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Rubens Medina
Law Librarian of Congress

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Abortions

KOREA, SOUTH – Legalizing Abortion to Be Considered

The South Korean Ministry of Health and Welfare drafted a new policy in late 2007 to seek more realistic measures to address the growing number of abortions in the country. These measures include changing the law that restricts abortions with criminal sanctions. The Ministry held a hearing on February 13, 2008. There is strong opposition to legalizing abortion in the country. Some experts believe, however, that legalizing abortion will not lead to an increase in abortion, because some countries with looser regulations, such as Japan, Australia, and Canada, have a lower rate of abortion than Korea does. (*Jinkō ninshin chūzetsu no kyoyō hani kakudai meguri ronsō* [Arguments over scope of legalized abortion], CHOSUNILBO, Feb. 14, 2008.) (Sayuri Umeda)



Administrative Law

CHINA – Clearance of Administrative Regulations and Rules

The State Council of China issued the State Council Decision on Abolishing Some Administrative Regulations (*Guowuyuan guanyu Feizhi Bufen Xingzheng Fagui de Jueding*, the Decision) on January 23, 2008; it takes effect upon publication. According to the Decision, the State Council has reviewed all 655 administrative regulations it issued up to the end of 2006, among which 49 were abolished. Another 43 were declared invalid. (The Central People's Government of the People's Republic of China (PRC) Web site.)

The State Council review is one of the achievements of a broader project to prune administrative regulations and rules. The project was launched in February 2008, when the State Council circulated the Notice of the General Office of the State Council on the Work of Clearing Out Administrative Regulations and Rules (*Guowuyuan Bangongting guanyu Kaizhan Xingzheng Fagui Guizhang Qingli Gongzuo de Tongzhi*, http://www.gov.cn/zwgk/2007-03/08/content_545924.htm (last visited Mar. 7, 2008), the Notice). The Notice states that the State Council, the departments of the State Council, provincial-level governments, and governments of big cities will review the administrative regulations and rules they issue, to abolish those whose main content has been replaced by new laws or regulations, to pronounce invalid those that have expired or are out-of-date, and to amend those that contain some clauses that are inconsistent with laws and regulations.

As another part of the project, on January 29, 2008, the PRC Ministry of Commerce (MOC) abolished four administrative rules issued by itself or its predecessor, the Ministry of Foreign Trade and Economic Cooperation, and announced that another two were invalid. (The MOC Decision on Abolishing and Announcing Invalid Six Administrative Regulations (*Shangwubu guanyu Feizhi he Xuanbu Shixiao Liuge Guizhang de Jueding*), http://www.gov.cn/flfg/2008-02/29/content_905863.htm (last visited Mar. 7, 2008).) Prior to this, several other departments of the central government completed their clearance of regulations. The State Environmental Protection Administration (SEPA) decided to abolish or amend seven rules and documents on October 8, 2007. (The SEPA Decision on Abolishing and Amending Some Administrative Rules and Normative Documents (*Guanyu Feizhi Xiugai Bufen Guizhang he Guifanxing Wenjian de Jueding*), SEPA official Web site.) The Legislative Affairs Office (LAO) of the State Council vowed to clear administrative regulations periodically in the future. (*Official in Charge of the State Council LAO Answered Questions of Journalist on the Decision on Abolishing Some Administrative Regulations* (*Guowuyuan Fazhiban Fuzeren jiu Guowuyuan guanyu Feizhi Bufen Xingzheng Fagui de Jueding Da Jizhe Wen*), http://www.gov.cn/zwhd/2008-01/23/content_864561.htm (last visited Mar. 7, 2008).) (Laney Zhang)



Agriculture

PERU – Promotion of the Organic or Ecological Production

Law No. 29196 promulgated on January 24, 2008 adopts provisions to promote the sustainable and competitive development of organic or ecological production in Peru. The specific objectives of this Law are to: encourage and promote the organic production to overcome poverty; provide food guaranty and the conservation of ecosystems and biological diversity; develop and motivate the organic production as an alternative for the economic and social development of the country; assist in the improvement of the quality of life for producers and consumers and help overcome poverty; define the functions and jurisdictions of the institutions responsible for the promotion and control of the organic production; and strengthen the “Sistema Nacional de Fiscalizacion y Control de la Produccion Organica” (National System of Supervision and Control of the Organic Production) to guarantee the condition of organic produce in domestic and foreign markets.

The law creates the “Consejo Nacional de Productos Organicos” (CONAPO)

[National Council of Organic Products] to propose policies and norms of sustainable development for the encouragement and promotion of organic production; and the “Consejos Regionales de Productos Organicos” (COREPO) [Regional Councils of Organic Products] to strengthen organic production and become the link with the CONAPO for the development of the Coordinated National Plan for the Promotion and Encouragement of the Organic or Ecological Production.

As an incentive to encourage regional and local governments to prioritize their support for organic or ecological production in their plans, programs, and projects, the “Banco Agropecuario” will grant loans to certified producers.

(Law No. 29196, Web site of the Congress of Peru, Jan. 29, 2008).
(Dario Ferreira)



Arbitration

INDIA – A Foreign Arbitration Award May Be Challenged

The Supreme Court of India has ruled that a suit in an Indian court is maintainable against a foreign arbitration award if the award contravenes public policy and the statutory provisions. In its ruling, the bench observed that the provisions of the Arbitration and Conciliation Act, 1996, would apply to the international commercial arbitrations held outside of India. Such provisions apply to international awards unless parties exclude their applicability by express or implied agreement.

The matter came up before the Supreme Court in a dispute that arose in 2005 between Venture Global Engineering (VGE) Incorporated of the United States and Satyam Computer Services Limited (SCSL) of India when they entered into a joint venture agreement in 1999 to constitute a company named Satyam Venture Engineering Services Limited. At the request of the Indian company, the London Court of International Arbitration (LCIA) appointed an arbitrator who directed VGE to transfer the shares to SCSL. Aggrieved, VGE filed a suit in India to set aside the award, and the trial court granted an interim order of injunction restraining SCSL from seeking or affecting the transfer of shares under the terms of the award. Upon appeal by SCSL, the High Court of Andhra Pradesh suspended the trial court's order. Finally, the trial court dismissed the suit, and the appeal against the dismissal was denied.

The Supreme Court allowed the appeal against the order of the High Court and ordered the trial court to proceed with the suit. It directed the parties to maintain the status quo until the conclusion of the suit proceedings. (*Court: Suit Can Be Filed Against a Foreign Arbitration Award*, THE HINDU, Jan. 14, 2008, available at <http://www.hindu.com/2008/01/14/stories/2008011454281300.htm>.)
(Krishan Nehra)



Arts

TURKMENISTAN – Visits to Opera and Circus Are Allowed Again

On January 21, 2008, President Kurbanguly Berdymukhamedov of Turkmenistan repealed bans on opera and circus performances established in 2001 by his predecessor, who had believed that this kind of entertainment was unsuited to the Turkmen people and who had his own views about bringing Turkmenistan back to the roots of its culture. Although opera theaters and circus companies were not outlawed in the country, they remained open only for foreign visitors and the Russian ethnic minority. In issuing decrees that permit ethnic Turkmen to attend operas, the President wrote that the Turkmen deserve this kind of entertainment and cannot stay isolated from the rest of the world. These decrees appear to be in line with other measures, such as those permitting the return of major holidays traditionally celebrated during the Soviet era and those aimed at softening former isolationist policies. (5th Channel TV Station (in Russian), report published in ISI Emerging Markets database, Jan. 21, 2008.)
(Peter Roudik)



Capital Punishment

IRAN – Iran Bans Execution in Public

According to a directive issued by Iran's Chief of the Judiciary, no convicted criminal may be executed in public without the prior approval of the Head of the Judiciary, based on social requirements. The directive forbids publication of the photos of the execution procedure in the mass media. Public and Revolutionary prosecutors are responsible to see that the instructions issued regarding the execution of convicted criminals are fully observed. (*Iran Bans Execution in Public* (in Farsi), HAMSHAHRI, Jan. 30, 2008.)
(Gholam Vafai)



Children

ICELAND/COUNCIL OF EUROPE – Child Sexual Exploitation Convention Signed

On February 4, 2008, Iceland signed the Council of Europe's [*Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse*](#) (CETS No. 201). Thus far, 27 states have signed the Convention, but none have ratified it. (*Iceland Sings [sic] Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Feb 21, 2008)*, <http://www.legislationline.org> (last visited Mar. 4, 2008).)

(Wendy Zeldin)



Communications and Electronic Information

GERMANY – Earth Observation Satellites

On November 23, 2007, Germany promulgated the Act Protecting Against the Endangerment of German Security Through the Proliferation of High Resolution Aerial Imagery of the Earth (Satellitendatensicherheitsgesetz, BUNDESGESETZBLATT I at 2590). The entire Act became effective by December 1, 2007. The Act allows the German authorities to restrict the proliferation of high-resolution satellite imagery if such imagery could endanger the security of Germany or its allies. Such danger could arise, for instance, from providing images of strategically important areas that could be used for the targeting of weapons. In addition, the Act provides an overall regulatory framework for the commercial and scholarly distribution of satellite imagery (Gesetzesentwurf, Mar. 3, 2007, BUNDESTAG DRUCKSACHE 16/4763).

In June 2007, Terrasar X, a German earth observation satellite, commenced operations under the auspices of a German public-private partnership. The satellite is used for commercial and scientific applications. The satellite is in part based on U.S. technology, and its use therefore has to comply with U.S. security interests. The new German law intends to protect these interests by requiring distributors and users of satellite imagery to screen requested or obtained data for security aspects, and in cases of doubt, to ask for permission from the German authorities. (*Offener Himmel*, FRANKFURTER ALLGEMEINE ZEITUNG, Sept. 5, 2007, at N1.) (Edith Palmer)

GERMANY – Online Searches of Personal Computers

On February 27, 2008, the Federal Constitutional Court of Germany issued a decision on online searches of personal computers by the intelligence agencies (Docket No. 1 BvR 595/07, Federal Constitutional Court official Web site. The decision invalidated various provisions of the Act on Domestic Intelligence Agency of the State of North-Rhine Westphalia that were introduced in December 2006 and allowed the domestic intelligence agency of the state to infiltrate personal computers of individuals and store the data from the computers' hard drives (Gesetz zur Änderung des Verfassungsschutzes in Nordrhein-Westfalen, Dec. 20, 2006, GESETZ-UND VERORDNUNGSBLATT FÜR DAS LAND NORDRHEIN-WESTFALEN [Official Gazette of the State of North-Rhine Westphalia] at 620). Moreover, the decision appears to set restrictive standards for the laws on online searches that other German states and the German federation had been planning to enact (H. Jess, *Länder haben wenig Lust auf Online-Razzien*, FINANCIAL TIMES DEUTSCHLAND, Nov. 29, 2008, at 11, Lexis/Nexis, News Library/Zeitng File).

