



# Law Library of Congress GLOBAL LEGAL MONITOR

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## Abortions

### **UNITED STATES - Alaska Supreme Court Holds Parental Consent Requirement Unconstitutional Under Alaska Constitution**

On November 2, the Supreme Court of Alaska held that a law requiring minors to obtain parental consent before obtaining an abortion violated the right of privacy provision of the Alaska Constitution.

The Alaska Constitution includes a provision stating that “[t]he right of the people to privacy is recognized and shall not be infringed.” In a 2001 opinion, the Supreme Court of Alaska ruled that the right to privacy extends to minors, and the state can constrain a pregnant minor’s privacy right only when necessary to further a compelling state interest and only if no less restrictive means exists to advance that interest. In its decision November 2, the court ruled that the state had a compelling interest in protecting minors from their own immaturity and in aiding parents in fulfilling their parental responsibilities. However, the court ruled that a law requiring parental consent before a minor can obtain an abortion was not the least restrictive means available to achieve this compelling state interest. It stated that a parental consent requirement effectively shifted the right from the minor to the parents. The court suggested that a parental notification requirement, as opposed to a consent requirement, might pass constitutional muster. (Alaska v. Planned Parenthood, No. 6184 (Alaska Nov. 2, 2007), available at <http://www.state.ak.us/courts/ops/sp-6184.pdf>.) (Luis Acosta)



# Administrative Law

## CHINA – Simplification of Administrative Procedures

On September 28, 2007, the State Council of the People's Republic of China issued a circular that cancels 128 administrative examination and approval procedures and amends 58 others, in a move to reduce government red tape. Among the 128 eliminated procedures are some of those listed, for example, in the Decision of the State Council on Instituting Administrative Licensing in Regard to Administrative Examination and Approval Procedures That Must Be Retained (No. 412, June 29, 2004), which has an appended list of 500 items, and in the Circular of the General Office of the State Council on Retaining Some Non-Administrative Licensing Examination and Approval Procedures (2004, No. 62, Aug. 2, 2004), whose appended list covers 211 items.

Of the 58 adjusted procedures, 29 entail a derogation of management level (mainly from the central government to the provincial level), 8 involve a change of implementing department, and 21 reflect a merger of the same type of matters. Seven other administrative examination and approval procedures, while slated by the State Council to be eliminated or adjusted, require deliberation and revision by the legislature because they were instituted on the basis of relevant laws. (Guowuyuan guanyu disi pi quxiao he tiaozheng xingzheng shen pi xiangmu de jueding [Decision of the State Council on the Fourth Batch of Cancelled and Adjusted Administrative Examination and Approval Procedures], Oct. 9, 2007; Guowuyuan dui que xu baoliu de xingzheng shen pi xiangmu sheding xingzheng xuke de jueding, *WWW.GOV.CN* [the Central People's Government of the People's Republic of China Web site], June 20, 2005; Guowuyuan Bangongting guanyu baoliu bufen fei xingzheng xuke shen pi xiangmu de tongzhi, Ministry of Construction P.R. China Web site, Aug. 2, 2004.)

(Wendy Zeldin)



## Arms Limitation

### SRI LANKA – Ban on Arms Deals Proposed

The Sri Lankan government has issued a special provision under the existing Emergency Regulations on Arms Trading. According to Basil Rajapaksa, a new Member of Parliament, the provision will eventually be enacted as law. The purpose is to prohibit any Sri Lankan from taking part in arms deals, whether within the country or abroad, with the goal of making it impossible for citizens or companies to act as middlemen in the arms trade. (*New Regulation to Block Arms Deals*, SOUTH ASIAN MEDIA NET, Oct. 10, 2007, available at [http://www.southasianmedia.net/index\\_story.cfm?id=433392&category=Frontend&Country=SRILANKA](http://www.southasianmedia.net/index_story.cfm?id=433392&category=Frontend&Country=SRILANKA).)

(Constance A. Johnson)



# Banking

## GERMANY – Internet Banking

On July 5, 2007, the Administrative Court of Frankfurt am Main upheld an administrative decision of the German Banking Supervisory Agency (Bundesanstalt für Finanzdienstleistungsaufsicht) that forbade a Swiss provider of consumer loans to engage in loan transactions with German customers via the Internet (Verwaltungsgericht Frankfurt/M, docket No.1 E 4355/06 (V), as summarized in Mathias Hanten, *Kurzkommentar*, ENTSCHEIDUNGEN ZUM WIRTSCHAFTSRECHT 573 (2007)). The Swiss firm was not licensed by the Swiss Banking Commission to engage in banking transactions, but merely was licensed according to the laws of the Swiss Canton of Sankt Gallen to provide consumer loans; the firm solicited German customers on the Internet through a German credit agency.

Both the German court and the German banking agency based their decisions on section 32 of the German Banking Act (Gesetz über das Kreditwesen, repromulgated Sept. 9, 1998, BUNDESGESETZBLATT [BGBL] I at 2776, as amended) that requires anyone engaging in banking transactions in Germany on a commercial scale to obtain a license from the German banking authority. The Court held that the Swiss firm was engaging in banking in Germany because its advertisements and the terms of the offered transactions were tailored to the German market. The Court also held that Germany was not obligated by the General Agreement on Trade in Services [GATS] (Apr. 15, 1994, I.L.M. 1167 (1994)) to open its markets to border-crossing Internet banking transactions. Germany ratified the GATS on August 30, 1994 (BGBI II at 1438), together with the accompanying Annexes and the Schedule of Specific Commitments of the European Communities and their Member States (BGBI 1994 II at 1521); Germany ratified the Fourth Protocol of April 15, 1997 on November 20, 1997 (BGBI II 1990), and the Fifth Protocol of February 27, 1998, became effective for Germany on March 1, 1999 (BGBI 1999 II at 312).

(Edith Palmer)

## SOUTH AMERICA – Bank of the South

Argentina, Bolivia, Brazil, Ecuador, Paraguay, Uruguay, and Venezuela have agreed to create a regional development bank based on a proposal of Venezuelan President Hugo Chavez, in order to improve regional trade and growth with their own resources. The Presidents of the seven countries inaugurated the Bank of the South (*Banco del Sur*) on November 3, 2007, in Caracas, following the schedule set out in the “Declaration of Rio de Janeiro” signed on October 8, 2007, by their respective finance ministry officials. The Bank will have its headquarters in Caracas and two regional offices, one in Buenos Aires and another in Rio de Janeiro.

Chavez proposed the creation of the bank as part of a drive to counter the influence of the United States in Latin America and to use oil profits from record-high crude prices to finance social and economic development programs. The amount each country will contribute to the bank and how it will raise additional capital are issues to be worked out in the 60 days after the





Caracas signing ceremony, Guido Mantega, Brazil's finance minister, said at a press conference. In addition to agreeing to set up the bank, the participants decided that each country will have one vote on the bank's board of directors. Chile, Peru, and Colombia have not yet joined the new financial institution. However, Colombia announced on October 12 that it has requested membership.

No conditions will be set on loans to members. Brazil, which will make a "large" contribution to the bank, emphasized the goal of creating a self-sustaining institution that will earn enough interest on investments to increase the amount of capital available for loans to promote regional integration projects for both the private and public sectors.

The bank will not give grants, only loans, and will operate only within South America. This means that Central American and Caribbean countries will not be included. The bank plans to increase its capital from the initial national contributions through borrowing, possibly through international capital markets and other regional financial development organizations.

The bank hopes to make its first loan in 2008 and plans to work with existing regional financial institutions, such as the *Corporacion Andina de Fomento*, the InterAmerican Development Bank, and regional banks such as the *Banco Nacional de Desarrollo (BNDES)* of Brazil and the *Banco de la Nacion Argentina* of Argentina. (*El Banco del Sur se lanzara oficialmente el 3 de Noviembre*, DIARIO CLARIN, Oct. 8, 2007.)  
(Graciela Rodriguez-Ferrand)



## Border Zones

### PALESTINE – Future Borders

In an interview on Palestinian television, Mahmoud Abbas, President of the Palestinian Authority, announced that he wants to establish an independent Palestinian state on 6,205 square kilometers (about 2,400 square miles), corresponding to about 98 % of the Palestinian territories occupied by Israel in 1976. As to the remaining 2%, he indicated his willingness to exchange it for equal land area “within the green line,” meaning Israeli land. (*Abbas Specifies the Area of the State*, ASHARQ ALAWSAT, Oct. 11, 2007.)  
(Issam M. Saliba)



# Capital Punishment

## AFRICA – Death Penalty Developments

The non-governmental human rights organization Amnesty International (AI) reported in October 2007 on various developments concerning capital punishment in five African countries. Most notably, Rwanda abolished the death penalty on July 27, 2007, resulting in the commutation of the sentences of about 600 death row prisoners to life imprisonment. According to AI, this makes Rwanda “the 14<sup>th</sup> African country to end capital punishment for all crimes; 18 others are abolitionist in practice.” (AFRICA ROUND-UP, 37:9 THE WIRE (Oct. 2007), AI Index: NWS 21/009/2007, available at <http://www.amnestyusa.org/document.php?id=ENGNWS210092007&lang=e>.)

Nigerian authorities announced in May 2007 that all prisoners over 70 years of age and those over 60 who had spent more than ten years on death row would be granted amnesties, but no death row prisoners (some of whom had been there for 20 or more years) had been released by July. The Guinean Minister of Justice and Human Rights indicated to AI in June 2007 that the Government of Guinea is opposed to the death penalty and would carry out no executions. According to AI, the re-election to the Mali Parliament, in July 2007, of Kassoum Tapo, the initiator of a January 2007 draft bill to abolish the death penalty in that country, “raised hopes that legislation to abolish the death penalty would be put before Parliament soon” (see below for information on the recent action in Mali). Finally, in Mauritania, the establishment of an anti-death penalty association in that country, the first of its kind, was conjointly announced in August 2007 by several human rights organizations. (*Id.*) It may also be noted that in September 2007 Gabon’s Council of Ministers voted to abolish the death penalty (*see* 10 W.L.B. 2007).

(Wendy Zeldin)

## INDIA – Death Sentences for Ex-Legislators in a Lynching Case

On October 1, 2007, the Additional Sessions Judge, Ram Krishna Rai, handed down a landmark judgment when he awarded a former member of the Parliament (M.P.), Anand Mohan, and a former member of the Legislative Assembly (MLA) of the State of Bihar, Akhlaq Ahmed, sentences of death in a murder case. The case concerned the mob lynching of the then District Magistrate of Gopalgunj on December 5, 1994. The judge also punished two accomplices, awarding a death sentence to Arun Kumar, and a sentence of life in prison to Mohan’s wife, former M.P. Lovely Anand. These defendants are political allies of the Minister for Railways, Lalu Prasad. Life sentences were also given to sitting MLA Vijay Kumar Shukla, alias Munna Shukla; Shashi Shekhar; and Harendra Kumar.

