; Mexico Moves to Limit Rising Tortilla Prices, CNN.com, Jan. 18, 2007.)  
(Gustavo Guerra)



## **TAIWAN – Royalties for Foreign Technology Duty-Free**

Taiwan's National Tax Administration (NTA), under the Ministry of Finance, recently declared that the royalties or franchise fees paid by domestic manufacturers for the use of foreign technologies or products will enjoy duty-free status, provided they are officially approved for the exemption. The aim of the measure is to encourage the manufacturers to upgrade their manufacturing level by bringing in new technologies and pivotal products from abroad. Under existing regulations, there is a twenty- to twenty-five-percent business tax on royalties or franchise fees paid by domestic enterprises or corporations to their foreign clients. The manufacturers, especially those in electronics and high-technology industries, who often adopt foreign expertise and know-how, have protested the tax in the past.

The new tax measure permits Taiwan enterprises or corporations to apply for exemption from duty on royalties or franchise fees paid for newly developed foreign technology and products that can help the enterprise or corporation enhance its manufacturing level, upgrade product quality, or lower the manufacturing cost. Those manufacturers that have paid the tax before receiving approval for the exemption can apply for reimbursement within five years after obtaining the approval. (Judy Li, Taiwan Economic News: MOF Declares Duty Free on Royalties Paid for Foreign Technologies, The Taiwan Economic News, Dec. 19, 2006, Open Source Center No. CPP20061219392007.)  
(Wendy Zeldin)



## War

### NETHERLANDS – Code of Conduct for Armed Forces Personnel

On January 17, 2007, the 70,000 civilian and military personnel of the Dutch Defense Ministry reportedly received a copy of a new five-point code of conduct. General Dick Berlijn, Commander of the Armed Forces, drew up the code. It is apparently the first time that a uniform code of behavior has been prepared for all sections of the Armed Forces, and it is the announcement of a uniform code, more than the content, that is new. The code applies in free time as well as on the job, according to the Commander.

Issuance of the code comes in the aftermath of a report by the Staal Commission, which in 2006 investigated sexual intimidation, harassment, and discrimination in the Armed Forces as a result of an incident on the frigate Tjerk Hiddes. The report asserted that harassment and undesirable sexual behavior are more common in the military than in civilian organizations and called upon the Defense Ministry to increase its efforts to report and punish such behavior. Military trade unions have stressed that “broad support” of the code is necessary, and that while its content is not in dispute, the code’s success will depend on its implementation. (Netherlands Defense Ministry Issues Code of Conduct for Personnel, *Handelsblad*, Jan. 17, 2007, Open Source Center No. EUP20070118024001.)  
(Wendy Zeldin)

### UNITED NATIONS/NEPAL – Political Mission Established

On January 23, 2007, the United Nations Security Council (UNSC) established a U.N. political mission in Nepal (UNMIN) to oversee the country’s peace process. That process was inaugurated after a historic agreement was reached in November 2006 by Maoist rebels and the Nepal government to end ten years of civil war.

In its unanimous resolution, the UNSC decided that the UNMIN will have a twelve-month mandate that can be terminated or extended at the request of the Nepal government. The mission will be headed by a Special Representative of the U.N. Secretary-General. It will manage arms and armed personnel of both the government and the Maoists and also support elections to a Constituent Assembly planned for 2007. The latter is to include not only technical support for planning, preparation, and conduct of the elections, but also provision of a team of electoral monitors to review the technical aspects of the electoral process and report on the conduct of the elections, the resolution stated. The UNSC also called for “special attention” to be paid in the peace process to the needs of women, children, and groups that have traditionally been marginalized in Nepal. ([UN Security Council Establishes Political Mission in Nepal](#), eKantipur.com, Jan. 24, 2007.)  
(Wendy Zeldin)





## Index

|  |                    |                      |                |
|--|--------------------|----------------------|----------------|
| ASEAN .....                                | 56                 | Kenya .....          | 17             |
| Australia .....                            | 39                 | Korea, North .....   | 5              |
| Austria .....                              | 39                 | Korea, South .....   | 43             |
| Bahamas .....                              | 13                 | Lesotho .....        | 46             |
| Bangladesh .....                           | 13, 30             | Libya .....          | 45             |
| Brazil .....                               | 26, 56             | Malawi .....         | 20             |
| Canada .....                               | 6, 57              | Maldives .....       | 31             |
| China .....                                | 24, 28, 50, 51, 57 | Mexico .....         | 32, 36, 41, 59 |
| Columbia .....                             | 14                 | Nepal .....          | 32, 61         |
| Costa Rica .....                           | 26, 58             | Netherlands .....    | 11, 54, 61     |
| Cuba .....                                 | 15                 | Nicaragua .....      | 45             |
| Egypt .....                                | 30, 48             | Nigeria .....        | 8              |
| England and Wales .....                    | 48                 | Pakistan .....       | 54             |
| Estonia .....                              | 10                 | Peru .....           | 9              |
| Ethiopia .....                             | 39                 | Portugal .....       | 45             |
| European Union .....                       | 10, 29, 53, 58     | Romania .....        | 21             |
| Fiji .....                                 | 15                 | Russia .....         | 42             |
| France .....                               | 9, 36, 40          | Rwanda .....         | 40             |
| Germany .....                              | 16, 27             | Sudan .....          | 22             |
| Great Britain .....                        | 48, 58             | Switzerland .....    | 55             |
| Hong Kong .....                            | 36                 | Taiwan .....         | 18, 19, 51, 60 |
| ICTR .....                                 | 40                 | Thailand .....       | 22             |
| India .....                                | 31, 45, 49         | Turkmenistan .....   | 22             |
| International Court of Justice (ICJ) ..... | 7                  | UNHCR .....          | 12             |
| Iran .....                                 | 10, 16, 45         | United Nations ..... | 25, 61         |
| Iraq .....                                 | 16                 | United States .....  | 18, 33, 37, 43 |
| Israel .....                               | 17, 21, 46         | Uzbekistan .....     | 12, 34         |
| Italy .....                                | 12                 | Zimbabwe .....       | 25             |
| Japan .....                                | 19, 20             |                      |                |