The decision has not prohibited the online collection of data by intelligence services from personal computers of individuals, but it has set high hurdles for such searches. The decision appears to create a constitutional right guaranteeing the integrity and confidentiality of information technology systems, and this makes online searches of personal computers and cell phones permissible only in extremely serious situations and under rigorous judicial scrutiny. According to these standards, it might be necessary for secretly retrieved online data to be



subjected to judicial scrutiny to sort out and erase data belonging to the private sphere of the individual before the remaining data could be passed on to intelligence agencies.

(Edith Palmer)

INDIAN OCEAN COMMISSION – Agreement on Telecommunications Fiber Cable

At a meeting held in mid-February 2008 in Addis Ababa, Indian Ocean islands agreed to be connected to each other and the rest of the world by fiber cable. The nations involved include Comoros, Madagascar, Mauritius, Reunion (a French region, not an independent state), and Seychelles. At present Mauritius and Reunion are connected to a cable system, and both governments have taken action to lower access costs. The purposes of the fiber project are to connect the rest of the islands and provide a level of redundancy to users of the cable system. The existing cable has sometimes been broken as a result of rough weather. The greatest demand for the service is expected in the future to come from Madagascar, which has the largest population. (*East Africa: Indian Ocean Islands Agree a Scheme [sic] to Connect Themselves by Fibre*, BALANCING ACT (London), Feb. 18, 2008, available at <http://allafrica.com/stories/200802190478.html>.)

(Constance A. Johnson)

PERU – Prohibition of Access to Minors to Pornographic Web Pages

Law No. 29139, promulgated on November 30, 2007, amends the title and articles 1, 2 and 3 of Law 28119, concerning prohibition of access by minors to web pages containing pornographic content, to chat forums, and to any other type of communication over internet involving pornographic subject matter and/or information considered a violation of decency and public morality, threatening their physical or psychological integrity, or affecting their personal or family intimacy.

Provisions of this law are applicable to establishments that offer public access to internet or other kinds of network communication and whose equipment can be used by minors. Parts of this law are also applicable to public institutions offering public internet service.

Owners, managers, or persons in charge of the above mentioned establishments are under obligation to install on every computer programs or special software to filter and block or by any other means to prevent the access of minors to prohibited web pages.

Municipalities, in coordination with the National Police of Peru, are responsible for supervising compliance with this law. Violations shall be punished with cancellation of the license of operation. Finally, managers of public internet rooms must keep a written registration of users. The regulation of this law shall state that minors are prohibited from admission to these rooms during school hours. (Law No. 29139, Web site of the Congress of Peru, Dec. 1, 2007.)

(Dario Ferreira)



UNITED STATES – Virginia Supreme Court Upholds Felony Spamming Conviction

On February 29, 2008 the Supreme Court of Virginia upheld the felony conviction of Jeremy Jaynes on three counts of violating the unsolicited bulk e-mail (“spam”) provision of the Virginia Computer Crimes Act.

Jaynes used computer systems in his home in North Carolina to send tens of thousands of unsolicited e-mail advertisements to customers of America Online, Inc. (“AOL”). Jaynes falsified the header information in the e-mails to conceal his identity from the recipients. Virginia law makes it a crime to send unsolicited bulk e-mail with such falsified routing information. Jaynes was convicted after a trial, and sentenced to nine years in prison. He appealed his conviction on several grounds.

The Supreme Court of Virginia found that Virginia had jurisdiction over Jaynes, even though he lived in, and sent the e-mails from, North Carolina, because AOL’s mail servers were all in Virginia and “the location of AOL’s servers was information easily accessible to the general public.” The court rejected Jaynes’ First Amendment “overbreadth” argument, stating that his false-header e-mails constituted misleading commercial speech and thus did not give him standing to assert First Amendment rights on behalf of theoretical third parties. The court also rejected Jaynes’ “void for vagueness” and “dormant Commerce Clause” arguments as well, stating that the statute was clear, and that the effects of the law on interstate commerce would be incidental. (Jaynes v. Virginia, No. 062388 (Va. Feb. 29, 2008) *available at* <http://www.courts.state.va.us/opinions/opnscvwp/1062388.pdf>.)
(Gary Robinson)



Constitutional Law

BOLIVIA – Constitutional Referendum

On February 28, 2008, the Bolivian Congress, in a vote boycotted by the opposition, approved the holding of a referendum on May 4 on a draft constitution drawn up by supporters of President Evo Morales. The vote surprised government and opposition committees that were negotiating constitutional amendments to reduce the central government's influence. Morales, Bolivia's first indigenous president, has alienated Bolivia's rich lowland regions, whose populations are largely of European descent or mixed, by pushing the plan, which would strengthen indigenous rights. The political crisis is threatening to split the country. (*Bolivia: Morales convoca a referendo*, AGENDA DIGITAL DE NOTICIAS, Feb. 29, 2008.)
(Graciela Rodriguez-Ferrand)

BRAZIL – Proposals to Amend Constitution to Be Voted on in 2008

In 2008, the Brazilian Chamber of Deputies and the Federal Senate will vote, *inter alia*, on two proposals to amend the Constitution. The first proposal establishes that the number of Council Members (*Vereadores*) of a municipality is to be determined according to the amount of its tax collection. The second proposal addresses secret votes on federal, state, and municipal legislative powers. According to the current terms of the Brazilian Constitution, the number of Council Members is determined according to the population of the municipality and a vote on legislative powers may occur in a secret manner. (*Fim do Voto Secreto no Legislativo Deve Ser Votado Este Ano*, O GLOBO ONLINE, Feb. 7, 2008.)
(Eduardo Soares)

KENYA – Constitutional Amendment Under Consideration

The Kenyan government and the opposition party may amend the Kenyan Constitution as part of a power-sharing deal that is expected to end the ethnic and political clashes that have claimed the lives of at least 1,000 people. Although the constitutional change is going to be only one part of a complicated negotiation, it could "pave the way for a power sharing agreement and the introduction of a prime ministerial position in Kenya's political system." (*Kenya Constitution 'Within Year,'* BBC NEWS, Feb. 14, 2008, available at <http://news.bbc.co.uk/2/hi/africa/7245661.stm>.)
(Hanibal M. Goitom)



Courts

BANGLADESH - Contempt of Court Ordinance Approved

On March 3, the Council of Advisers of the caretaker government of Bangladesh approved a draft law, the Contempt of Court Ordinance 2008, which is intended to remove confusing provisions in existing law pertaining to the power of courts to hold persons in contempt.

The new ordinance will repeal the Contempt of Court Act 1926 when the law becomes effective through notification in the official gazette. The ordinance specifies that any willful act, statement, or expression that may violate any verdict, decree, order, writ or warrant issued by a court that affects the normal course of the trial process may constitute contempt. Contempt may also include obstruction of justice.

The ordinance provides that contempt proceedings must be resolved within two years. After two years contempt proceedings will be cancelled automatically. The time limitation is one year in cases where the contempt proceeding is deemed to adversely impact the country. Punishment for contempt of court is maximum six months of simple imprisonment, a fine, or both. (*CG Approves Ordinance: Contempt of Court Redefined*, THE NEW NATION, INTERNET EDITION, March 5, 2008, <http://nation.ittefaq.com/issues/2008/03/03/news0024.htm>.)
(Shameema Rahman)

BANGLADESH - Supreme Court Stayed High Court Judgment

The Appellate Division of the Supreme Court allowed the caretaker government of Bangladesh to file an appeal against the High Court's February 6, 2008 judgment on the extortion trial of former Prime Minister Sheikh Hasina, and stayed the High Court judgment that declared the trial illegal under the Emergency Powers Rules of 2007. The High Court had determined that the case filed against Sheikh Hasina cannot be tried under the Emergency Powers Rules because the alleged crimes occurred prior to the imposition of emergency rule. The Supreme Court fixed March 16, 2008 for hearing the government appeal, and stayed the trial proceedings pending the appeal. (*Bangladesh SC Stays HC Judgment Against Hasina*, NEWKERALA.COM, February 26, 2008, <http://www.newkerala.com/one.php?action=fullnews&id=27220>.)
(Shameema Rahman)



Criminal Law

IRAN – New Law Punishes Illegal Audiovisual Activities

The Iranian Islamic House (*Majlisi Showra'i Islami Iran*) passed a law on January 16, 2008, on the punishment of those involved in illegal audiovisual activities. According to article 1 of the law, any legal entity or individual that engages in introducing illegal audiovisual products as legal or undermines the rights of the producers by illegal copying of the material will be subject to a fine of 2 million to 20 million *rials* (about US\$200-2,000), along with the punishment provided for copyright violations.

Article 2 of the law states that any commercial activity to produce, distribute, or copy audiovisual products, cassettes, CDs, and DVDs will require a permit from the Ministry of Culture and Islamic Guidance. Violators will be fined 10 to 100 million *rials* (about US\$1,100-11,000).

Article 3 of the law provides for the punishment of those involved in copying and distributing pornographic audiovisual products with one to three years in jail for the first offense and a fine of 100 million *rials*. Moreover, the persons involved in such illegal activities will lose their political rights for seven years. Repetition of the crime will subject the offenders to two to five years of imprisonment. The article then adds:

The following persons may receive the death penalty if their crime is qualified as corrupt on earth: persons who produce pornographic materials in order to exploit others sexually and the principal agents involved in production of pornographic materials. If they do not qualify as corrupt on earth, they will receive 30 to 74 lashes and a fine of from 10 million to 50 million *rials* and the loss of social rights for from two to five years.

Under this law, production of pornographic or obscene materials in digital format and through the Internet or intranet connections is counted as publishing and distribution. Violators will receive punishments decided by the Revolutionary Courts based on the gravity of each case. (*Iran: President Promulgates Law on Illegal Audiovisual Activities*, AFTAB NEWS, Jan. 29, 2008, Open Source Center No. IAP20080130950076.)
(G. H. Vafai)

JAPAN – Victims to Receive Money Deposited by Criminals

New legislation, the Law Concerning the Distribution in Payments to Victims of Crime-Related Deposits in Financial Institutions, was promulgated in Japan on December 21, 2007. This Law facilitates financial institutions' freezing of accounts in which funds were deposited by victims because of fraud, deception, or coercion. Financial institutions can distribute the money to victims following procedures specified by the Law. (*Hanzai riyō yokin kōza tō ni kakaru shikin ni yoru higai kaihuku bunpaikin no shiharai tō ni kansuru hōritsu* [Law Concerning the



Distribution in Payments to Victims of Crime-Related Deposits in Financial Institutions], Law No. 133 of 2007, KANPŌ GŌGAI [Kanpo extra issue] 291, 3 (2007).)
(Sayuri Umeda)

MOZAMBIQUE – Government Inefficiency Leads to Increase in Lynching

Tired of the government inefficiency in the fight against crime, the population of Beira, the second largest city in Mozambique, is taking justice into its own hands and lynching people allegedly guilty of committing crimes, including robbery and murder. That is the conclusion reached by analysts after seven people have been beaten and burned to death by the population in just this year alone.