The court held all seven defendants guilty under sections 302 (murder), 307 (attempt to murder), 147 (rioting) and 427 (mischief causing damage) of the Indian Penal Code, 1860. It is stated that the victim was lynched by a mob accompanying the cortege of a political leader, Chotan Shukla, on December 5, 1994, when they pulled him out of a car, beat him up, and then



shot him. The judge acquitted 29 other persons accused in the case. (*Ex-MP Anand Mohan Gets Death Sentence in DM Lynching Case*, THE HINDUSTAN TIMES, Oct. 3, 2007.)  
(Krishan Nehra)

### **ITALY - Repeal of Capital Punishment**

On October 2, 2007 the Italian Parliament approved Constitutional Law no.1, which amends article 27 of the Constitution, concerning the repeal of capital punishment. The previous reading of the fourth paragraph of article 27 was “Capital punishment is not permitted, except in cases foreseen in the military laws of war” (unofficial translation). The amendment repeals the second part of this sentence, to state that “Capital punishment is not permitted.” (Parlamento Italiano, *Gazzetta Ufficiale*, no. 236, October 10, 2007.)  
(Dario Ferreira)

### **MALI – Cabinet Abolishes Death Penalty**

*L'Essor*, a government newspaper in Mali, reported on its Web site on October 18, 2007, that the Cabinet had passed a bill on the abolition of capital punishment, replacing it with life imprisonment. It had been a penalty that could be imposed under article 4 of the August 20, 2001, penal code. However, although death sentences were handed down in the country, none had been carried out since 1980; instead the sentences have been commuted by the president to life imprisonment.

The decision was the result of a Cabinet session held on October 17, 2007. The government Web site statement on the change states:

It is true that our country's high authorities, deeply imbued with values of humanism, chose not to take human life, be it that of a criminal. The abolition of the death sentence, which changes into law what was only a practice, is set within this framework of the respect for life in conformity with the sacred values of humanism, clemency, compassion and pardon that are part of our society.

(*Malian Cabinet Abolishes Death Sentence for Life in Prison*, OSC SUMMARY, Oct. 18, 2007, Open Source Center No. AFP20071018950048.)  
(Constance A. Johnson)



## Communications and Electronic Information

### EGYPT – Tribal Council Fines Journalist

In a precedent, the first of its kind in journalism, a customary tribal judicial council in Sinai has fined a journalist member of al-Byadiah tribe, who was accused of slander and libel, 2.7 million Egyptian pounds, the equivalent of the price of 1,000 female camels, to be paid to the al-Tarabin tribe. The Al-Tarabin tribe waived one million of the fine and is willing to waive the remaining amount if the al-Byadiah tribe hoists 12 flags on 12 of its houses as a symbol of apology and publishes a written apology in three official newspapers. (*A Tribal Council in Sinai Fines a Journalist an Amount Equal to One Thousand Female Camels for Libel and Slander*, ASHARQ ALAWSAT, Oct. 23, 2007.)  
(Issam M. Saliba)

### GHANA – Phone Chip Registration

It was reported in late September 2007 that Ghana's National Communication Authority (NCA) was introducing reforms in the mobile phone industry. Under the NCA's proposed new regulations, a spokeswoman stated, customers would have to provide such information as name, home address, other telephone numbers, and a form of identification before the seller would activate their pre-paid mobile phone chip. In addition, because the NCA wants to establish a complete database to use in monitoring the industry and tracing anonymous callers and originators of text messages in the event of complaints being made, current customers will have to re-register with their service operators.

An editorial in the GHANAIAN CHRONICLE pointed out that, unlike in industrialized nations, in which security measures including the registration of phones have been adopted to make it difficult to use mobile or fixed-line phones to commit crimes, in Ghana "anyone can walk into any corner of the country, buy a chip and start using it immediately, without any checks done on the person." As a result, "criminals also appear to have taken advantage of the situation by using their phones to threaten people." The editorial cited a recent incident in which "damaging text messages" were circulated concerning some of the ruling New Patriotic Party's presidential candidates, but "the security agencies could not do much because there is no system in place to enable them track down the perpetrators." It noted that the lack of phone registration hampered police investigation of potential terrorist crime, in contrast to Great Britain, where the police "had managed to arrest one of the terrorists who had attempted to bomb one of the airports in the UK because of the mobile phone chip they found at the crime scene." The editorial suggested that the NCA require photo identification and the signature of phone customers and urge mobile phone operators to request such information. It concluded, "[t]he use of mobile phone[s] has become so common in Ghana that it could have serious security repercussions if systems are not put in place to check some of the excesses." (*Ghana: Editorial Hails Communication Agency Directive on Phone Chip Registration*, THE GHANAIAN CHRONICLE, Sept. 26, 2007, Open Source Center No. AFP20070926631004.)  
(Wendy Zeldin)



**UNITED STATES – Moratorium on State Taxation of Internet Access Extended to 2014**

On October 31, President Bush signed into law the Internet Tax Freedom Act Amendments Act of 2007. The act extends a moratorium on state and local taxation of Internet access services through November 1, 2014. The moratorium was first enacted in 1998, and was renewed in 2001 and 2004, but was due to expire on November 1, 2007. A grandfather clause in the legislation permits states that taxed Internet access prior to the original 1998 law to continue to do so. The law provides that phone and television services delivered online are taxable, but services related to Internet access such as instant messaging, e-mail, and personal online data storage are not. (Internet Tax Freedom Act Amendments Act of 2007, Public Law No. 110-108, 121 Stat. 1024, available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:h3678enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h3678enr.txt.pdf).)

(Luis Acosta)



# Constitutional Law

## EUROPEAN UNION – Reform Treaty

On October 26, 2007, the European Union agreed on the text of the Reform Treaty, otherwise known as the Lisbon Treaty, which replaces the EU Constitution rejected in 2005 by France and the Netherlands. The treaty will be formally signed by the 27 EU Member States in Lisbon, Portugal, on December 13, 2007. Subsequently, it must be ratified within a year by all Members in conformity with their constitutional traditions. The Reform Treaty, if ratified, will come into effect in January 2009.

The Treaty introduces an EU presidential term of two-and-a-half years that will in effect replace the current rotating presidency; strengthens the role of the Parliament; and removes the veto powers of EU Members in certain areas, including terrorism issues. The European Court of Justice will gain more power in the fields of justice and home affairs.

At the end of the negotiations, Bulgaria, Italy, and Poland appeared to have been triumphant in winning certain concessions. Bulgaria insisted on spelling the word euro as *evro*. It was finally agreed upon that the translated versions of legal documents and the Lisbon Treaty in Bulgarian will use *evro*. The Italian government fought to ensure that it be accorded the same number of Euro-deputies as France and the United Kingdom; the final text was changed accordingly. In order to incorporate this change while preserving the 750 overall limit on the number of Euro deputies, it was decided that the President of the European Parliament will not be considered a member. Poland insisted on reviving an old clause of the EU Constitution that had been rarely used, the so-called Ioannina clause. This clause provides for a mechanism that permits countries to block an EU decision for up to two years. It ultimately was not included in the text of the Reform Treaty but in a declaration. (Reform Treaty, EUROPA, [http://europa.eu/reform\\_treaty/index\\_en.htm](http://europa.eu/reform_treaty/index_en.htm) (last visited Oct. 30, 2007) [this site has hyperlinked key documents, press releases, speeches, and useful links].) (Theresa Papademetriou)

## VENEZUELA - Congress Approves Constitutional Reforms Proposed by the President

On October 23, 2007, the National Assembly of Venezuela approved an increase in powers for the president of the republic as part of a constitutional reform in progress.

Among the new presidential powers included in the reform, are the following:

To create or suppress federal provinces, federal territories, federal cities, operational districts, federal municipalities, maritime regions, strategic regions and insular districts and communal cities [and] to designate and remove their authorities.



In addition, the leader will be able to remove his vice-president, to appoint vice-presidents to govern the new regions that he may decide to create. Likewise, he may promote “Officials of the National Bolivarian Armed Forces in all grades and hierarchies; administer the public treasury, the international reserves, as well as the establishment and regulation of monetary policy.” The reforms also provide the president eligibility to run for reelection indefinitely. (*Aprueba el Congreso venezolano aumentar las atribuciones de Chávez*. [www.jornada.unam.mx](http://www.jornada.unam.mx) (last visited October 24, 2007).)  
(Francisco Macías)





## Corporations

### TAIWAN – Statute on Development of Biotech, New Pharmaceutical Enterprises

On July 4, 2007, the 13-article Statute for Development of Biotechnology and New Pharmaceutical Enterprises was promulgated in Taiwan, to provide incentives to companies in that sector. According to Academia Sinica President Wong Chi-huey, the legislation is “important and timely” and represents “a new foundation that would rapidly boost the industry” instead of “repeatedly amending existing regulations.” (Annie Huang, *Legislature Passes Biotech Act*, 24:43 TAIWAN JOURNAL (Nov. 2, 2007), available at <http://taiwanjournal.nat.gov.tw/ct.asp?xItem=24389&CtNode=122> [the original article is dated June 29, 2007].)

A key change brought about by the Statute is that it eases restrictions on holding concurrent posts imposed on publicly funded research scientists, including those in institutions like the prestigious Academia Sinica, by article 13 of the Government Employees Service Law. Thus, with the permission of the original employer, certain researchers in those institutions may now be a founder or director of, or technical consultant to, a start-up biotech or new pharmaceutical company and also hold ten percent or more of the stock equity when the company is created (art. 10). Academic and research organization R&D personnel also may, with the employer’s permission, act as consultants or advisors to biotech and new pharmaceutical companies (art. 11). (Statute for Developing Biotechnological New Pharmaceuticals Enterprises, 6157 GAZETTE OF THE OFFICE OF THE PRESIDENT (July 4, 2007), Global Legal Information Network, GLIN ID No. 194345, available at <http://content.glin.gov/summary/194345>; *Investment Tax Offsets Offered Biotech and New Pharmaceutical Companies*, Taipei Economic and Cultural Office (Australia) Web site, <http://www.teco.org.au/eecon.htm> (last visited Nov. 5, 2007); Huang, *supra*.)