When the population is questioned, the most common response is that they are sick and tired of being robbed, says Carlos Serra, a sociologist and university professor who is coordinating a research on the topic in Maputo. He even believes that due to the government's failure in providing safety to the population and their property, there may be independent groups doing police work that specialize in lynching alleged criminals. He also observes that the lynching occurs in areas where there is almost no police presence, a lack of proper street illumination, high rates of unemployment, residences that offer no security to their occupants, and houses with high occupancy of usually more than five people. (*«Cansaço» Perante Inoperância da Polícia Leva a Linchamentos*, NOTÍCIAS LUSÓFONAS, Feb. 18, 2008.)
(Eduardo Soares)



Criminal Procedure

RUSSIAN FEDERATION – Bailiffs Now Have Housebreaking Right

On February 1, 2008, an amended version of the Federal Law on Execution of Judgments of the Russian Federation entered into force. The newly passed amendments allow bailiffs to enter private residences with the purpose of property evaluation, even if the residents are absent. A written order issued by the chief of the local bailiff service and the presence of two independent witnesses are required. Previously, bailiffs were supposed to wait for the person subject to executive proceedings to appear at the premises. The jurisdiction of the bailiff service has been expanded as well and it now includes recovery of child support payments and loan debts, formerly under the jurisdiction of the regular police, and the review of real estate registration. The new Law allows the bailiffs to confiscate property on the spot or restrict a person's right to movement and travel abroad. (*Bailiffs Have the Right to Break into Apartments*, NEWSRU.COM INFORMATION AGENCY, Jan. 30, 2008.)
(Peter Roudik)



Death and Dying

LUXEMBOURG – Right to Die with Dignity

In February 2008, the Luxembourg Chamber of Deputies adopted the Law on the Right to Die with Dignity. The Law covers both euthanasia and physician-assisted suicides. A physician who performs euthanasia or assists in a suicide must ensure that:

1. the patient is legally competent at the time of his request;
2. the patient has the authorization of his parents or legal guardian if he is between the ages of 16 and 18;
3. the request is voluntary, thought through, and repeated and does not result from external pressure;
4. the patient suffers from an incurable condition and is constantly in unbearable physical or mental pain; and
5. the patient respects all the conditions and procedures prescribed by the Law.

The physician is also required to inform the patient of his state of health and life expectancy and to discuss all other therapeutic possibilities still available and their consequences, including palliative care. He must arrive at the conclusion that in the eyes of the patient, there is no other solution. He must also ensure through several meetings with his patient that the physical or psychological suffering is persistent and that there have been repeated requests to die. He must consult with another physician to confirm that the patient's condition is incurable. The request to die must be in writing. Euthanasia may also be requested in a living will.

The Law establishes a National Commission of Control and Evaluation to assess the implementation of the Law. A physician who performs euthanasia must, within four days, remit an official declaration to the Commission. Finally, the Law provides that no physician is obliged to perform euthanasia or assist in a suicide. According to the parliamentary rules of procedure, a second reading of the Law is necessary before it can take effect. (Chambre des Députés, Proposition de loi No. 4909 sur le droit de mourir en dignité.)

(Nicole Atwill)



Disability

CHINA – Law on Disabled to Be Amended

On February 26, 2008, the Standing Committee of China's National People's Congress instituted discussion of draft amendments to the Law on the Protection of Disabled Persons, which entered in force on May 15, 1991. The proposed changes include: establishing and improving a system of rehabilitation services for the disabled; setting up educational institutions and providing financial support for the disabled as well as for the children of poor disabled parents; creating more public welfare jobs and providing free employment services for the disabled; adopting relief measures for the disabled poor by guaranteeing subsistence allowances for urban residents. Other draft amendments call for improved facilities and the creation of an environment friendly to the handicapped, clarify penalties for infringement of disabled persons' rights and interests, and declare that the right of the disabled to play a role in state affairs and social life should be guaranteed, including the right to be heard in the formulation of laws, regulations, and policies that concern them. The draft revised Law also lifts a ban against guide dogs entering public places, in conformity with China's pledge to permit the practice in connection with the upcoming Beijing Olympic Games, but stipulates that relevant regulations should be observed. An estimated 83 million people, or over six percent of the population, in China are disabled. It is reported that more than 75 percent of them live in the countryside. (*China to Change Law to Better Protect Disabled*, CHINA VIEW, Feb. 26, 2008, available at http://news.xinhuanet.com/english/2008-02/26/content_7673095.htm; *China Approves Draft Law Revision on Protection of the Disabled*, CHINA VIEW, Jan. 23, 2008, available at http://news.xinhuanet.com/english/2008-01/23/content_7481656.htm; see also Zhonghua Renmin Gongheguo canji ren baozhang fa [Law of the People's Republic of China on the Protection of Disabled Persons] (in Chinese), Central People's Government of the People's Republic of China Web site, Aug. 4, 2005; Law of the People's Republic of China on the Protection of Disabled Persons, China Disabled Persons' Federation Web site, http://www.cdpcf.org.cn/english/info_01.htm (last visited Mar. 6, 2008).)

In a related move, on January 15, 2008, the Shenzhen municipal government issued a regulation that will provide an annual 20 million yuan (about US\$2.74 million) in social insurance subsidies to the city's roughly 50,000 disabled residents. Those eligible for benefits are divided into four groups – the employed disabled, the unemployed disabled, disabled persons living on government welfare, and the severely disabled, with the amount of the subsidy to be based on the extent of the disability, employment status, and family income. (*SZ Pledges 20 mln Yuan Yearly for Disabled*, CHINA VIEW, Jan. 18, 2008, available at http://news.xinhuanet.com/english/2008-01/18/content_7445730.htm.)

(Wendy Zeldin)



Elections and Politics

CUBA – Raúl Castro Elected New President

On February 24, 2008, the National Assembly of People's Power elected Raúl Castro, Fidel Castro's younger brother, as President of Cuba. In his inaugural speech, Raúl Castro indicated that he intends to confer with his brother on matters of special relevance for Cuba, especially those pertaining to defense, foreign policy, and the socioeconomic development of the country. In addition, Raúl Castro asked the National Assembly to give him time to think about prospective members of his Cabinet (except the Defense Minister and the Vice President, who were appointed on February 24, 2008) and, most importantly, to analyze the current government system and to consider changes to it, if necessary. The National Assembly approved this proposal and determined that the new Cabinet and possible changes to the government system will be discussed in a session that will take place later in the year. (Discurso pronunciado por el presidente Raúl Castro Ruz el 24 de febrero de 2008, GRANMA ONLINE, Feb. 24, 2008; Tres propuestas de Raúl, Intervención del compañero Raúl Castro Ruz, Presidente de los Consejos de Estado y de Ministros, en la Sesión Constitutiva de la VII Legislatura de la Asamblea Nacional del Poder Popular, efectuada en el Palacio de las Convenciones, el 24 de febrero de 2008, GRANMA ONLINE; Acuerdo VII-5, Asamblea Nacional del Poder Popular de la República de Cuba, 011 GACETA OFICIAL 57-58 (Feb. 25, 2008); *see also* the Law Library of Congress Web site, <http://www.loc.gov/law/help/cuba-resignation.html>.) (Gustavo Guerra)

EGYPT – Muslim Brotherhood Members Arrested

On February 17, 2008, the Egyptian security forces conducted a wave of arrests against officials of the Muslim Brotherhood group. The round of arrests, the second in three days, included 51 persons from four provinces, to bring the total number of arrestees to 91. Sources within the group expected more arrests to come due to the upcoming local election. They explained to reporters for ASHARQ ALAWSAT that the regime is afraid the group will repeat the victory it realized in the parliamentary election of 2005. (*New Arrest Campaign Against 51 of the Brotherhood Cadres in Egypt*, ASHARQ ALAWSAT, Feb. 18, 2008, available at <http://www.asharqalawsat.com/>.) (Issam Saliba)

FINLAND – Pilot E-Voting System

In October 2008, Finland will pilot a new electronic voting system, based on the “Direct Recording Electronic” system of TietoEnator Finland, an information technology services company, and Scytll, a Spanish back-end provider. In February, in response to an inquiry about the system from the digital rights organization Electronic Frontier Finland (Effi), the Ministry of Justice stated that the documentation on its specific details must be kept secret based on the Act on the Openness of Government Activities. Under the latter, documents on the system's information security and those on a private company's trade secrets (in this case, the system provider's) must be kept secret.



According to an analysis Effi has made, based on high-level documents provided by the Ministry of Justice and a U.S. patent granted to Scytl, the system will not use any voter-verified paper ballots (in contrast to the e-voting systems of 30 U.S. states) or even the electronic receipt system set forth in the Scytl patent. As currently proposed, it is argued, the Finnish e-voting system would make recounts independent of that system impossible. It would also facilitate alteration of the election results by “a much smaller team of individuals ..., as the software, which counts the ballots, is not public and its integrity would probably be only checked by consultants contracted by the Ministry of Justice.” (*Finnish E-Voting System Is a Trade Secret* (Feb 7, 2008), NEWSLETTER MARCH 2008, available at <http://www.legislationline.org> [citing to STATEWATCH NEWS ONLINE].)

In the current Finnish election process, representatives of the competing political parties at each polling station carry out, manually and collectively, the widely distributed ballot. Each station’s results are individually published, giving the representatives the opportunity to cross-check the tally for correctness. A separate count of the ballots, independent of the original, is done again and archived should further recounts be necessary. The system is described as “quite fast, providing results in a matter of hours from the whole country, easy to understand, and very resilient.” (*Id.*)
(Wendy Zeldin)

MEXICO – New Electoral Code

The Mexican Government officially published a new federal electoral law on January 14, 2008. The Federal Code of Electoral Institutions and Procedures (COFIPE) supersedes the Code that had been in force since August 1990. Among the innovations in the new Code are a separate chapter on transparency; regulation of the use of official airtime for electoral propaganda; sanctions for media violations of the electoral law; a 50% reduction of the permitted statutory amount of presidential campaign financing; and regulation of the vote by the holding of a recount when the difference between the number of ballots received by the first and the second place winner is 1% of the vote or less. (Decreto por el que se expide el Código Federal de Instituciones y Procedimientos Electorales, DIARIO OFICIAL DE LA FEDERACIÓN (Jan. 14, 2008), available at <http://www.leginfor.com/> [Mexican legal database, by subscription only]; *Aprueban Senadores Reformas al Cofipe*, EL UNIVERSAL, Dec. 6, 2007.)
(Norma C. Gutiérrez)



Employment

JAPAN – McDonald’s Manager Not Considered a Manager Under Labor Law

On January 28, 2008, the Tokyo District Court ordered McDonald’s Holdings Co. (Japan) Ltd. to pay 7.55 million *yen* (US\$70,000) in overtime allowance and “additional pay” to a manager at one of its outlets. The court said that a shop manager of a McDonald’s in Saitama Prefecture does not qualify as a manager under the Labor Standards Law. The Law stipulates that employers must pay overtime allowances to employees who work more than eight hours a day or 40 hours a week. The regulation is not applied to employees in managerial positions. The court understood that employees in managerial positions must be able to wield significant authority and receive privileged treatment, including higher pay. The court found that the plaintiff neither played such a role for the company nor received better pay. (Akemi Nakamura, *McDonald’s Told to Pay Overtime to Manager*, JAPAN TIMES, Jan. 29, 2008, available at <http://search.japantimes.co.jp/cgi-bin/nn20080129a3.html>.) (Sayuri Umeda)



Energy

SWITZERLAND – Sustainability Criteria for Biofuels

On January 30, 2008, Switzerland promulgated the Act Amending the Mineral Oil Tax Act (Mineralölsteuergesetz, Änderung, AMTLICHE SAMMLUNG (AS) 579) and the Act Amending the Mineral Oil Tax Regulation (Mineralölsteuerverordnung, Änderung, AS 583). (Federal Authorities of the Swiss Confederation official Web site http://www.admin.ch/ch/d/as/2008/index0_9.html (last visited Feb. 28, 2008).) These enactments have an effective date of July 1, 2008, and introduce tax benefits or exemptions for the use of biofuels, but they make the extent of the benefit dependent on the environmental superiority of the employed biomass: to qualify for tax benefits, biofuels must reflect a 40 percent reduction of greenhouse gas emissions compared with the corresponding fossil fuels. In addition, biomasses from plants are disqualified if the plants were grown on areas that were deforested or that should have been preserved in their natural state in order to encourage biodiversity.

(Edith Palmer)



Environment

CHINA – Water Pollution Prevention Law Amended

On February 28, 2008, the Standing Committee of China's National People's Congress approved amendments to the Law on Prevention of Water Pollution. Under the revised Law, which enters into force on June 1, senior company executives may have up to half of their annual salary docked if they are found responsible for major or exceptionally serious pollution accidents, and the upper limit on enterprises' payment of penalties has been raised to 30 percent of the direct economic loss caused by the accident (art. 83). The former Law stipulated that executives would only be subject to disciplinary action and the maximum fine for polluters was RMB1 million (about US\$141,000). In addition, the amended Law provides that local officials' performance evaluations "will now take into account how well they handle pollution cases and whether they meet environmental targets - a move that environmentalists have been urging for years." (Tracy Quek, *China Toughens Water Protection Law to Hit Polluters' Pockets*, THE STRAITS TIMES [Singapore], Mar. 1, 2008, Open Source Center No. CPP20080301094002; Zhonghua Renmin Gongheguo shui wuran fangzhi fa [Law on Prevention of Water Pollution of the People's Republic of China (PRC)] (in Chinese), The Central People's Government of the PRC Web site, Feb. 28, 2008.)

Strengthening of the Law came in advance of the annual meeting of the National People's Congress, which opened on March 5, at which the State Environmental Protection Agency (SEPA) was raised to the level of a full Cabinet-level ministry, thereby increasing its clout. According to THE STRAITS TIMES, the SEPA has in recent months "been rolling out new pollution control measures with more economic bite than before" – for example, by making companies that seek to go public or raise new capital pass an environmental assessment before being allowed to do so (affecting such high polluters as power generation, steel, and cement production industries) and by having banks deny credit to businesses that guzzle energy or create high amounts of pollution. (Quek, *supra*.)
(Wendy Zeldin)

INDONESIA – Carbon Credit Plan for Rainforest

On February 7, 2008, a project to save Indonesia's Ulu Masen rainforest in Aceh Province, by using carbon trading markets to help villages preserve trees, was announced. Under the plan, villages that halt logging would receive about \$26 million in revenue from the sale of carbon credits to individuals and companies seeking to offset emissions. It is expected that the project will reduce logging in Ulu Masen by 85 percent. Villages will be paid upon demonstrating that trees have not been logged, with progress monitored by on-site forest wardens as well as satellite images.

According to John O. Niles, chief science and policy officer for Carbon Conservation, a sponsor of the Ulu Masen project, forest burning accounts for 20 percent of global warming emissions, but there is no international agreement to reward developing countries for stopping



the deforestation. In his view, the reduction of emissions by 100 million tons over 30 years (a rate of about 3.3 million tons of carbon per year) under the Ulu Masen plan “may help convince critics that saving forests can help slow the planet’s warming.” Because the Climate, Community & Biodiversity Alliance, comprised of non-governmental organizations as well as companies, certified the project, it is “extremely likely” to begin producing carbon credits in 2009, Niles said. (Jim Efstathiou Jr., *Carbon Trading May Reward Indonesians for Saving Rainforest*, BLOOMBERG/CCB STANDARDS: NEWS & UPDATES, Feb. 7, 2008, available at http://www.climate-standards.org/news/news_bloomberg_feb2008.html.) (Wendy Zeldin)

KOREA, SOUTH – Plan to Reduce Ocean Dumping

South Korea dumped 2.02 million cubic meters of sewage from livestock farms, 1.71 million cubic meters of leftover food, and 1.61 million cubic meters of urban sewage into the ocean in 2007. Although South Korea ratified the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter in 1993, Korea has not made significant efforts to reduce dumping into the ocean. Rather, Korea’s dumping of wastes into the ocean has increased. Moreover, citizen groups have pointed out that more has been dumped illegally than is shown in the government statistics. In 2007, the Marine and Fisheries Ministry and the Environment Ministry came up with a plan to gradually reduce the dumping of wastes into the ocean and to ban such dumping by 2012. After the media paid attention to the fact that two of the dumping sites crossed the Exclusive Economic Zone (EEZ) line between Korea and Japan, the Marine and Fisheries Ministry announced its plan to amend the Marine Environment Management Act Enforcement Order by June 2008 and to re-designate the dumping sites so that they will not infringe on Japan’s EEZ. (Un-hoe Pak, *Haikibutsu toki [Dumping wastes]*, CHOSUNILBO, Feb. 12, 2008; Ui-je Yi, *Kankoku no gomi kaiyo toki no jittai [Korea’s waste dumping into the ocean]*, CHOSUNILBO, Feb. 11, 2008; *Our Oceans Are Not Giant Trash Cans*, CHOSUNILBO, Feb. 12, 2008, available at <http://english.chosun.com/w21data/html/news/200802/200802120014.html>.) (Sayuri Umeda)



Family

INDIA – Marriage Age for Men May Be Lowered to 18

The Law Commission of India has proposed a reduction in the legal marriageable age for men from 21 to 18 years, while recommending that unions contracted below the age of 16 be considered void. The Commission states that there is no scientific reason for keeping different marriage ages for men and women. It has also recommended compulsory registration of marriages and that the legal age of consent for sexual activity be 16 instead of 15 years.

If the reforms are accepted by the government, consensual sex with girls under 16 years of age would invite punishment for rape. Similarly, a man's sex with minor "wives" below the age of 16 would constitute rape. At present, sex with minor "wives" below 15 years of age is punishable.

Additionally, the Commission has recommended that marriages of children between the ages of 16 and 18 be made voidable. (*Law Panel Proposes to Lower Marriage Age for Men from 21 to 18*, THE HINDUSTAN TIMES, Feb. 6, 2008.)
(Krishan Nehra)

ISRAEL – Adoption of Children by Same-Sex Couples

On February 10, 2008, Israel's Attorney General Menahem Mazuz (AG) issued a legal opinion that same-sex couples may adopt children. According to a statement issued by the AG,

[T]here is no legal reason to prevent a same-sex couple, or either one of them, from adopting a child who is not the biological offspring of one of the partners, according to the same criteria applied to a single person who wants to adopt a child and conditional, as is customary, on considerations of the best interests of the child.

The AG directive is based on High Court of Justice rulings in two landmark decisions involving same-sex adoptions. In the first decision, the Court ordered the State to register foreign adoptions; in the second, the Court ordered the state to register the adoption of each partner's biological children by the other partner. The Court held that "the well-being of the adopted child" is a complex principle that includes many aspects, and one may not say *a priori* that because a couple is same-sex, it will be bad for the child to be adopted by that couple. "Therefore, the question of the identity of the couple is only one of the relevant considerations that must be taken into account, together with all the other relevant circumstances and considerations." (*Attorney General: Let Same-Sex Couples Adopt*, JERUSALEM POST, Feb. 11, 2008.)
(Ruth Levush)



PERU – Loss of Parental Rights and Duties

Law No. 19194 of January 24, 2008 amends article 177 and adds article 181-B to the Criminal Code concerning loss of the “Patria potestas” (parental rights and duties). The new versions of these articles incorporate aggravating circumstances in the conduct of parents and custodians of children including sexual offenses and trafficking of minors. As specified in various articles of the Criminal Code, when the agent is the father or the mother, tutor or custodian, the court shall impose in addition to the pertinent punishment depriving the person of freedom, the loss of parental rights.

This Law also amends article 75 of the Code of the Child and Adolescents. The “Patria potestas” is suspended when the father or the mother is the subject of a criminal proceeding for crimes specified in the articles 173 and following.

Furthermore, Law 29194 amends article 471 of the Civil Code regarding restoration of the “Patria potestas”. Parents who have been deprived of their parental rights and duties or were limited in their exercise, can petition for restoration of the rights at the cessation of the determining causes. But this action can be attempted only after three years of the service of the pertinent criminal sentence. The judge can restore totally or partially “Patria potestas” taking into consideration the well-being of the child.

The final article of this new law adopts complementary measures on suspension and loss of the parental rights and duties.

(Law No. 29194, Web site of the Congress of Peru, Jan. 25, 2008.)
(Dario Ferreira)



Foreign Investment

AUSTRALIA – Foreign Sovereign Funds Subject to Scrutiny

The Australian government has released a set of principles by which it will assess foreign investment in Australia by foreign governments and their agencies. (Press Release, The Hon. Wayne Swan, Government Improves Transparency of Foreign Investment Screening Process (Feb. 17, 2008), available at <http://www.treasurer.gov.au/>.) (Lisa White)

INDIA – 100% Foreign Direct Investment Obtains Automatic Approval for Aircraft Repair Shops

India allows 100% foreign direct investment (FDI) through the automatic approval route for helicopter and seaplane operations and for maintenance, repair, and overhaul (MRO) facilities. This is a reversal of the previous policy, under which approval of the Foreign Investment Board was required for FDI beyond 74%. Similarly, for ground handling services, FDI of up to 74% is being allowed through the automatic route in scheduled and non-scheduled airline charter operations and in cargo airlines. The decision to allow 100% FDI in MRO facilities followed a decision by the major aircraft manufacturers, including Boeing and Airbus Industries, to establish such facilities in India.