In addition, the Statute permits biotech and new pharmaceutical companies to offset up to 35% of their expenses for personnel training and R&D against enterprise income tax over a period of five years. It also allows 20% of investment in those company shares to be offset against the tax as long as the shares are held for at least three years. These tax incentives will be available to the end of 2021 (art. 6). The Statute provides for tax incentives to high-level professionals and technology investors to participate in company operations and R&D (art. 7). It also permits biotech and new pharmaceutical companies to issue stock warrants and sell them under par to their high-level professionals and technology investors; taxes on them are levied on the basis of their actual value at the time of transfer (art. 8, paras. 1&2, with reference to art. 140 of the Company Law). (*Id.*)

According to the ASIAN MEDICAL NEWSLETTER, the Ministry of Economic Affairs recently drafted provisions to supplement the new Statute in regard to the threshold for tax relief. They stipulate that the tax relief “applies to companies developing new biotech drugs or high-risk medical devices” but “they will need to spend at least 5% of total turnover or 10% of investment capital on new drug or device development to qualify.” (*Taiwan’s Biotech and New*



*Pharmaceutical Development Act, 7:10 ASIAN MEDICAL NEWSLETTER (Oct. 5, 2007), available at [http://www.pacificbridgemedical.com/newsletter/newsletter\\_v7n10.htm](http://www.pacificbridgemedical.com/newsletter/newsletter_v7n10.htm).)*

(Wendy Zeldin)



## Courts

### AUSTRIA – Proving Foreign Law

In a recent decision, the Austrian Administrative Courts reiterated that the parties in administrative proceedings may have an obligation to prove foreign law, if finding the foreign law would be burdensome for the deciding Austrian agency. The latest of these decisions was issued by the Austrian Administrative Court on May 23, 2007 (Verwaltungsgerichtshof [VwGH] docket No. 2006/13/20074), and it was followed by the deciding agency, an independent “finance senate” (Unabhängiger Finanzsenat), on September 28, 2007 (VwGH, Sept. 28, 2007, JUSGUIDE 2007/42/385, available at RDB legal data subscription database). In its 2007 decision, the Administrative Court relied on a preceding case of 2006 (VwGH, Sept. 12, 2006, docket No. 2003/03/0035).

Requiring the parties to prove the foreign law is somewhat unusual in Austria, where the principle of *jura novit curia* (the authorities know the law) generally prevails for the finding of foreign law. According to section 4 of the Austrian Conflicts Code (Internationales Privatrechtsgesetz, BUNDESGESETZBLATT No. 304/1978, §4), foreign law is to be ascertained *ex officio*, while the assistance of the parties or of expert witnesses is permitted. (Edith Palmer)

### CHINA – Law of Civil Procedure Amended

On October 28, 2007, the Standing Committee of the National People’s Congress passed amendments to China’s Law of Civil Procedure, the first revision of the law since its adoption in 1991. Two of the key changes are to facilitate applications for a retrial and to increase the effectiveness of execution of judgments. In regard to the former, the number of circumstances in which a retrial should be held has been nearly tripled, to include, for example, situations where the substantive evidence for determination of the facts of the original judgment or order was false or not cross-examined, where there was a mistake of competency, or where there was a failure by a judge to recuse himself when there should have been a recusal. Moreover, the retrial application is to be made to the court at the next higher level; the option of submitting it to the original court has been eliminated, thereby “removing the possibility that the court may be reluctant to order a retrial” (Ng Tze-Wei, *Urban and Rural Planning Law Passed*, Hong Kong SOUTH CHINA MORNING POST, Oct. 19, 2007, Open Source Center No. CPP20071029775018.)

Regarding execution of judgments, the revised Law newly prescribes that in cases where a person subject to execution of judgment has not fulfilled the obligations specified in the relevant legal document and there is the possibility of his concealing or transferring assets, the execution officer may immediately adopt compulsory execution measures. It further provides that such a person is to report his or her asset flow, current and for the year prior to the date of reception of an execution notification. Refusal to report or false reporting may result in a court-ordered fine or detention for that individual, his agent, or the person in charge or the directly responsible personnel of the unit concerned. The court may also adopt lawfully stipulated



measures such as restricting the person from leaving the country or making information about the person's non-fulfillment of obligations public.

Among other changes, the maximum amount of fines imposed under the Law has been increased ten-fold, from 1,000 yuan to 10,000 (about US\$1,340) for individuals and from 30,000 yuan to 300,000 (about US\$40,200) for work units. In addition, the former chapter 19, on procedures for debt repayment pursuant to enterprise bankruptcy, has been deleted. The Law will enter into effect on April 1, 2008. ((Shouquan fabu) Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui guanyu xiugai <Zhonghua Renmin Gongheguo minshi susong fa> de jue ding [(Authorized for Issuance) Decision of the Standing Committee of the National People's Congress on Revising the Law of Civil Procedure of the People's Republic of China], XINHUANET, Oct. 28, 2007; Zhonghua Renmin Gongheguo minshi susong fa (quan wen), CHINA.COM.CN, Oct. 29, 2007 [provides the Decision as well as the complete revised text]; Ng Tze-Wei, *id.*)  
(Wendy Zeldin)



## Criminal Law

### CHILE – Regulations of the Law Establishing a Criminal Responsibility System for Juvenile Delinquents

On 13 December 2006, the President of Chile issued Supreme Decree 1,378 approving the Regulations of Law 20,084 of 2005, which establishes a Criminal Responsibility System for Juvenile offenders. The regulations address the rights of adolescents in the Chilean criminal law system, including, among other things, their right to a treatment which respects their human rights, development, dignity, social integration, to be informed of their rights and responsibilities, to petition the authorities, to counsel, to practice the worship of their choice, and their to participate in recreational activities. The regulations also concern the juveniles' right to receive periodic visits, to enjoy respect for their integrity and privacy, to access educational services, and to the privacy and regularity in all their communications, especially with counsel. In addition, special rights of detained female juveniles are covered by the regulations, including their right to health services, pregnancy and delivery-related health matters, medical check-up of their children, lactation needs, and residence of their infant children in the facilities. The regulations encourage the participation of parents in all of the activities related to the juveniles.

The regulations state the powers of the National Minors Service (NMS) as the government agency in charge of implementing legal provisions concerning penalties involving imprisonment for juveniles, and the parole regime. The regulations also mandate the implementation of Individual Intervention Plans (IIP) by the NMS in order to provide juveniles with rehabilitation treatment for drug or alcohol addictions, in coordination with the National Council for the Control of Narcotics. The purpose of IIPs is to make juveniles take responsibility for their actions, repair any wrongdoings, and to receive rehabilitation that will allow their re-introduction into society through work training, educational, and other programs.

The regulations establish rules governing life inside detention facilities, set forth penalties for the violation thereof, and deal further with the construction and other operational conditions of centers with a contained confinement regime, and for provisional imprisonment, respectively. Finally, the Regulation creates a special detail within the Chilean Gendarmerie for the administration and implementation of the rules concerning facilities for the containment of juveniles, and also mandates the creation of Juvenile Sections within regular imprisonment centers for persons who turn 18 years old when six months or more remain for the completion of their sentences. Decree No. 1378, Dec. 13, 2006, [38.747] D.O. 4, *available at* <http://content.glin.gov/summary/200346>.  
(Dante Figueroa)

### CHINA – Implementation of Court Rulings

It was reported on September 26, 2007, that China's Supreme People's Court (SCP), Supreme People's Procuratorate (SPP), and Ministry of Public Security (MPS) recently jointly issued the Circular on Problems Related to Seriously Investigating and Punishing Criminal Acts



of Refusing to Implement Judgments or Rulings and of Violently Resisting Court Enforcement. The Circular is based in particular on the Criminal Code, the interpretation by the National People's Congress Standing Committee of article 313 of the Code, and the Code of Criminal Procedure. In fact, the section of the Circular on acts punishable for the crime of refusing to implement a court judgment or ruling almost exactly duplicates a similar section in the interpretation. Among the punishable acts listed, for example, are those of hiding, transferring, or deliberately destroying property on the part of the person against whom the judgment or ruling is being executed, resulting in the judgment or decision being unenforceable; refusal on the part of an implementing personnel to assist in carrying out a ruling after receiving the court verdict; and collusion between a government official and the person against whom the ruling is being executed, the guarantor, and implementing personnel to take advantage of the official's post to prevent the law's enforcement.

According to the Circular, violent resistance of court enforcement orders encompasses three types of acts: 1) gathering a mob to create a row at or assault the implementation site, or besieging, seizing, or attacking law enforcement officials, so as to make it impossible to conduct enforcement work; 2) damaging or seizing case materials related to the implementation or vehicles for performance of official business and other enforcement apparatus, enforcement officials' apparel and credentials for performance of official business, causing serious consequences; 3) other acts involving violent or threatening means to impair or resist implementation, making it impossible to conduct enforcement work. Such acts will be handled as offenses of jeopardizing official business.

The Circular also clarifies case jurisdiction and the mutual cooperative and conditioned relationships among the courts, procuratorates, and public security organs in connection with the process of cracking down on the above types of offenses. For example, it stipulates that the courts may in advance place in judicial detention persons who have refused to implement a court judgment or ruling, "if the circumstances are serious"; if the perpetrators are suspected of having committed a crime, the case should be transferred to the public security organ of the place where it occurred for placement on file for investigation and prosecution. (*Yansu cha chu ju bu zhixing panjue, caiding he baoli kangju fayuan zhixing fanzui xingwei*, CHINACOURT, Sept. 25, 2007; *China to Intensify Implementation of Court Rulings*, PEOPLE'S DAILY ONLINE, Sept. 26, 2007, available at <http://english.peopledaily.com.cn/90001/90776/6271457.html>.)

In addition, China's newly amended Law of Civil Procedure multiplies fines that may be imposed on those who refuse to execute a civil court ruling by a factor of ten and also stipulates that such persons may be detained [see separate entry above on amendment of the Code]. According to NPCSC member Wang Shengming, "[t]he public are up in arms about the poor execution of verdicts. ... The amendment is necessary to safeguard the authority of justice" (*China to Ensure Civil Court Rulings Are Carried Out*, XINHUA, June 24, 2007, available at [http://www.chinadaily.com.cn/china/2007-06/24/content\\_901046.htm](http://www.chinadaily.com.cn/china/2007-06/24/content_901046.htm)). In January 2007, moreover, the central government had issued a circular requiring local governments to enforce court rulings, linking it to evaluation of official performance. (*China Requires Local*



*Governments to Enforce Court Rulings*, PEOPLE'S DAILY ONLINE, Jan. 15, 2007, available at [http://english.peopledaily.com.cn/200701/15/eng20070115\\_341280.html](http://english.peopledaily.com.cn/200701/15/eng20070115_341280.html).)

(Wendy Zeldin)

### **ITALY – Iraq Murder Case Against U.S. Soldier Dismissed**

On October 25, 2007, an Italian trial court dismissed a criminal case against U.S. Army Specialist Mario Lozano, who was charged with the murder in Iraq of Italian intelligence agent Nicola Calipari and the attempted murder of agent Andrea Carpani and Italian journalist Giuliana Sgrena. The court cited lack of jurisdiction over the case. Lozano's lawyers had made that argument in July, pointing out that members of multinational forces in Iraq were under the home country's sole jurisdiction, but the court reportedly delayed handling the case until September to give prosecutors time for a rebuttal.