Several other Indian and global engineering players have also evinced keen interest in this emerging field, with the goal of making India an aviation engineering hub. India's Minister of Civil Aviation has been vocal in supporting the growth of such aviation activities. According to him, the decision described above will go a long way to expand regional connectivity and help in speedy transportation of perishable items within and outside the country. Besides establishing flight training and technical training institutes, the new standard will help the aviation industry overcome the massive shortage of pilots and engineers in the face of a burgeoning civil aviation sector in India. (*FDI Cap in Air Cargo Raised to 74 Percent*, INDIA BRAND EQUITY FOUNDATION NEWS, Jan. 31, 2008, available at http://www.ibef.org/artdisplay.aspx?cat_id=499&art_id=17818.) (Krishan Nehra)



Freedom of Information

COOK ISLANDS – Introduction of Freedom of Information Legislation

The Cook Islands has become the first Pacific Island country to enact Freedom of Information legislation. The Cook Islands Official Information Act will come into force on February 11, 2009, one year after its enactment. In the Pacific region, Australia and New Zealand have freedom of information laws and Papua New Guinea's Constitution includes a right to information. (*Cook Islands Government Introduces Freedom of Information Legislation*, RADIO NEW ZEALAND INTERNATIONAL, Feb., 12, 2008, available at <http://www.rnzi.com/pages/news.php?op=read&id=37977>.)

(Lisa White)



Government Ethics

BANGLADESH – Extortion Trial of Former Prime Minister

The trial of the former Prime Minister of Bangladesh, Sheikh Hasina, on a complaint of extortion filed by businessman Azam J. Chowdhury, has begun. The complainant stated to journalists on January 24, 2008, that he had made the complaint against Hasina's cousin, former minister Sheikh Fazlul Karim Selim, for extortion of \$500,000 for clearing a business deal but Hasina's name was added by the investigators of the complaint.

As the trial began, the complainant was examined as the first witness. In response to insistent questioning by the prosecution about Hasina's role in the extortion of money, the complainant refused to name Hasina, but stated that Selim had assured him that he would secure him the contract to build a 210 megawatt power plant with the help of "the then prime minister." The witness denied payment of any money to the prime minister and refused to name her as an accused. Hasina's Canadian counsel, Payam Akhavan, has stated that the charge against the prime minister is "politically motivated." Akhavan, a Canadian lawyer and a professor at McGill University, is a member of a panel of lawyers who are representing Hasina. (*Complainant Declines to Name Hasina in Graft Trial*, THE HINDUSTAN TIMES, Jan. 31, 2008; *Ajam J [sic] Chowdhury Mentioned Hasina's Name Nine Times in FIR: Canadian Lawyer in Dhaka to Act as AL's Chief Counsel*, THE NEW NATION, Jan. 29, 2008, available at <http://nation.ittefaq.com/issues/2008/01/29/news0258.htm>.)

(Krishan Nehra)

CZECH REPUBLIC – High Court Rejects Complaint Against Supreme Court Head

On March 3, 2008, the Olomouc High Court in North Moravia, the Czech Republic, rejected a complaint against Iya Brozova, the Chairwoman of the Czech Supreme Court. The disciplinary complaint, initiated by Justice Minister Jiri Pospisil in December 2007, had alleged that she diverted from the Justice Ministry 40 million crowns (about US\$2.4 million) paid as a fine from a financial office. An audit in 2005 had uncovered shortages in the Supreme Court's funds. The High Court decision rejecting the complaint was based on a ruling that the act was not a disciplinary offense. (*Czech High Court Rejects Complaint Against Supreme Court Head*, CTK, Mar. 3, 2008, Open Source Center No. EUP20080304950035.)

(Constance A. Johnson)

IRAN – Judiciary High Council Bans Judges from Membership in Political Parties

A directive issued by the Judiciary High Council of Iran in late 2007 states that, for the purpose of ensuring neutrality in the performance of judicial duties and meeting the highest standards of ethics, judges are banned from membership in any political parties and related organizations. The directive stresses that judges are not allowed to engage in any kind of publicity or publication of newspapers or periodicals.



Judges are warned in the directive that engaging in any kind of activity inconsistent with the judicial standards of ethics, such as accepting any gift or free service or any privilege offered to them because of their judicial position, will be punishable by the Judicial Disciplinary Court. The directive also prohibits judges from accepting positions such as that of notary public, officiating at divorce and marriage ceremonies, or engaging in any kind of business activities. (*Judiciary High Council Bans Judges from Membership in Political Parties*, KEYHAN DAILY NEWSPAPER, Nov. 20, 2007, at 3, available at <http://www.kayhannews.ir/860830/15.htm#other1504>.)
(Gholam Vafai)



Health

UNITED STATES – Federal Law Preempts State Lawsuits Involving Medical Devices

The Supreme Court ruled on February 20 that because the Medical Device Amendments of 1976 (MDA) preempts state regulation of medical devices that were approved by the Food and Drug Administration (FDA), persons injured by such devices may not pursue lawsuits under state law causes of action.

The MDA provides that a state shall not establish “any requirement . . . different from, or in addition to” federal requirements with respect to the safety or effectiveness of a medical device approved by the FDA. Metronic, Inc. manufactured a catheter that received FDA approval. After a Metronic catheter ruptured in her husband Charles Riegel’s coronary artery during heart surgery, Donna Riegel sued Medtronic, alleging that the device was designed, labeled and manufactured in a manner that made Medtronic liable under New York common law theories of strict liability, implied warranty, and negligence. The lower federal courts ruled that the MDA preempted the state law claims. The Supreme Court agreed. The Court found that common law claims such as those raised by Riegel would impose “requirements” under the ordinary meaning of that term as it appears in the MDA, and therefore the MDA’s preemption provision bars such state causes of action. (Riegel v. Medtronic, Inc., No. 06-179 (Feb. 20, 2008) *available at* <http://www.supremecourtus.gov/opinions/07pdf/06-179.pdf>.)
(Luis Acosta)



Human Rights

CHAD – UN Agency Concerned About Abductions

Rupert Colville, a spokesperson for the United Nations Office of the High Commissioner for Human Rights, has expressed concern about the human rights situation in Chad. Opposition leaders and members of civil society organizations have been reported abducted and detained in the period since the uprising in the N'Djamena, Chad's capital city. On February 15, 2008, the government issued a presidential decree declaring a state of emergency. The decree authorized house searches, controls on the news media, limits on movements of people and vehicles, and a ban on most meetings.

Colville stressed the importance of respecting human rights during the emergency period, which he hoped would be short, stating:

While appreciating that the Chadian Government has faced a major crisis, the Office has called for fundamental human rights and freedoms to be respected during the state of emergency. ... We remain concerned about reports of killings of large numbers of civilians during the fighting and call upon the Government of Chad to fully investigate these allegations and hold those responsible to account.

(Reports of Political Detentions in Chad Alarm UN Human Rights Agency, UN NEWS, Feb. 22, 2008, from UNNews@un.org.)
(Constance A. Johnson)

CUBA - Cuba Signs International Human Rights Agreements with the United Nations

New York, U.N. Headquarters--Cuba signed the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The covenants were signed on 28 February 2008, where Cuban Foreign Minister Felipe Pérez Roque met with the UN Secretary General Ban Ki-moon and the Coordination Bureau of the Non-Aligned Movement, of which Cuba holds the presidency.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the UN General Assembly on 16 December 1966 that entered into force on 3 January 1976 and is monitored by the Human Rights Committee (for text of the pact, see: http://www.unhchr.ch/html/menu3/b/a_cescr.htm). The International Covenant on Civil and Political Rights (ICCPR) is also a multilateral treaty based on the Universal Declaration of Human Rights., which was created in 1966 and entered into force in 1976 (for text of the pact, see: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm).



(*Cuba Signs International Human Rights Agreements*, GRANMA INTERNACIONAL DIGITAL, ENGLISH EDITION, Feb. 29 2008, available at <http://www.granma.cu/ingles/2008/febrero/vier29/Minister-Felipe-Perez-Roque.html>.)
(Francisco Macías)

KENYA/INTERNATIONAL CRIMINAL COURT – Opposition Files Case Against Government

The Orange Democratic Movement (ODM), the Kenyan opposition party, filed a case against the Kenyan government before the International Criminal Court (ICC) for crimes against humanity, over the government's "mishandling of the protests" following the December 2007 election results. The ODM accuses the Kenyan police of adopting a "shoot to kill policy" during the protests. The police insisted that they have conducted themselves with restraint.

The Kenyan government revealed plans to file a countersuit for genocide. Alfre Mutua, a government spokesperson, accused the ODM leaders of planning and executing genocide in connection with the violence that targeted the Kikuyu community in the Rift Valley, Nairobi Slums, and Mombassa. (*Kenya Sued over Police 'Crimes,'* BBC NEWS, Jan. 22, 2008, available at <http://news.bbc.co.uk/2/hi/africa/7203214.stm>.)
(Hanibal M. Goitom)

NIGERIA – Cross-Dressers Face Charges

Eighteen cross-dressers face criminal charges before a *Sharia* court one year after their arrest in Bauchi, a city in northern Nigeria. Although the men were at first charged with sodomy, a crime punishable by death under *Sharia* law, the charge has now been reduced to indecent dressing and vagrancy. Yusuf Adamu, the prosecutor for the case, said that, "Under *Sharia* law a man must dress like a man and a woman must dress like a woman."

Human Rights Watch, in a letter that it sent to the court, called upon it to respect the defendants' right to "free association," which it claims is enshrined in at least two conventions that Nigeria has ratified. (*'Cross-Dressers' in Nigeria Court,* BBC NEWS, Feb. 15, 2008, available at <http://news.bbc.co.uk/2/hi/africa/7246935.stm>.)
(Hanibal M. Goitom)

RWANDA/ICTR – Former Official to Be Tried for Genocide

Callixte Nzabonimana, who had been Minister of Youth and Sports in Rwanda in 1994, was arrested on February 19, 2008, in Kigoma, Tanzania. He was sent the next day to Arusha, the location of the International Criminal Tribunal for Rwanda (ICTR), where he will be tried for his role in the 1994 Rwandan genocide. Nzabonimana is facing 11 charges, including genocide, inciting others to commit genocide, and conspiracy to commit genocide, and has entered a plea of not guilty before Judge Dennis Bryan of the ICTR. The charges stem from his role in an alleged plot to carry out mass killings of the Tutsi ethnic group and murders of opposition political leaders. About 800,000 Tutsis and moderate Hutus were killed in just 100 days in April



1994. The ICTR was established by the United Nations Security Council in the same year with the mandate of trying those responsible for the crimes. (*Ex-Minister in Rwanda Arrested and Brought Before UN Genocide Tribunal*, UN NEWS, Feb. 19, 2008, & *Rwandan Ex-Minister Pleads Not Guilty to 11 Charges before UN Genocide Tribunal*, UN NEWS, Feb. 21, 2008, both from unnews@un.org.)