Calipari, Carpani, and Sgrena were shot at while proceeding to the Baghdad airport after the agents had secured Sgrena's from Iraqi kidnappers. Lozano, who has denied all the charges against him, contends that he fired on the Italians' vehicle in self-defense when it failed to stop at the checkpoint he was manning despite numerous attempts to signal it to do so. He has denied all the charges against him. There is lack of agreement between U.S. and Italian officials regarding the details of Calipari's death. Although a U.S. investigation cleared U.S. soldiers of wrongdoing, an initial Italian inquiry into the matter concluded that the killing was accidental but "found that there were serious miscommunications among US officials in Iraq, and confusion about the rules of engagement for checkpoints." (Joshua Pantesco, *Italy Court Dismisses Murder Case Against US Soldier Accused in Iraq Shooting*, JURIST, Oct. 25, 2007, available at <http://jurist.law.pitt.edu/paperchase/2007/10/italy-court-dismisses-murder-case.php>.)

(Wendy Zeldin)

### **MEXICO/UNITED STATES – Memorandum of Understanding on Exchange of Criminal Information**

On September 19, 2007, Mexico and the United States signed a memorandum of understanding to collaborate in areas of training and exchange of information on criminal matters and experience in oral trials. The memorandum was signed by American prosecutors Gary King and Lawrence Wasden from New Mexico and Idaho, respectively, and by Mexican prosecutors Patricia González, Evencio Martínez, and Francisco Coronato from Chihuahua, Oaxaca, and Morelos, respectively, as well as by the elected Governor of Baja California, José Guadalupe Osuna. González commented that this agreement will benefit the Mexican prosecutors' offices in the implementation of a new justice system and of more advanced methods of scientific criminal investigation. (*Acuerdan Ayuda Contra el Crimen*, REFORMA, Sept. 20, 2007.)

(Norma C. Gutiérrez)





## Criminal Procedure

### **BRAZIL –Congress Analyzes Changes to Code of Criminal Procedure**

The Commission of Constitution, Justice and Citizenship of the Brazilian Chamber of Deputies approved a proposed law amending the Code of Criminal Procedure. The proposed law is part of a body of proposals previously sent in 2001 to the National Congress by the Brazilian Presidency. Among the many changes to the Code, which include a new summary procedure and a new ordinary procedure, the most significant one is the implementation of a single hearing for both procedures, in contrast to the multiple hearings now in existence. According to Senator Ideli Salvatti, the reduction in the number of hearings will expedite the criminal procedural process. The proposed law will now be analyzed by the Federal Senate during its plenary session. (*CCJ Aprova Projeto que Altera o Código de Processo Penal para Agilizar Procedimentos do Judiciário*, JURID, Oct. 10, 2007.)  
(Eduardo Soares)





## Cultural Property

### UKRAINE – New Rules for Transfer of Cultural Valuables

On October 15, 2007, the Verkhovna Rada (legislature) of Ukraine adopted amendments to the Ukrainian Law on Export, Import, and Return of Cultural Valuables, which regulates the transfer of artifacts moved during World War II. According to the new Law, artifacts transferred to Ukraine during World War II are considered partial compensation for damage caused by the German occupation. The newly defined procedure allows the return of imported cultural valuables to foreign states on the basis of a Cabinet of Ministers' resolution and in accordance with an international agreement between Ukraine and a claiming state, which has to be ratified by the Verkhovna Rada. The Law obligates the claiming state to replace the returning artifacts with an analogue similar in its historical, cultural, or monetary equivalent. Identification, examination, storage, restoration, and transportation of the returning artifacts will be provided by the claiming state. One-way transfers of cultural valuables by Ukraine are prohibited. The Law further provides for the creation of a state system to control the transfer of the cultural valuables. Additionally, ten regional offices of the newly established Artifacts Protection Service will decide on issuance of permits for transfers abroad of non-World-War-II-related cultural valuables by individuals; the new offices will substitute for export control at present conducted by art specialists at nine border customs checkpoints. (*Rada Regulates Transfer of Cultural Values Moved During WWII*, UKRAINIAN NEWS ONLINE, [ISI Emerging Markets database], Oct. 18, 2007.)

(Peter Roudik)



## Disability

### KOREA, SOUTH – Breast Cancer Survivor Regained Position in the Military

The Seoul Administrative Court rendered a judgment on October 4, 2007, that revoked the Defense Ministry's decision to discharge a female lieutenant colonel in the first reserve, Pi Ujin. Pi is a breast cancer survivor. After a mastectomy, Pi took a physical test and passed it, and kept working as a helicopter pilot for three years. However, in 2005, in accordance with the Enforcement Decree of the Military Service Act, she was ordered to have further examinations. She was deemed to be a disabled person and discharged from the military. After she filed a lawsuit against the government, the government amended the Enforcement Decree, so that certain disabled persons can keep working if they wish and if they pass a new physical. However, Pi's position was not restored by the amendment. (Il hyung Chang, *Josei Shōkō, Nyūgan ni yoru kyōsei jotai wa mukō no hanketsu* [Female Officer, Judgment Revoked Mandatory Discharge Based on Breast Cancer], CHOSUN ONLINE, Oct. 6, 2007.) (Sayuri Umeda)



## Education

### **BRAZIL – New Subjects Included in Curriculum of Public Basic Education**

On October 1, 2007, the Legislative Assembly of the State of Rio de Janeiro, Brazil, approved and promulgated Law No. 5,096, on the inclusion in the curriculum of basic education for public schools the teaching of human sexuality. The Law makes the subject mandatory and completely distinct from any other class and determines that the executive branch must elaborate the appropriate acts to regulate the norms contained in the Law. The Law was approved by the state deputies after being vetoed by the Governor of Rio de Janeiro, Sérgio Cabral, who argued that the initiative to propose such a law was exclusively within the competency of the executive.

At the federal level, on September 25, 2007, the government promulgated Law No. 11,525, making it mandatory to include the teaching of children's and adolescents' rights in the curriculum of basic education. The Law determines that the studies must be based on the Children and Adolescents Statute, Law No. 8,069 of July 13, 1990. (*Ensino da Sexualidade Será Obrigatório em Escolas Públicas do Rio*, O GLOBO (O)NLINE, Sept. 26, 2007; Lei No. 11.525 de 25 de Setembro de 2007, Web site of the Brazilian Presidency.)  
(Eduardo Soares)

### **HONG KONG – Extension of Free Education**

The Hong Kong government announced on October 10, 2007, a new policy that will provide twelve years of free school education beginning from the 2008-2009 school year. (Policy Address, Education Advancement Outlined (Oct. 10, 2007), available at <http://sc.info.gov.hk/gb/www.news.gov.hk/en/category/atschool/071010/html/071010en02002.htm>.)  
(Lisa White)

### **RUSSIAN FEDERATION – Higher Education Reform**

On October 11, 2007, the Federation Council (legislature) of Russia passed a law that introduced a two-tier higher education system. As of 2009, the existing five-year university education system will be replaced by a “four plus two” system – four years for a bachelor's degree and two for a masters, although specialist degrees will continue to involve five years of study, which will preclude the holders of specialist degrees from obtaining the masters degree. The list of the specialties that require continuous five-year education will be issued and periodically updated by the government. In proposing this law, the government stated that the move will push Russian higher educational institutions to modernize and adopt study programs in accordance with Western standards. In 2003, Russia joined the “Bologna process” in an attempt to make its education more compatible with that of Europe. It is expected that only ten percent of current educational institutions will retain graduate programs. (Marina Lemutkina, *Na Dvukh Urovniakh [On Two Tiers]*, GAZETA.RU, Oct. 12, 2007.)  
(Peter Roudik)



## Elections and Politics

### BRAZIL – Federal Supreme Court Decision Changes Electoral Law

On October 4, 2007, the Brazilian Federal Supreme Court issued a decision determining that the “electoral mandates” (seats) of Members of Congress who keep switching from one political party to another belong to the political party on the basis of which they were initially elected and not to the Members themselves. The decision was made in response to a request for an injunction (*Mandado de Segurança*) filed by three political parties who were seeking the mandates of 23 Congress Members who had left their respective political parties after being elected. As a consequence of the decision, these Members can now lose their mandates. However, it was decided that the risk of loss of their mandates would only affect the Members who changed political parties after March 27, 2007, the date on which the Superior Electoral Tribunal had ruled on this issue.

In practice, any political party can now ask for the mandates of Members of Congress who change their political party, by filing the appropriate request with the proper Electoral Justice, who will analyze each request on a case-by-case basis. (*Fidelidade Partidária: STF Decide que Mandato Pertence ao Partido. Infêis Podem ser Cassados*, O GLOBO (O)NLINE, Oct. 10, 2007.)  
(Eduardo Soares)

### KENYA – State Funding for Political Parties

The Kenyan Parliament recently adopted a bill on political parties, under which, for the first time, the state will provide state funding to political parties. The bill prescribes that a new Office of the Register of Political Parties will be responsible not only for registering and funding, but also for regulating the activities and conduct of, all political parties in the country. The Register will have the power to reject an application for registration if the political party is “founded on ethnic, age, tribal, racial, gender, religious or provisional provisions.” (*Kenya: Parliament ‘Unanimously’ Passes Bill to See State Fund Political Parties*, NATIONAL TELEVISION, Sept. 27, 2007, Open Source Center No. AFP20070927950078.)

Only political parties that garner at least five percent of the vote in general elections and in which at least one third of the office holders are women will be eligible for the state funds, the bill stipulates. It further provides, in order to limit switching of party affiliation, that members who propagate information on behalf of a different political party or advocate the formation of another political party will be deemed to have resigned from their original party. It is surmised that this move would obviate technical defections, a practice common in the current parliament. In addition, political parties are required under the new legislation to declare their funding from external and internal sources to the Register; failure to do so will incur harsh penalties, including deregistration. The bill awaits approval by the President in order to become law. (*Id.*)  
(Wendy Zeldin)



## NEPAL – Key Elections Postponed

On October 5, 2007, Nepalese officials announced that the scheduled November 22 elections had been postponed for at least three, and possibly as long as six, months. The delay was caused by the failure of the coalition interim government and Maoists to reach agreement over the fate of the monarchy and the electoral system. The Maoists left the interim government in September 2007.

The November ballot was a central element of the peace accord reached in November 2006, ending a decade-long Maoist rebel insurgency. The Maoists have called for the monarchy's immediate abolition and the creation of a republic and, although previously having agreed to elections combining "first-past-the-post" and proportional representation systems, have now demanded a completely proportional system. They threatened to disrupt the November polls if their demands were not met by the mainstream political parties. Those polls were designed to elect representatives to a constituent assembly that will rewrite Nepal's Constitution and determine the future of the (now) largely symbolic, 240-year-old monarchy. (*Nepal Ponders Monarchy's Fate Amid Security Concerns*, VOICE OF AMERICA, Oct. 10, 2007; Deepesh Shrestha, *Nepal Elections Postponed Indefinitely*, Hong Kong AFP, Oct. 5, 2007, Open Source Center No. JPP20071005969090.)