(Constance A. Johnson)



Immigration and Nationality

GUINEA-BISSAU/SPAIN – Cooperation Agreement on Immigration Signed

On January 27, 2008, the Foreign Minister of Spain, Miguel Angel Moratinos, visited Guinea-Bissau to meet with Prime Minister Martinho N'Dafa Cabi. At the meeting, representatives of the two countries signed a cooperation agreement on immigration designed to control illegal immigration to Spain.

Moratinos was quoted as saying that a previous repatriation agreement signed in 2003 did not work because of its focus on policing and because it did not include aspects of cooperation in such areas as the strengthening of local police forces, the fight against human trafficking, and the hiring of legal labor. According to Moratinos, the new agreement integrates cooperative measures in security, border control, economic development, and the hiring of local workers.

Guinea-Bissau is currently a place of transit on the way to Spain for many sub-Saharan immigrants, and so another purpose of the Moratinos visit was to negotiate a broader, future collaboration of Guinea-Bissau with Frontex, the European external borders agency. (*Spain and Guinea-Bissau Sign Agreement to Curb Illegal Migration*, EL MUNDO, Jan. 28, 2008, Open Source Center, No. EUP20080128950021; *Governo e Espanha Assinam Acordo para Combater Imigração Ilegal*, NOTÍCIAS LUSÓFONAS, Jan. 27, 2008.)
(Eduardo Soares)

RUSSIAN FEDERATION – Quotas for Guest Workers

On February 1, 2008, a new annual cycle for the issuance of migrant quotas started in Russia. According to a government regulation, two million guest workers from abroad will be admitted in 2008, including about 60,000 people from the countries that have visa relations with Russia and the rest from the former Soviet republics, because guest workers from these republics do not need visas but merely have to be registered with local migration service offices. This number is almost three times lower than the 2007 figures, mostly because the number of permits issued for the cities of Moscow and St. Petersburg, the most attractive destinations for foreign laborers, has been decreased significantly, in order to secure an even distribution of migrants. Quotas can be increased by up to 30 percent if needed, and additional permits can be issued should a labor force deficit become obvious.

The distribution of quotas will be conducted according to 14 occupational categories. According to amendments to migration legislation adopted last year, foreigners are not allowed to work in the retail sector or to sell goods in markets. It is expected that the simplified registration of guest workers by merely informing the authorities, together with tough deportation policies and high fines against those who employ illegal migrants, will lead to a decrease in the number of illegal immigrants. In 2007, illegal immigrants, according to government estimates, amounted to 15 million people. In 2007, fines for illegal employment of



foreigners rose to US\$200,000. (*Federal Migration Service: Quotas for Foreign Laborers Is 2 Million People*, NEWSRU.COM INFORMATION AGENCY, Jan. 2, 2008.)
(Peter Roudik)

UNITED KINGDOM – New Migrant Entry Tax for Public Services

The public services in the United Kingdom have faced a strain in light of increasing numbers of migrants utilizing them. The government has recently announced a new “immigration tax” that will be levied on immigrants entering the country for six months or more. The charge will be incorporated into visa fees, with persons who require more public services, such as children and the elderly, being charged a higher fee. (Home Office Border and Immigration Agency, *The Path to Citizenship: Next Steps in Reforming the Immigration System*, Feb. 2008, available at <http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/pathtocitizenship/>.)
(Clare Feikert)



International Relations

MALTA/COUNCIL OF EUROPE – Convention on Proceeds from Crime and Financing of Terrorism Ratified, Will Enter into Force

On January 31, 2008, Malta became the sixth nation to ratify the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on Financing of Terrorism (of May 16, 2005). As a result, the Convention will enter into force on May 1, 2008, pursuant to article 49(3). (*Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Enters into Force on 1 May 2008* (Feb 5, 2008), LEGAL NEWS (Mar. 2008), available at <http://www.legislationline.org/>; *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism*, Warsaw, 16.V.2005, Council of Europe Web site, <http://conventions.coe.int/Treaty/EN/Treaties/HTML/198.htm#ANX> (last visited Mar. 7, 2008).)

(Wendy Zeldin)



Justice

CHINA – White Paper on Rule of Law

On February 28, 2008, the State Council of the People's Republic of China (PRC) issued the country's first White Paper on the country's efforts to build the rule of law. "China's Efforts and Achievements in Promoting the Rule of Law" comprises eight chapters and an appendix listing the 229 currently effective laws of the PRC. The chapters cover the history of the "building a socialist country under the rule of law"; the legislative system and hierarchy of laws, with a focus on the Constitution; "the safeguarding of human rights"; legislation on the "socialist market economy"; administrative law; the justice system; popularization of knowledge of law and development of the study of law; and international exchange and cooperation in the legal field. ((*Shouquan fabu*) '*Zhongguo de fazhi jianshe*' [(*Authorized for Issuance*) '*China's Establishment of Rule of Law*'], XINHUA, Feb. 28, 2008, *Xinhua: Full Text of White Paper on PRC's Efforts in Promoting Rule of Law*, XINHUA, Feb. 28, 2008, Open Source Center No. CPP20080228968165.)

(Wendy Zeldin)



Legislative Power

KYRGYZSTAN – Weapons for Members of Parliament

On January 23, 2008, the Parliament of Kyrgyzstan adopted amendments to the nation's Law on Weapons that provide for issuance of service weapons to the members of the Kyrgyz Parliament and that regulate the related procedures. The passage of these amendments was considered justified by a series of premeditated killings of Kyrgyz legislators that occurred recently. According to the Law, the weapons will be used for personal self-defense. Each legislator may request, for the duration of his term in office, the same type of weapon as that used by the national police force. After the expiration of the legislative term, the weapons must be returned to the police. A set of rules adopted to implement these amendments provides for a prohibition on bringing weapons into the legislature's meeting hall and requires the establishment of an "armory" in the Parliament, where guns can be stored during the session. (*Kyrgyz Deputies Obtained the Right to Possess Weapons*, NEWSRU.COM INFORMATION AGENCY, Jan. 23, 2008.)
(Peter Roudik)



Narcotics and Drug Abuse

THE NETHERLANDS – Efficiency of Drugs Policy Under Scrutiny

For three decades, the Netherlands has had a tolerant policy towards drugs, having decided in the mid 1970s to distinguish between cannabis and hard drugs, “which no other country does officially.” According to Bert Bieleman of the Intraval Research Bureau, “[t]he Dutch drugs policy seems reasonably successful in comparison with that of other countries,” and in his view, “there ‘seems’ to be less mingling of the soft and hard drugs markets than elsewhere, and addicts’ living conditions are ‘reasonable’” in the Netherlands. Nevertheless, it has been pointed out, “persistent foreign criticism cannot be refuted because a thorough assessment is lacking.” To that end, on March 6, 2008, Boris van der Ham, a D66 [Democrats 66] Member of the Second Chamber of the Dutch Parliament, was expected to seek a quick assessment of the policy and the establishment of a “drugs think tank” to facilitate discussion of the best drugs strategy by politicians, social workers, and scientists. “The Netherlands owes it to itself and to the international community,” in the view of Thanasis Apostolou of the International Dialogue on Drugs Policy Project, to assess the drugs policy’s successes and shortcomings, because that could lead to its being “much more effective.” (*Parliament to Evaluate Efficiency of Netherlands Drugs Policies*, HANDELSBLAD, Mar. 3, 2008, Open Source Center No. EUP20080304024008.)

The possession and cultivation of soft drugs is technically illegal in the Netherlands, but until relatively recently, the authorities have had a policy of non-enforcement of the law. Although in the last few years some local politicians have cracked down on the coffee shops that make the substances available, a German online news source reported “it is unclear whether the reduction in the number of coffee shops has actually resulted in a decrease in drug consumption and drug tourism,” and the drugs have also now been engineered to have greater effectiveness. According to the news report, it is that effectiveness that has given rise to the call for reconsideration of the definition of “soft” drugs by policymakers, some of whom advocate bringing Dutch policy in line with international standards by means of a complete ban on all illicit drugs, hard or soft, while others call for soft drugs to be legalized to make the current policy of tolerance consistent in terms of form and practice. (*Dutch Coffee Shops Close as Authorities Weed Out Drug Tourists*, DEUTSCHE WELLE, Apr. 29, 2007, available at <http://www.dw-world.de/dw/article/0,2144,2459387,00.html>.)

Despite the planned parliamentary discussion, according to a recent article in the Dutch newspaper HANDELSBLAD, “rapid change in the Dutch drugs policy is not to be expected.” (*Parliament to Evaluate Efficiency of Netherlands Drugs Policies, supra.*) While the Members of Parliament of the D66, the Green Left, and the Socialist Party are in favor of the complete legalization of soft drugs, there is apparently insufficient support for it, but there is also insufficient support for a complete ban of the substances. Another factor in the Dutch Parliament’s drugs policy debate is the stance the Netherlands will adopt towards the international drugs treaties, which are to undergo scrutiny in 2008 and 2009. The HANDELSBLAD article avers “[e]xperts call the UN treaties in the area of drugs hopelessly antiquated and



inhuman” and takes note of Apostolou’s view that the country should urge the United Nations to abolish the liability to punishment of soft drug users. Because the Netherlands does not have much scope to steer its own course, however, experts in the Netherlands argue “adjusting the treaties is the best thing.” (*Id.*)
(Wendy Zeldin)



National Symbols

MEXICO – Law on National Symbols Amended

An amendment to Mexico's Law on the Coat of Arms, the Flag, and the National Anthem that was passed in January of 2008 mandates that under no circumstances may a reproduction of the coat of arms of the nation be altered or changed. Although the coat of arms may be used on the vehicles that the President of the Republic uses, as well as on the official stationery of the federal, state, and municipal agencies, its reproduction must be strictly in keeping with the law. (Decreto por el que se reforma la Ley sobre el Escudo, la Bandera y el Himno Nacionales, DIARIO OFICIAL DE LA FEDERACIÓN 4 (Jan. 21, 2008) [electronic version], *available at* <http://www.leginfor.com> [Mexican legal database, by subscription only].)
(Norma C. Gutiérrez)



Pensions and Retirement

UNITED STATES – 401(k) Plan Participants May Sue Plan Administrators under ERISA

The Supreme Court ruled on February 20 that a participant in a defined contribution pension plan, such as a 401(k) plan, may use a section of the Employee Retirement Income Security Act of 1974 (ERISA) to sue a plan administrator whose misconduct impaired the value of the participant's individual account.