A special session of the Nepali Parliament opened on October 11 to debate the Maoists' demands. However, it has been observed, "[I]awmakers in the special session, dominated by the Nepali Congress Party, are unlikely to be cowed by the threats. At most, they are expected to agree to set a new date for nationwide elections - twice delayed this year and last held in 1959" (VOICE OF AMERICA, *id.*) In a statement issued on October 9, 2007, members of the U.N. Security Council expressed "disappointment" at the elections' delay, while reiterating "their full support for the work of the UN Mission in Nepal," which was established in January to support the country's peace process (*Security Council 'Disappointed' at Nepal Elections Delay – President*, UN NEWS CENTRE, Oct. 9, 2007, available at <http://www.un.org/apps/news/story.asp?NewsID=24242&Cr=nepal&Cr1>.) (Wendy Zeldin)

## PAKISTAN – Petition for Contempt of Court Against Chief Election Commissioner

On October 17, 2007, Wajihuddin Ahmed, a retired judge of the Supreme Court of Pakistan (SCP) and a Presidential candidate for election in opposition to President Pervez Musharraf, filed a petition for contempt of court against the Chief Election Commissioner of Pakistan (CEC) for failing to comply with the October 5, 2007, decision of the SCP directing him not to declare the results of the presidential election. The CEC, Qazi Mohammad Farooq, is also a retired judge of the Supreme Court. The petition, filed under article 204 of the Constitution, stated that contrary to the SCP's direction, the CEC had publicized the election results when he opened the ballot boxes, counted the votes, and announced the results of the election, thereby reducing the orders of the SCP to a mere ritual.



The petition states that the CEC should not have counted the votes, but was required to keep the ballot boxes sealed to maintain the secrecy of the election results and to await the decision of the SCP on whether Musharraf was eligible to take part in the presidential election. The petitioner also alleged that the CEC's conduct showed bias, in allowing the Prime Minister, Shaukat Aziz, and the Pakistan Muslim League President, Chaudhry Shujaat, who were the proposer and seconder, respectively, for Musharraf in his election bid, to sit with the CEC in the office space only for the CEC, and also in failing to allow the petitioner adequate time to scrutinize the nomination papers of the opposing candidate.

The petitioner asked that the CEC be summoned before the SCP and punished for contempt of court. (*Contempt Plea Filed Against CEC*, THE DAWN, Oct. 18, 2007, available at <http://www.dawn.com/2007/10/18/top8.htm>.)  
(Krishan Nehra)

### **TOKELAU – Independence Rejected**

Tokelau, a small country consisting of three islands in the Pacific Ocean, has rejected proposed independence in a United Nations-observed referendum. A two-thirds majority of voters was required for Tokelau to move from a dependent territory to self-government in free association with New Zealand. (Press Release, Rt. Hon Helen Clark, Tokelau Referendum Votes for Status Quo (Oct. 25, 2007), available at <http://www.beehive.govt.nz/Print/PrintDocument.aspx?DocumentID=31098>.)  
(Lisa White)



## Employment

### UNITED STATES – Court Enjoins New DHS Employment Regulations Targeting Illegal Immigrants

On October 10, the U.S. District Court for the Northern District of California granted a preliminary injunction against the Department of Homeland Security (“DHS”), preventing DHS from implementing new regulations designed to make it more difficult for employers to hire and retain employees who are illegal immigrants.

The Social Security Administration (“SSA”) tracks employee earnings for the purposes of calculating Social Security benefits. Every year employers submit statements to notify SSA of earnings by employees, and SSA attempts to match these statements with records of individuals on file. If a mismatch occurs, SSA notifies the employer by means of a “no-match” letter. Under new DHS regulations, this no-match letter would be considered legal notice to the employer that the employee in question is not authorized to work in the United States, and the employer could face civil and criminal penalties if the situation is not resolved within 90 days. At the time of the ruling, SSA was poised to mail 140,000 no-match letters to employers, affecting 8 million employees.

The plaintiffs, including business and labor organizations, sued to stop implementation of the new regulations. The court granted the plaintiffs’ motion for a preliminary injunction, blocking implementation of the new regulations pending litigation to determine their validity. The court found that the “balance of harms” greatly favored the plaintiffs, and that the plaintiffs had raised serious issues, including whether the regulatory process violated the Regulatory Flexibility Act, and whether DHS had changed its position on no-match letters in an arbitrary and capricious manner by not publishing a reasoned analysis explaining the change. (*American Federation of Labor v. Chertoff*, No. C 07-04472 CRB (N.D. Cal. Oct. 10, 2007) *available at* [http://www.cand.uscourts.gov/cand/Judges.nsf/ba8bc702282ba44588256d480060b732/61c2fef3cd43bfde882573700081d7ed/\\$FILE/7-4472.pdf](http://www.cand.uscourts.gov/cand/Judges.nsf/ba8bc702282ba44588256d480060b732/61c2fef3cd43bfde882573700081d7ed/$FILE/7-4472.pdf).)  
(Gary Robinson)



## Energy

### CUBA – The Cienfuegos Oil Refinery Will Be Inaugurated in December 2007

On November 7, 2007, Rafael Ramírez, the Venezuelan Minister of the People's Power for Energy and Petroleum asserted that by December of 2007 the Cienfuegos Oil Refinery of Cuba would be inaugurated. The notice was confirmed during the signing of the 2007-2009 Collective-Bargaining Agreement and notice was also given concerning the respective necessary deposit before the Ministry of the People's Power for Labor and Social Security—a step that enacts the entry into force of the legal instrument that supports almost 70,000 workers of the petroleum industry.

According to the information supplied by *Petróleos de Venezuela S. A. (PDVSA*, in Spanish), the Cienfuegos Oil Refinery expects to reach a production level of 65,000 barrels of petroleum per day (bpd) in its first stage and later expects to reach a level of 100,000 bpd. Once the refinery meets that production figure, it will be the top producing plant in Cuba—exceeding even that of the *Ñico López Oil Refinery* (headquartered in Havana and has a production capacity of 44,000 bpd.).

The founding of this enterprise carries out the Letter of Intent signed on 28 April 2005 within the context of the Bolivarian Alternative for the People of Our America (ALBA, in Spanish). The refinery is built as one of the most important project of ALBA. Two hundred thirty-six million dollars (US\$236,000,000) have been invested in the refinery's re-activation—this is only for its first phase. The second phase will require 1.3 billion dollars coming from Venezuela and Cuban capital to construct a petrochemical center in the zone. (*Agencia Bolivariana de Noticias [ABN*, in Spanish], *En diciembre sera inaugurada la refinería de Cienfuegos*, ALTERNATIVA BOLIVARIANA PAR LOS PUEBLOS DE NUESTRA AMÉRICA ONLINE, Nov. 7 2007.)

(Francisco Macías)





## Environment

### CHINA – New Urban and Rural Planning Law

The Standing Committee of the National People's Congress adopted a new Law on Urban and Rural Planning on October 28, 2007. When it enters into effect on January 1, 2008, the current 1989 Urban Planning Law will be abolished. "Urban and rural planning" refers to city-town system planning, city planning, town planning, township planning, and village planning. Overall plans for cities and towns (as opposed to detailed plans) are generally to be for a period of 20 years.

In a bid to reduce the spread of projects entailing corrupt practices by officials – in the form of "image projects," "achievement projects," and "jerry-built projects" – the new Law stipulates that 30 days before being sent to higher authorities for approval, an urban or rural development plan must be publicly announced and debates, hearings, and other methods used to solicit expert and public opinion. Once a plan has been lawfully approved, it cannot be changed without going through the prescribed procedures. This provision is reportedly intended to stop local government leaders from arbitrarily altering urban plans approved by their predecessors in power.

The urban and rural planning agencies must timely announce lawfully approved plans, with the exception of those whose content may not be made public as stipulated by laws or administrative regulations. Certain provisions of the law provide for compensation of persons whose lawful rights may be harmed by changes in a plan or withdrawal of a license. (Zhonghua Renmin Gongheguo cheng xiang guihua fa, *WWW.GOV.CN* [Web site of the Central People's Government of the People's Republic of China], Oct. 28, 2007; *Opinion: Curbing Bad Projects*, CHINA DAILY, Oct. 31, 2007, available at [http://www.chinadaily.com.cn/opinion/2007-10/31/content\\_6218471.htm](http://www.chinadaily.com.cn/opinion/2007-10/31/content_6218471.htm); *China Establishes New Law to Promote Urban-Rural Integration*, BRIDGING THE STRAITS, Oct. 31, 2007, available at <http://english.cri.cn/4426/2007/10/31/191@289567.htm>.)  
(Wendy Zeldin)



## Family

### **BRAZIL – Maternity Leave Extended**

On October 18, 2007, the Commission on Human Rights of the Brazilian Federal Senate unanimously approved a draft law extending maternity leave from four to six months and expanding the benefit to women who adopt young children. The proposed law also allows the full deduction of two extra months of salary from the company's or employer's taxes.

Specialists in pediatrics maintain that during the first six months of life brain growth is more intense; one of the main justifications of the law is that this period is fundamental for the psychological and emotional development of the newborn. The proposed law will now be analyzed in the Chamber of Deputies and, if approved, will be submitted for presidential sanction. (*Senado Aprova Extensão da Licença-Maternidade para Seis Meses*, O GLOBO (ONLINE), Oct. 18, 2007.)  
(Eduardo Soares)

### **INDIA - Supreme Court Rules on Mandatory Marriage Registration**

On October 25, 2007, the Supreme Court of India ruled that all marriages must be registered without any exception for any religion. The court directed all states and union territories to enact legislation within three months to make registration of all marriages compulsory. The Supreme Court in February 2006 had ordered states and union territories to make registration of all marriages compulsory, but not all of them had complied with this order with respect to all religions, and therefore the Court issued a new order requiring them to comply within three months.

In spite of registration being a simple process, the vast majority of Indians choose not to register their marriage. According to recent news, in New Delhi, out of 50,000 weddings each year, only approximately 1,500 marriages are registered. The court's ruling is expected to reduce instances of child marriages, bigamy, unlawful abandonment, and cases of domestic violence. (J. Venkatesan, Register All Marriages: Supreme Court, *The Hindu* (Oct. 26, 2007), available at <http://www.hindu.com/2007/10/26/stories/2007102656810100.htm>.)  
(Shameema Rahman)



## Freedom of Information

### FIJI – Ruling Permits Publication of Any Government Information

According to a media report of October 19, 2007, a recent Fiji High Court decision permits Fiji media the freedom to publish any government or statutory body information regardless of how the information has been obtained. The only exception to this right is where the owners of the information are able to establish that publication is not in the public interest as provided for in the Fijian Constitution. This matter arises from the earlier decision of Justice Roger Coventry, who dissolved a temporary injunction granted to the National Provident Fund to prevent reporting by Fiji Television on an audit report by Ernest & Young on the National Provident Fund. (*Fiji High Court Rules Fiji Media Has Freedom to Publish Information*, RADIO NEW ZEALAND INTERNATIONAL, Oct. 19, 2007, available at <http://www.rnzi.com/pages/news.php?op=read&id=35882>.)

(Lisa White)



## Freedom of the Press

### NIGERIA – Publisher Charged with Sedition

On October 10, 2007, in southern Nigeria, the publisher of a private newspaper was arrested by officers reported by some to be agents of the State Security Service, even though the local authorities denied they were involved. On October 16, Jerome Imeime, publisher of a newspaper in the State of Akwa Ibom, was charged by a magistrate's court with sedition, based on an article critical of Godwill Akpabio, the governor of that state. The newspaper had printed a front-page story speculating that state treasury funds could perhaps have been used by the governor to pay off his election campaign debts and alleging that the process of awarding contracts for road construction in the state was corrupt.

Imeime is the first journalist in the country to be charged with sedition for coverage of the leadership in more than a year. Nigeria had rescinded its sedition law in 1983, but journalists have still been charged with the offense since that date. Commenting on the arrest, Joel Simon, Executive Director of the New York-based Committee to Protect Journalists, stated: “[r]esurrecting sedition charges against Jerome Imeime for his work is outright censorship and is unacceptable in a country engaged in a historic democratic transition.” The newspaper had been raided in June 2007, when 5,000 copies of an issue criticizing Governor Akpabio were seized; state authorities denied involvement in that action. Imeime's trial date was set for November 16, and the paper has remained closed. He was released on bail of N25,000 (about US\$206). (Press Release, Committee to Protect Journalists, Publisher Arrested, Charged with Sedition over Story Critical of Governor (Oct. 18, 2007), available at <http://allafrica.com/stories/200710191013.html>; Nigeria: Court Grants Bail to Newspaper Publisher in A/Ibom [sic], DAILY TRUST (Abuja), Nov. 2, 2007, available at <http://allafrica.com/stories/200711020363.html>.) (Constance A. Johnson)

### TAIWAN – Press Freedom Ranking Improved

According to the *Worldwide Press Freedom Index 2007*, issued by the international, Paris-Based press organization Reporters Without Borders, Taiwan is rated highest among its Asian neighbors in press freedom in 2007 and No. 32 worldwide. Among the other 168 countries that comprise the Index, Japan was ranked No. 37; the United States, No. 48; Hong Kong, No. 61, and the People's Republic of China, No. 163. In 2006, Taiwan's ranking was No. 43. Iceland, Norway, and Estonia topped the list in press freedom throughout the world; Turkmenistan, North Korea, and Eritrea were ranked lowest. (*Taiwan Tops Freedom List*, CNA, Oct. 18, 2007, available at <http://www.taipeitimes.com/News/taiwan/archives/2007/10/18/2003383667>; Press Release, Reporters Without Borders, Worldwide Press Freedom Index 2007 (Oct. 16, 2007), available at [http://www.rsf.org/IMG/pdf/index\\_2007\\_en.pdf](http://www.rsf.org/IMG/pdf/index_2007_en.pdf).) (Wendy Zeldin)



## Government Finance

### **MEXICO – Fiscal Reform Measures Published in Federal Official Gazette**

On October 1, 2007, the Mexican government officially published a fiscal reform package to increase the government's revenue. The fiscal laws amended are: the Income Tax Law, the Federal Fiscal Code, the Special Tax Law on Production and Services, and the Value-Added Tax Law. The package newly establishes an employment subsidy; the Federal Law of Rights in Matters of Hydrocarbons; the Federal Budget and Fiscal Responsibility Law; the Organic Law of the Federal Public Administration; the Fiscal Coordination Law; the Law of Public Sector Acquisitions, Rentals and Services; and the Public Works and Related Services Law. The package also includes the promulgation of the Tax Law on Cash Deposits, which will become effective on July 1, 2008, and the Single-Rate Business Tax Law. (DIARIO OFICIAL, Oct. 1, 2007.)

(Norma C. Gutiérrez)



## Government Organization

### BANGLADESH - Judiciary Separated from Executive Control

Bangladesh formally declared the final separation of the government's executive and judicial functions on November 1, 2007, at a ceremony at which two separate magistracies for judicial and executive functions were inaugurated.

Article 22 of the Bangladesh Constitution provides for independence of the Judiciary. In 1999 the Supreme Court directed that separation of the judicial and executive functions should be implemented. The government announced the separation of the country's subordinate judiciary from the executive through a Gazette notification in January 2007. (See *Global Legal Monitor*, February 2007, at 30.) The President will now need to consult the Supreme Court in exercising powers regarding appointment, promotion, and control of the judicial service.

The November 1 ceremony marked the inauguration of two new magistracies, the Dhaka District Judicial Magistracy and the Dhaka Metropolitan Magistracy. 218 judicial magistrates were appointed, while the judicial power of 170 administrative officials was withdrawn.

The ceremony was attended by leading officials and dignitaries. In a speech at the ceremony, Chief Advisor Fakhruddin Ahmed, the head of the interim government, emphasized that the separation of the judiciary from the executive branch must be complemented by reforms in the police, the courts, and the legal profession. (Julfikar Ali Manik, *Judiciary Freed From the Executive Fetters Today*, *The Daily Star*, Nov. 1, 2007, available at <http://www.thedailystar.net/story.php?nid=9805>.) (Shameema Rahman)

### BANGLADESH- Mobile Court Ordinance 2007

"The Mobile Court Ordinance 2007, Ordinance No. 31, was published in the Bangladesh Gazette, October 29, 2007. The ordinance bars people from suing executive magistrates. It also empowers executive magistrates to perform certain judicial powers, including confiscating illegal goods and making decisions regarding confiscated perishable goods."

The 2007 Mobile Court Ordinance created two kinds of magistrates in Bangladesh, judicial and executive. Judicial magistrates will operate the Magistrate Courts and decide cases full time. They are appointed and supervised by the Supreme Court. The executive magistrates, on the other hand, will no longer preside over trials in any specific jurisdiction. They are appointed through the Public Service Commission and will deal with on-the-spot, impromptu proceedings anywhere in the country, and establish punishments. Punishments by the executive magistrates, however, may be meted out only against accused persons who confess, and are limited to financial penalties. The executive magistrates may later frame charges under section 242 of the Code of Criminal Procedure. A confessed violator may be freed on payment of a penalty or may be imprisoned up to three months.



If an appeal is filed against a decision of an executive magistrate, the case will be sent to the judicial magistrates for investigation and trial. The Mobile Court Ordinance also authorizes the accused to file an appeal with the district and sessions judge. (Cabinet Okays Mobile Court Ordinance, Executive Magistrates Cannot Be Sued, The Daily Star, October 29, 2007, available at <http://www.thedailystar.net/story.php?nid=9376>.)

(Shameema Rahman)

### FRANCE – Reorganization of Intelligence Services

Two of France's intelligence organizations, the *Direction de la Surveillance du Territoire* (DST, Directorate of Territorial Security) and the *Renseignements Généraux* (RG, Central Directorate of General Information), are merging into one agency, the *Direction Centrale du Renseignement Intérieur* (DCRI, Central Directorate for Domestic Intelligence), to better fight terrorism. The DST was responsible for counter-espionage, counter-terrorism, and protection of the economic and scientific assets of France. The RG served as an information-gathering service for the government on a wide range of topics. It participated in the defense of the fundamental interests of France and supported the country's internal security missions. One of its sub-directorates, the Directorate of Research, centralized information concerning prevention and the fight against terrorism and watched groups that pose risks to the national security.

The merger should be complete at the beginning of 2008, when a director is appointed. The aim of the reorganization is to strengthen the fight against terrorism by avoiding miscommunication and competition between the two services. The RG and DST were well known for their rivalry. The President of the Republic, Nicolas Sarkozy, a former Minister of the Interior, requested the reorganization. The new agency will have four directorates: counter-espionage, counter-terrorism, industrial espionage, and monitoring social unrest such as, for example, the 2005 youth riots. (Gérard Davet & Isabelle Mandraud, *La ministre de l'intérieur présente le nouveau visage des services de renseignement français*, LE MONDE, Sept. 14, 2007, at 9.)

(Nicole Atwill)

### SAUDI ARABIA – Succession Rules

On October 8, 2007, King Abdullah of Saudi Arabia issued by-laws governing the work of the political body *Haiat al-Baiat* (Allegiance Commission), set up last year to help streamline the process of succession to the throne. The Commission will comprise the sons of King Abdulaziz Al-Saud, the founder of Saudi Arabia. If a son declines to participate or is deceased or incapacitated, his seat on the Commission goes to one of his sons, who should be of good moral character and at least 22 years old. (*By-laws of the Allegiance Commission*, ASHARQ ALAWSAT, Oct. 9, 2007.)

(Issam M. Saliba)





## Health

### CHINA – Rural Healthcare Guidelines

On September 10, 2007, China's Ministries of Health and Finance and the State Administration of Traditional Chinese Medicine jointly issued new guidelines on the management of the rural cooperatives' medical program, which was inaugurated in 2002. Under the existing scheme, the central and local governments contribute 40 yuan to an insurance fund for each farmer who voluntarily pays 10 yuan annually (about US\$1.30) into the fund. Members of the plan can apply to have up to 20 percent of inpatient fees refunded should they require medical care, but outpatient care is apparently not covered "in the majority of areas." (Shan Juan, *Govt Adds Clarity to Health Scheme*, CHINA DAILY, Sept. 26, 2007, available at [http://www.chinadaily.com.cn/china/2007-09/26/content\\_6134404.htm](http://www.chinadaily.com.cn/china/2007-09/26/content_6134404.htm).)

Under the new guidelines, provincial governments would be given more information on how funds should be allocated in order to facilitate their implementation of the program, and they are called upon to gradually expand their coverage to include outpatient care as well. The guidelines stipulate that the fund is to be used only to subsidize farmers' medical bills and not for financing other public health programs; that the percentage of reimbursed fees should be balanced across rural areas nationwide; that the percentage of the fee that the farmer is entitled to reclaim is always made clear; and that reimbursements be made on the spot. In addition, the guidelines call for the cost of giving birth at a hospital to be covered and for a free check-up to be awarded to plan members who make no claims upon the fund during a 12-month period. The government reportedly allocated 9.4 billion yuan (about US\$1.25 billion) to the fund in June 2007. (*Id.*; *Guanyu wanshan xin xing nongcun hezuo yiliao tongchou buchang fang'an de zhidao yijian*, Ministry of Health Web site, Sept. 25, 2007.)