Section 502(a)(2) of ERISA authorizes participants in retirement plans to bring actions on behalf of a plan against administrators for violations of fiduciary duties. A 1985 Supreme Court opinion ruled that a participant in a traditional, defined benefit pension plan could only sue for relief that would benefit the pension plan as a whole. Some federal courts interpreted this precedent to preclude participants in defined contribution plans from suing under section 502(a)(2). When James LaRue sued his former employer under section 502(a)(2) for failing to follow his instructions with respect to the investments in his 401(k) plan, the district court and the U.S. Court of Appeals for the Fourth Circuit rejected LaRue's case as contrary to the Supreme Court precedent.

Reversing, the Supreme Court held that section 502(a)(2) authorizes participants in defined contribution plans to sue plan administrators for fiduciary breaches. The Court distinguished its 1985 precedent as primarily focused on the defined benefit plan context. It concluded that an individual participant in a defined contribution plan may use section 502(a)(2) to sue for recovery for harms arising from an administrator's fiduciary breaches that impair the value of plan assets in a participant's individual account. (LaRue v. DeWolff, Boberg & Associates, Inc., No. 06-856 (Feb. 20, 2008) *available at* <http://www.supremecourtus.gov/opinions/07pdf/06-856.pdf>.)
(Luis Acosta)



Religion

CANADA – Ontario Judge Rules Sikh Not Exempt from Helmet Law

In a decision released on March 6, 2008, that has not yet been formally reported, W. James Blacklock of the Ontario Court of Justice in Brampton, Ontario, ruled that a Sikh motorcyclist could not be exempted from the province's law requiring the wearing of helmets on the grounds that it violated his religious freedoms (Ont. Court of Justice, Brampton, Mar. 6, 2008). The judge found that an exemption would place an undue hardship on the province, because of the costs that are incurred by the provincial health program in treating serious head injuries and ordered the defendant to pay the ticket he had been issued for riding without a helmet. The defendant, Balinder Badesha, had been supported by the Ontario Human Rights Commission in his constitutional challenge. Elsewhere in Canada, both British Columbia and Manitoba exempt Sikhs from helmet laws on the grounds that their religion forbids them from covering their turbans.

Sikhs have successfully sued Canadian governments for the right to wear their turbans where headgear is prohibited or other types of headgear have been prescribed in a number of cases. In recent years, they have gained the right to wear their turbans with their military and Royal Canadian Mounted Police uniforms. The judge in the case at hand distinguished these cases on the grounds that the helmet law was designed to reduce significant safety risks. The lawyer representing the defendant indicated that his client would consider appealing the Ontario Court of Justice ruling. (*Sikh Loses Helmet Fight*, THE STAR, Mar. 6, 2008, available at <http://www.thestar.com/article/310015>.)
(Stephen F. Clarke)



Research and Technology

EUROPEAN UNION – Code of Conduct on Nanosciences and Nanotechnology Research

The European Commission has a keen interest in the newly emerging fields of nanoscience and nanotechnology. The Commission – in light of the fact that this area of research raises questions pertaining to ethics and fundamental rights and may also have a tremendous positive impact on society and the environment – took action initially in 2005, by adopting the Nanotechnologies Action Plan. On February 8, 2008, the Commission adopted an additional measure, the Code of Conduct for Responsible Nanosciences and Nanotechnologies Research. The core of the Code of Conduct consists of seven principles on which research in this field must be based. These principles are:

- **Meaning:** research must be comprehensible to the public and must respect fundamental rights;
- **Sustainability:** research should be safe and ethical and must not harm or endanger humans, animals, plants, or the environment at large;
- **Precaution:** research must be guided by the precautionary principle;
- **Inclusiveness:** research must be open and transparent to all stakeholders;
- **Excellence:** research must meet the best available scientific standards, including safe laboratory practices and integrity of research;
- **Innovation:** research must encourage maximum creativity, flexibility, and planning ability for innovation and growth; and
- **Accountability:** all persons involved in research activities must be held accountable for any impact on society, the environment, and humans.

The Code of Conduct is not binding. The Commission recommends that Member States encourage the appropriate authorities involved in this field to adopt the Code voluntarily. The Commission will monitor the implementation of the Code annually and will review compliance every two years. (Press Release, European Commission Adopts Code of Conduct for Responsible Nanosciences and Nanotechnologies Research, IP/08/193 (Feb. 8, 2008), *available at* <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/193&format=HTML&aged=0&language=EN&guiLanguage=en>.)

(Theresa Papademetriou)



Taxation

CANADA – Proposal to Deny Tax Credits to Offensive Films

Tax credits offered by the federal and provincial governments have attracted many North American filmmakers to Canada. An issue respecting the federal credits has now arisen. In its lengthy bill to amend the Income Tax Act, which has already been passed by the House of Commons, the Conservative Government has included changes that would deny credits to productions considered to be contrary to public policy. The Heritage Minister has explained that the intent of the measure is not to limit freedom of expression, and other Conservative members have stated that it is intended to ensure that the government does not subsidize films that involve extreme violence or child pornography. (Joan Bryden, *Senate Liberals Vow to Protect Film Industry from Government Bill*, THE CANADIAN PRESS, Mar. 5, 2008, available at <http://www.macleans.ca/article.jsp?content=n0305104A>.)

The Canadian film industry is generally opposed to the measure, because it fears that it will be used to effectively censure film and video production. In order to become law, the Government's bill will have to be passed by the Senate. The majority of Canada's Senators were appointed by previous Liberal governments, and a number of them have indicated that they will amend the bill to protect artistic freedom. Canada's Senate does not often reject government bills, but as a chamber of "sober second thought," it does occasionally propose changes that necessitate the government reintroducing the bill in the House of Commons. The current Conservative government is a minority government, and the third and fourth largest parties in the House of Commons have already called on the government to change the provision respecting tax credits. The Liberals, who are the second-largest party in the House, have decided to let the Senate deal with the matter first. (An Act to Amend the Income Tax Act, Bill C-10, 39th Parl. 2d Sess., available at <http://www2.parl.gc.ca/HouseBills/BillsGovernment.aspx?Language=E&Mode=1&Parl=39&Ses=2#C10> (last visited Mar. 6, 2008).)

(Stephen F. Clarke)

ISRAEL – Bribes to Foreign Officials Not Tax Deductible

The Tel Aviv Yafo district court rejected an appeal against a decision by the Income Tax Authority of Israel not to recognize as a legitimate expense bribes paid to foreign officials to facilitate a business transaction in a foreign country. The appellant, an Israeli company, claimed that the amounts paid as the bribes should be recognized as an expenditure incurred in order to obtain taxable income.

In rejecting the appeal, the court held that recognizing payment of bribes as an expense for tax purposes contradicts the moral base that authorizes the legislator to impose tax. Permitting bribes as expenditures establishes legitimacy for corrupted and corrupting regimes that harm the economic relationship of countries in the world, even if done outside of Israel. The court rejected the claim that by not allowing the deductions, the company was subjected to discrimination as compared with foreign beneficiaries. The court held that if bribes could be



deducted, taxpayers would in effect become party to the activities and that a tax system that aspires to be enlightened cannot transform its citizens into partners in such acts, even if the latter do not constitute an offense if conducted outside the state's borders. (Income Tax Appeal 1015/03 A Company Ltd. v. Income Tax Officer Natania, Nevo Legal Database (by subscription, in Hebrew), <http://www.nevo.il> (last visited Feb. 14, 2008.)
(Ruth Levush)



Terrorism

AUSTRIA – Terrorism Trial

On March 3, 2008, the trial of two suspected terrorists began in the Regional Court of Vienna. The accused were spouses who were Austrian citizens of Arab ethnicity, and they were charged with aiding and abetting al Qaeda. The accused woman appeared in court dressed in a “burqa” that hid her face and head, leaving only an opening for the eyes. After she had refused to show her face, the presiding judge removed her from the courtroom and proceeded with the trial in her absence, on the grounds that the court needed to see her face in order to find the truth (*Wien: Terror-Prozess beginnt mit Schleier-Debatte*, DIE PRESSE, Mar 3, 2008). The legal provision justifying this court order was section 234 of the Austrian Code of Criminal Procedure (STRAFPROZESSORDNUNG, BUNDESGESETZBLATT [OFFICIAL LAW GAZETTE of Austria] No. 1975/631), which allows the judge to remove a disorderly defendant from the trial and to try him *in absentia*. The case is one of first impression for Austria and it juxtaposes defendant’s rights of religious expression and possibly also the right to remain silent with the court’s duty to find the truth (*Ein konfliktträchtiges Szenario*, DIE PRESSE, Mar. 3, 2008.) (Edith Palmer)

KUWAIT – Cabinet Condemns Mourning of Mughniyah

In its meeting on February 18, 2008, the Kuwaiti Council of Ministers condemned the eulogizing in one of the local Shiite religious places of gathering (*Husseiniya*) of Imad Mughniyah, a military leader of Hizbullah, in a ceremony attended by two Kuwaiti Members of Parliament. After the meeting, the State Minister for the Council of Ministerial Affairs, Faisal al-Hujji, indicated that the competent authorities are taking the necessary legal action, describing Mughniyah as “a terrorist with innocent blood on his hands.” (*Mughniyah Is a Terrorist and His Eulogy Is a Provocation*, AL-QABAS, Feb. 19, 2008.) (Issam Saliba)

LEBANON – New Charges Against Shaker al-Absi

The General Prosecutor in Lebanon has filed charges seeking the death penalty against the leader of Fath al-Islam, Shaker al-Absi, and three others for their role in a bombing last year that resulted in the deaths of three persons. Al-Absi had been sentenced to death in absentia in Jordan in 2002 for the assassination of an American diplomat. He was later imprisoned in Syria prior to forming the Fath al-Islam organization in north Lebanon and fighting the Lebanese army for three months in the refugee camp of Nahr al-Barid last summer. In January 2008, al-Absi declared in a recording published on the Internet that he was able to escape the siege the army had imposed on the camp. (*The General Prosecutor in Lebanon Seeks the Death Penalty for Al-Absi and Three Others*, ALJAZEERA, Feb. 19, 2008.) (Issam Saliba)



UNITED KINGDOM – Extradition Order to U.S. Signed for Muslim Cleric

The Home Secretary of the United Kingdom has signed an extradition order to the United States for controversial Muslim Cleric Abu Hamza al-Masri, where he is expected to face terrorism-related charges. Hamza al-Masri is currently in prison in the UK serving a seven-year term for inciting murder and preaching racial hatred. He had opposed the extradition order to the United States in the British courts, but this failed and the Home Secretary, in considering the cleric's objections to the extradition, determined that they were not sufficient to prevent his extradition. There is a 14-day period in which Hamza al-Masri may appeal against his extradition to the High Court, and there is the potential in the appeals process for the case to reach the European Court of Justice. (Home Office, *Home Secretary Signs Abu Hamza Extradition Order*, Feb. 8, 2008, available at <http://www.homeoffice.gov.uk/about-us/news/abu-hamza-extradition>.)

(Clare Feikert)



Trade and Commerce

CENTRAL AMERICA – Presidents Sign Customs Union Agreement

The presidents of the five Central American republics that make up the Central American Integration System (SICA) signed an agreement in Guatemala City, on December 12, 2007, on the establishment of a customs union to create a free trade zone in the region. The document has to be ratified by the congresses of each of the five nations. (Eduardo Smith & Leonel Díaz, *Istmo Consolidará la Unión Aduanera*, PRENSA LIBRE, Dec. 13, 2007.)
(Norma C. Gutiérrez)

EUROPEAN UNION – Commission Imposes New Fines on Microsoft

On February 26, 2008, the European Commission, the European Union's main antitrust law enforcer, imposed new fines of €899 million (about US\$1.364 billion) on Microsoft for failing to comply with the Commission's decision against the company issued in 2004. This fine is in addition to the initial penalty of €497 million imposed by the Commission in 2004 and €280 million imposed in 2006. In 2007, the European Court of First Instance upheld the Commission's decision and found that Microsoft had violated EU competition rules by abusing its dominant position in the market. The Court ordered the company to reveal information to its competitors on interface documentation at a reasonable price.

In January 2008, the European Commission initiated two new antitrust investigations against Microsoft on similar grounds. The first will examine whether Microsoft still abuses its dominant position in the personal computer market in order to exploit market share in the Internet. The second issue involves continued interoperability of Microsoft software with its competitors in the market. (*Microsoft Fined Euro 900 Million by Brussels*, EU OBSERVER, Feb. 27, 2008, *EU Fines Microsoft Record \$1.4bn*, BBC NEWS, Feb. 27, 2008, available at <http://news.bbc.co.uk/1/hi/business/7266629.stm>.)
(Theresa Papademetriou)



Trafficking in Persons

COUNCIL OF EUROPE – Anti-Human Trafficking Convention Now in Force

On February 1, 2008, the Council of Europe's (COE) Convention on Action against Trafficking in Human Beings, which opened for signature on May 16, 2005, entered into force for the first ten countries that ratified the Convention. These include COE Member States Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Moldova, Romania, and Slovakia. The purpose of the Convention is to prevent trafficking in all forms (national and transnational, organized-crime related or not), protect the human rights of victims, and prosecute traffickers. On May 1, the Convention will become effective for Bosnia and Herzegovina, France, and Norway. Twenty-four other Member States have signed but not ratified the treaty; ten have not yet signed it. Non-member states (which at present include Canada, the Holy See, Japan, Mexico, and the United States) and the European Community are also eligible to become party to the Convention. (*Council of Europe Convention on Action Against Trafficking in Human Beings Entered into Force on 1 February 2008*, LEGAL NEWS (Feb. 5, 2008), available at <http://www.legislationline.org>.) Under the Convention, "trafficking in human beings" means:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(Council of Europe Convention on Action Against Trafficking CETS No.: 197, Council of Europe Web site, <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=1&CL=ENG> (last visited Mar. 6, 2008).)
(Wendy Zeldin)

ISRAEL – Adjudication of Human Trafficking Offenses

On January 29, 2008, the Knesset (Parliament) of Israel passed an amendment to the Courts Law (Consolidated Version) 5744-1984. According to the amendment, defendants in human trafficking for prostitution trials will be prosecuted before a court of a single judge.

The amendment was designed to alleviate the hardship caused to victims by delays caused by court backlogs. In accordance with Penal Law 5737-1977, as amended, the offense of human trafficking for the purpose of prostitution is punishable by 16 years of imprisonment. Based on the level of this penalty, trials involving human trafficking for prostitution were heard by a district court before a bench of three judges. According to the explanatory notes of the bill,



the delays often resulted in release of defendants until the end of legal proceedings. The trial delays were particularly difficult to complainants, most of whom are foreigners who wish to return to their countries as soon as they can or victims anxious to start a process of rehabilitation in Israel. In addition to the impact on the complainants, the passage of time had also weakened the strengths of their testimonies due to memory loss, especially following the trauma they experienced. The authorization to hear such matters before a single judge was expected to resolve these problems. (The Courts Law and Bill (Amendment No. 48) 5768-2008, the Knesset Web site.)

(Ruth Levush)

UZBEKISTAN – Government Combats Trafficking

On January 31, 2008, the Government of Uzbekistan conducted a Cabinet meeting dedicated to the problem of human trafficking. Although the trafficking of women for sex trade is a common problem in Central Asia, this was the first case of discussing this problem at the highest level of the government in Uzbekistan, highlighting the growing concern about the issue among the top Uzbek officials.

Although statistics were not available, it was reported that a police unit consisting of 100 specially trained officers had been created within the national police force to fight smuggling of persons. The number of cases investigated by this unit is growing by 120 annually, although Uzbek authorities, according to specialists, tend to underreport negative facts. Since the early 1990s, when Uzbekistan became independent, many women have left the country to work abroad in the sex business. The most common destinations are Russia, the United Arab Emirates, and Europe. Following the meeting, government agencies responsible for providing social services were charged with the duty of developing a program aimed at assisting the victims of human trafficking. On March 13, 2008, the legislature of Uzbekistan voted to adopt an anti-trafficking law. (OSCE Office for Democratic Institutions and Human Rights, *Combating Trafficking on Agenda of Uzbek Government*, LEGAL NEWS, Feb. 4, 2008, available at <http://www.legislationline.org> [citing to BBC].)

(Peter Roudik)



Transportation

TAIWAN – No Biking in Pedestrian Crossings

Taiwan's Ministry of Transportation and Communications (MOTC) stated on March 2, 2008, that as of April 2008 bicycle riders will be subject to fines of NT\$300-800 (about US\$9.80-26.00) if caught cycling in pedestrian crossings. The cyclists may only use the crossings if they dismount the bikes and push them across; they must also obey the road signals for motor vehicles. According to Chen Yen-po, Deputy Director-General of the Department of Railways and Highways, "current regulations do not clearly define the status of a bicycle so you see a lot of the cyclists riding on the pedestrian crossings, which is actually against the law." To implement the new policy, he stated, about 30 traffic regulations are being amended and sections of pedestrian crossings will be changed to dedicated bicycle crossings. (Shelley Shan, *Bikes Banned from Pedestrian Crossings*, TAIPEI TIMES, Mar. 3, 2008, Open Source Center No. CPP20080303968018.)

On the other hand, under the new policy bicycles can be parked in spaces that were previously available only to motorcycles with an engine capacity of up to 550cc. The MOTC, after seeking an interpretation of the Law to Promote Private Participation in Infrastructure Projects from the Public Construction Commission, also made a proposal to encourage cities and counties in Taiwan to standardize motorcycle or bicycle parking spaces to be one-fifth the size of those for cars. Under the infrastructure law, contractors who build car parks may receive tax rebates, but motorcycle parking spaces are not mentioned. (*Id.*) (Wendy Zeldin)



War

UGANDA – Peace Agreement Shields Some from International Prosecution

The Ugandan government and the Lord Resistance Army (LRA), a Ugandan rebel movement, recently signed a peace agreement that will shield some members of the LRA from international prosecution. According to this agreement, members of the LRA accused of grave offenses would be brought before the Ugandan High Court, and others would be tried under northern Ugandan traditional justice systems. In return, the Ugandan government has promised not to hand over to the International Criminal Court (ICC) the LRA leader Joseph Kony and four other top leaders indicted by the ICC on charges of rape, mutilation, murder, and other atrocities and to work with the ICC towards having the charges dropped. (*Ugandan Government, Rebels Sign Deal*, THE ASSOCIATED PRESS, Feb. 19, 2008.)

(Hanibal M. Goitom)



War Crimes

NEPAL – Amnesty for War Criminals Planned

Nepal's Ministry of Peace and Reconstruction has finalized draft laws on constituting a truth and reconciliation commission and a commission on the disappeared for crimes committed during the country's ten years of armed conflict. It was reported in the Nepalese press on February 1, 2008, however, that the government was planning to use those laws to grant amnesty to the guilty and was seeking to issue the law in the form of an ordinance while the Parliament was not in session. A ministry source indicated that should a search be conducted for the persons responsible for the disappearances, "responsible leaders in the main ruling parties, high level officials in government and army officers will automatically become subject to action." Because "war criminals are to be found on both the Maoist and government sides, those in government are colluding to save them, and the matter of constituting a commission on disappeared citizens could only be window dressing," high-ranking government officials were quoted as saying. (*Nepal Government Planning Amnesty for War Criminals*, SAMARCHAPATRA, Feb. 1, 2008, Open Source Center No. SAP20080201950013.)

On June 1, 2007, the Supreme Court had directed the government to establish a commission on the disappeared in response to cases filed by the relatives of persons who had been arrested on given dates but who had subsequently disappeared. The Court also ruled that the government should draft legislation defining as a crime the act of causing disappearances, act against the perpetrators, end the state whereby such acts could be carried out with impunity, and provide the victims with treatment and compensation. "However, parliament did not come up with any important bills on disappeared citizens and a truth and reconciliation commission even though it had a long session, and an attempt is being made to bring in such law only after parliament has recessed, something which in itself smacks of non-transparency," human rights advocate Dr. Gopal Krishna Shivakote contended. (*Id.*)

The seven political parties that are sharing power had reached a 23-point agreement in late December to constitute by January 22, 2008, the two commissions as well as commissions on state restructuring and other important matters. By the last week of January, however, the agreement had not yet been implemented. (*Id.*; *23-Point Agreement by the Seven Party Alliance*, United Nations Mission in Nepal Web site, Dec. 23, 2007, available at <http://www.unmin.org.np/downloads/keydocs/2007-12-24-23.Point.Agreement.SPA.ENG.pdf>.)
(Wendy Zeldin)



Women

SAUDI ARABIA – Woman Arrested for Having Coffee with Colleague

On February 4, 2008, Yara, a female financial consultant for a company in Jeddah, Saudi Arabia, was arrested by agents of the official Saudi Commission for the Promotion of Virtue and Prevention of Vice. Her crime was being in a Starbucks café with a male colleague while waiting for the electric power to be restored to their offices located in the same building. Yara was quoted as saying she spent several hours in prison and was strip-searched, prevented from contacting her husband, and ordered to sign a confession that she was in a state of seclusion with a man who was not related to her. (*Coffee with Colleague Lands Woman in Trouble*, ARABNEWS, Feb. 5, 2008.)

(Issam Saliba)



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