In addition, it was reported on September 20, 2007, that the China Development Bank (CDB), starting from 2008, will have each of its branches set aside five percent of its annual loans for rural health projects, with a focus on establishing clinics in impoverished areas and providing low-cost medical equipment and basic pharmaceuticals to health agencies in such regions. The loans issued will amount to more than five billion yuan (about US\$665 million) and affect most of China's 1,500 counties, the CDB's governor Chen Yuan was quoted as stating. (*CDB to Extend Billions [sic] Loans for Rural Health*, XINHUA, Sept. 20, 2007, available at <http://www.china.org.cn/english/government/225098.htm>.)  
(Wendy Zeldin)

### JAPAN – 10 Years Since Organ Transplant Law's Effective Date

Under Japan's Law Concerning Organ Transplant (Law No.104 of 1997), the donation of organs is permitted from a dead or brain-dead donor. The criteria for establishing brain death are set by the Health Ministry Ordinance. Electroencephalography (brain wave) test results must be examined. There are other, additional strict regulations. Transplants are allowed in cases where the donor expressed in writing prior to death his/her intent to agree to donate his/her organs and





agree to be submitted to an authorized brain death declaration and where his/her family members did not object to the donation. The Law also prohibits transplants from children who are less than 15 years old.

Only 61 donors have been recognized as brain dead in the ten years since the Law became effective. There have been many Japanese patients, especially infants and children, who have gone abroad to get organ transplants. Two bills have been submitted to the Diet to amend the Law. However, it is not likely that either bill will be passed. There are deep-rooted suspicions that medical practitioners would give preference to organ transplant over saving moribund patients. (*Zoki ishokuho 10 nen [10 years of Organ Transplant Law]*, YOMIURI ONLINE, Oct. 16, 2007, on file with author.)  
(Sayuri Umeda)



# Human Rights

## KOREA, SOUTH – Prison Abuse

The father of an inmate in a South Korean prison who was allegedly attacked by a guard filed a written statement complaining of the attack in March 2007 to the country's Human Rights Commission. In September, the Commission recommended that the Anyang Prison take disciplinary action against the guard. The prison, however, replied that the act of the guard was not bad enough to merit disciplinary action, but it would give the guard human rights education. The Human Rights Commission made images taken by a monitoring camera in the prison public. The images showed the guard dragging the inmate by holding the back of the collar of the shirt that the inmate wore. The Commission stated that the general public should judge whether or not there was an attack by viewing the images. (Gyung Un Kim, *Kokka jinken i, jukeisha e no bōkō shīn toraeta eizō kōkai*, CHOSUNILBO, Oct. 16, 2007.) (Sayuri Umeda)

## NIGER – Reporters Without Borders Seeks Journalist's Release

Moussa Kaka, director of the private Radio Saraounia and a correspondent in Niger of Radio France Internationale (RFI) and of the international, nonprofit, journalist rights organization Reporters Without Borders, was arrested on September 20, 2007, and is being held in detention. Kaka may be charged with breaching national security and his arrest linked to that of a French producer, detained in Niger for several weeks, who is accused of having been in contact with the Tuareg rebels – specifically, with the armed Movement of Niger Citizens for Justice (MNJ). In the view of Reporters Without Borders, “[t]he arrest of our correspondent marks a stiffening of the Niger authorities, who are put under pressure by the issue of the Tuareg rebellion. President Mamadou Tandja must understand that this stiffening only will lead to an increased worsening of the situation.” (*Niger: Reporters Without Borders Demands Release of Arrested Radio Journalist*, ALWIHDA, Sept. 21, 2007, Open Source Center No. AFP20070921683001.) According to the U.S. Department of State's COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – 2006, the Constitution of Niger “prohibits arbitrary arrest and detention, and the law prohibits detention without charge in excess of 48 hours; however, police at times violated these provisions.” (*Niger*, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – 2006 (Mar. 6, 2007), available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78750.htm>.)

Radio Saraounia has reported on the MNJ's “deadly attacks” against army bases in northern Niger and has given air time to MNJ leader Agali Alambo. In mid-July 2007, in connection with Kaka's reporting on the rebellion in the north, General Moumouni Boureima, Chief of Staff of Niger's armed forces, had publicly threatened to kill the journalist. In addition, RFI had its programs suspended for a month by the country's media regulator, the Highest Council of Communication, on grounds of “broadcasting false information” related to MNJ activities. (*Niger: Reporters Without Borders Demands Release of Arrested Radio Journalist, supra.*)

(Wendy Zeldin)



**RUSSIAN FEDERATION – Compensation for Victims of Federal Troops in Chechnya**

On October 4, 2007, the European Court of Human Rights (ECHR) issued a ruling under which Russia is obligated to pay €200,000 (about US\$285,000) to three Chechen women who suffered from the unwarranted and indiscriminate use of force by the Russian military. This is a record high amount of compensation ever awarded by the Strasbourg Court. The Court found that by using military force against civilians and then denying them just compensation, Russian authorities violated the women's right to life, effective legal defense, and fair judicial review. Two of the women accidentally survived a cleansing operation conducted by the Russian army and pretended to be dead during a mass execution; the other claimant lost several relatives. The Russian authorities declined to recognize the claims, stating that involvement of the federal military in the events in question has not been established. At present, every fifth case pending before the ECHR is against the Russian Federation, and 200 of the cases originated in Chechnya. (*European Court Awarded Three Chechens with Euro 200,000*, NEWSRU.COM, Oct. 4, 2007.) (Peter Roudik)

**UNITED STATES – Lawsuit Allowed to Proceed Against Corporations for Aiding and Abetting Apartheid Regime in South Africa**

On October 12, the U.S. Court of Appeals for the Second Circuit reversed a decision by the U.S. District Court for the Southern District of New York dismissing plaintiffs' claims under the Alien Tort Claims Act ("ATCA"). The plaintiffs had filed claims against a variety of international corporations under the ATCA, a 1789 statute which allows aliens to bring lawsuits alleging violations of the law of nations or of a treaty of the U.S. The plaintiffs alleged that the defendants had aided and abetted the apartheid regime of South Africa. The District Court dismissed the claims on the ground that aiding and abetting is not set forth in the ATCA as a cause of action. The Court of Appeals reversed, finding that the ATCA encompassed aiding and abetting claims, and remanded the case back to the District Court, allowing the litigation to proceed. (*Khulumani v. Barclay National Bank*, No. 05-2141-CV (2d Cir. October 12, 2007) *available* at



# Immigration and Nationality

## EUROPEAN UNION – Proposal for a “Blue Card” for Skilled Immigrants

According to the European Commission’s estimates, the European Union will experience labor shortages that will reach their peak by 2050. Around that time, 25 million Europeans will reach retirement age and approximately one-third of the population will be over 65 years of age. As the EU Home Affairs Commissioner Franco Frattini indicated, the EU has not been as successful as other immigration destinations in its quest to attract highly skilled foreign workers. Such workers account only for 1.7 % of the employed population in the EU, compared to seven per cent in Canada, ten per cent in Australia, and three per cent in the United States. For this reason, on October 23, 2007, the European Commission proposed a Directive on the Conditions for Entry and Residence of Third-Country Nationals for Highly Qualified Employment. It is intended to facilitate the conditions for entry and recruitment of qualified foreign workers by European companies. It provides for an EU work permit, the so-called Blue Card. This card, modeled on the U.S. green card, will offer employment to third-country nationals to work in any EU Member State. Such workers will be offered employment under expedited procedures. The criteria for admission include the following: a) a contract of employment; b) professional qualifications; and c) a minimum salary that must be at the minimum three times the level of the existing minimum wage offered at the national level.

The proposal also attempts to avoid the so called “brain drain” result in developing countries by including a requirement to follow ethical standards and to limit active recruitment in those countries. (Press Release, RAPID, Attractive Conditions for the Admission and Residence of Highly Qualified Immigrants, MEMO/07/423 (Oct. 23, 2007), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/423&format=HTML&aged=0&language=EN&guiLanguage=en>.)

The proposal has not been immune from criticism. In particular, on October 26, 2007, 79 health ministers from African, Caribbean, and Pacific countries (ACP), in a conference in Belgium, voiced their concerns about the EU’s luring the most qualified workers from around the world. They also urged the EU to respect ethical standards and to avoid causing a brain drain in the developing world, especially in the area of health workers. Other experts have called the new immigration measure “a new form of colonization.” (*African States Fear Brain Drain Through EU Blue Card*, EUOBSERVER.COM, Oct. 29, 2007.)  
(Theresa Papademetriou)

## FRANCE – Immigration Reform Pending

Following a campaign promise made by presidential candidate Nicolas Sarkozy, in the last few weeks the French Parliament has debated a new immigration law that would further tighten the requirements for family reunification. Law 2006-911 of July 24, 2006, on Immigration and Integration, had already made the conditions for family reunification more stringent. These conditions include respect for the fundamental principles of the French



Republic, in particular, secularism and equality between men and women; the applicant having sufficient means to support his family through work and not through social benefits; and the obligation to sign an integration contract.

After Sarkozy's successful election, the government sent a proposed immigration reform bill to Parliament. A parliamentary committee has just worked out the differences in the two versions passed separately by the National Assembly and the Senate. Under the terms of this combined version, applicants older than 16 years of age who seek to join family members are required to take a test in their country of origin to demonstrate a good knowledge of the French language and the values of the French Republic. If needed, the applicant may be asked to attend language courses before obtaining a long-term visa. Applicants also have to prove that their family could support them and that the family income providers earn at least the minimum wage. Parents have to sign an integration contract for the family with the state. The contract requires them to attend training on the rights and duties of parents in France and to agree to send their children to school.

The most controversial provision of the draft law is the recourse to DNA testing to fight fraud in family reunion cases. When the applicant does not have a birth certificate or has been notified by the French consular officer that there is serious doubt regarding the authenticity of the document presented, he or she may ask for DNA testing. The DNA test is limited to showing the relationship with the mother, to avoid potentially embarrassing revelations about paternity. The consular officer transfers the DNA request to the competent court to rule on its necessity. The French government is to pay for the test. Recourse to DNA testing is subject to a trial period until December 31, 2009. Parliament then will reexamine the provision.

Both chambers of Parliament will debate the new version of the draft law in the very near future. If it is adopted in its current form, opponents of the DNA testing have vowed to challenge the constitutionality of the measure before the Constitutional Council. (*Sénat, Projet de loi relative à la maîtrise de l'immigration, à l'intégration et à l'asile: Texte élaboré par la commission mixte paritaire.*)  
(Nicole Atwill)

### **GERMANY – Transposition of EU Directives on Immigration and Asylum**

On August 19, 2007, the German Parliament enacted the Act to Transpose European Union Directives on Immigration and Asylum (BUNDESGESETZBLATT I at 1970). The Act transposes 11 European Union directives into domestic law, among them the Council Directive 2003/109/EC of April 29, 2004, Concerning the Status of Third-Country Nationals Who Are Long-Term Residents (2004 OFFICIAL JOURNAL OF THE EUROPEAN UNION (L16) 44) and Council Directive [2003/86/EC](#) of 22 September 2003 on the Right to Family Reunification (2003 O.J. (L251) 12).

In addition, the Act strengthens German immigration policies that tailor immigration to the needs of the labor market, promote the integration of the immigrant population, and resolve



the status of refugees. Among the newly enacted measures are the requirement of German labor certification for long-term third-country residents of other EU countries and the restriction of family unifications from certain countries to spouses who are 18 years or older and who have acquired a rudimentary knowledge of German before coming to Germany.

(Edith Palmer)

### **JAPAN – Children of Japanese Who Emigrated to Philippines before WWII**

All Japanese people have records in the Family Register. Therefore, it is easy to prove that a person is Japanese by submitting an official copy of the Family Register. A few hundred Filipinos whose fathers were Japanese had a hard time to prove that because they could not find their fathers' records in the Family Register. Some lost relevant records while they hid information about their Japanese fathers, because anti-Japanese feeling was strong in the Philippines for a while after World War II.

On September 28 and October 4, 2007, the Tokyo Family Court, for the first time, admitted the Japanese nationality of two children of Japanese fathers whose Family Register records were not found. The Court found enough indirect evidence that proved the fathers' Japanese nationality: descriptions of marriage certificates in the Philippines, prisoner of war records of the United States, and a Japanese magazine article that introduced one of them as a pioneer of Japanese immigration to the Philippines. (*Hi Nikkei 2sei hutari ni "nihon seki" ["Entries in Family Register" for Filipino/Second-Generation Japanese]*, YOMIURI ONLINE, Oct. 9, 2007, on file with the author.)

(Sayuri Umeda)



## International Relations

### EUROPEAN UNION/FORMER YUGOSLAV REPUBLIC OF MACEDONIA – Membership Talks

On November 7, 2007, the European Commission published the Enlargement Package. It includes the Commission's annual strategy document on future enlargement and a summary of the progress made by each candidate. Current candidates include Croatia, the Former Yugoslav Republic of Macedonia (FYROM), and Turkey. The Package will also include the 2007 progress reports for each candidate country, which will highlight their respective development towards and overall progress, or lack thereof, in meeting EU membership requirements.

Preliminary readings indicate that the European Union will not commence accession talks with FYROM, which became a candidate member in 2005. The European Commission based its decision on FYROM's lack of significant progress in various fields. Specifically, the report states that the Parliament and the government are not functioning properly and efficiently. In the Parliament, due to ongoing disagreements between the ruling party and the opposition, the legislative process has been slowed down considerably. The Commission noted that there was some progress in the areas of public administration and judicial system reform. In the former field, the law on civil servants is slowly being implemented, but the full and effective implementation of police reform is still problematic. In general, in the Commission's view, public administration was weak and inefficient. Officials are dismissed on a whim and, as a result, the normal functioning of the administration is often disrupted. In the area of judicial reform, the Commission noted that the overall impact of the reforms has been limited and that the government of FYROM needs to augment its efforts to ensure full independence, efficiency, and accountability of the judiciary.

Another thorny issue is the lack of progress in the official name used by FYROM. Greece has objected to the name Macedonia used by FYROM since it became an independent state in 1991, because Greece's northern area is also named Macedonia. The Greek government claims that FYROM may advance territorial claims in the future by virtue of that name, and also partly because of certain provisions in FYROM's Constitution, although some of the key controversial provisions have now been retracted. With regard to this issue, the European Commission calls on both governments to renew their efforts to find a common solution acceptable to both parties. (Elitsa Vucheva, *EU to Delay Launch of Membership Talks with Macedonia*, EUOBSERVER.COM, Oct. 31, 2007,.)  
(Theresa Papademetriou)

### EUROPEAN UNION/MONTENEGRO – Aim of 2008 Membership Application

Montenegro, in its quest to join the European Union and following the examples of other western Balkan countries, took the initial step towards becoming a full Member by signing a stabilization and association agreement with the EU on October 15, 2007. After the signing of the Agreement, the Prime Minister of Montenegro stated: "Montenegro is much closer to Europe





today than it was yesterday and our future is more certain than ever.” The government expects to officially apply for EU membership within the first six months of 2008. It is highly unlikely that it will join the EU as a full Member in the near future, because it lags behind European standards in many fields. (Elitsa Vucheva, *Montenegro Hopes to Apply for EU Membership Next Year*, EUOBSERVER.COM, Oct. 15, 2007.)

(Theresa Papademetriou)

### **HONDURAS/CUBA – Cooperation Agreement**

The Cuban Minister of Foreign Investment and Economic Cooperation, Martha Lomas, and the Honduran Minister for Technical Matters and International Cooperation, Karen Zelaya, recently signed an agreement of cooperation that includes joint programs for scholarships, educational training, internships, and technical visits. The agreement also covers expert technical assistance in areas of special interest, such as planning, finance, development, the environment, natural resources, innovation, and production technologies. Moreover, the agreement calls for cooperation in areas such as energy, electronics, mining, geology, fishing, agriculture, ports, transportation, communication, housing, urban affairs, and tourism. (*Ministras Firman Convenio: Becas, Cursos y Pasantías Dará Cuba*, TIEMPO, Oct. 3, 2007.)

(Norma C. Gutiérrez)

### **VIETNAM/UNITED NATIONS – Non-Permanent Security Council Member Status**

On October 16, 2007, the United Nations General Assembly voted almost unanimously (183 out of 190 votes) in favor of the Socialist Republic of Vietnam becoming a non-permanent member of the U.N. Security Council for the 2008-2009 term. Libya, Burkina Faso, Costa Rica, and Croatia were also elected to serve a two-year term on the Council, which comprises five permanent members with veto power and ten non-permanent members. In order to win election to the Council, countries must receive a two-thirds majority of the votes cast. Five countries leave the body each year, to be replaced by five others from the same region. Vietnam and Croatia are first-time members. (Warren Hoge, *Libya and Vietnam Elected to UN Security Council*, INTERNATIONAL HERALD TRIBUNE, Oct. 16, 2007, available at <http://www.ihf.com/articles/2007/10/16/africa/nations.php>; *Five Non-Permanent Security Council Members Elected for Seats Starting Next Year*, UN NEWS CENTRE, Oct. 16, 2007, available at <http://www.un.org/apps/news/story.asp?NewsID=24304&Cr=security&Cr1=council>.)

(Wendy Zeldin)





## Legislative Power

### CANADA – Conservative Government Outlines Legislative Program

On October 16, 2007, the second session of Canada's 39<sup>th</sup> Parliament was opened with the customary Speech from the Throne. Delivered by the Governor General in a formal atmosphere, Speeches from the Throne are actually written by and for the Prime Minister and lay out the Government's agenda for the coming session. The latest Speech was awaited with great anticipation because the current Conservative government does not have a majority of the seats in the House of Commons, and the failure of the House of Commons to approve the Speech would have resulted in the calling of a national election.

In the Speech from the Throne, the Government announced that it planned to extend Canada's mission in Afghanistan to 2011, cut the federal Goods and Services Tax, create mandatory sentences for certain crimes, amend the law to prohibit persons wearing veils from voting, take steps to reinforce Canadian claims to sovereignty in the Arctic region, and introduce legislation that would result in Canada's cutting greenhouse gas emissions but not meet Canada's obligations under the Kyoto Protocol. The leader of the opposition proposed amendments to the Speech that would have limited Canada's mission in Afghanistan and would have effectively faulted the conservative Government for Canada's failure to meet its Kyoto commitments. This proposal was defeated.

On October 24, 2007, a vote was held on the Speech from the Throne. The largest of the three opposition parties, the Liberals, abstained from voting and the Speech passed by a vote of 126 to 79. The two smaller opposition parties, the New Democratic Party and the Bloc Quebecois, voted against the Speech. The decision of the Liberals to abstain was generally seen as a concession that they are not prepared to contest a general election at the present time. The vote was a major victory for Prime Minister Stephen Harper, who was credited with advancing an agenda that incorporated many of his legislative goals while ensuring the survival of his government. (Jennifer Ditchburn, *Harper Government Survives Throne Speech Vote as Liberals Abstain*, THE CANADIAN PRESS, Oct. 24, 2007, available at [http://ca.news.yahoo.com/s/capress/071024/national/throne\\_speech\\_vote](http://ca.news.yahoo.com/s/capress/071024/national/throne_speech_vote).)

(Stephen Clarke)



# Military

## BENIN – Military Service Law

The legislature of Benin passed the Law on Public Interest Military Service on September 20, 2007, thereby enabling the government to put into effect its plan for the national mobilization of youth for the country's development. The Law prescribes that every Beninese youth between the ages of 18 and 35 is subject to military service "in the national interest." The first step in this process is obligatory registration of the young people in the communes. [Benin is administratively divided into 12 departments that are subdivided into 77 communes.] From among them, certain registrants will be chosen to serve and will be expected to undergo military training. They will then be called upon for duty in the national interest in all areas, with the exception of keeping order in the context of elections. (*Beninese MPs Amend Law on Military Service*, OSC SUMMARY [of an article by Leon Brathier in the Beninese newspaper L'AUTRE QUOTIDIEN], Sept. 21, 2007, Open Source Center No. AFP20070924950024; Ousmane Syll, *La décentralisation en Afrique subsaharienne: BÉNIN*, CERCOOP, Oct. 2005.) (Wendy Zeldin)



## Pensions and Retirement

### EUROPEAN UNION – Mandatory Retirement Age

On October 16, 2007, in a case involving an appeal by a Spanish manager who had filed a suit against his employer for forcing him to retire at the age of 65, the European Court of Justice held that the governments of the Member States of the European Union have the discretion to establish mandatory retirement age limits if they so desire. The Court stated that although age discrimination is illegal in all EU Member States, the general principle of equal treatment in employment does not prohibit measures “objectively and reasonably justified in the context of national law by a legitimate aim relating to employment policy and the labor market.” (Lucia Kubosova, *EU Court Approves Mandatory Pension Age*, EUOBSERVER.COM, Oct. 17, 2007.)

(Theresa Papademetriou)



## Public Welfare

### **BELARUS – Elimination of State Assistance**

On October 22, 2007, President Alyaksandr Lukashenka of Belarus signed a decree ordering implementation of measures aimed at the abolition of state benefits that had been established by a law adopted by the National Assembly (legislature) in June 2007. Despite the fact that the decree promises that social benefits for some categories of the population will be replaced with “targeted” assistance, as of mid-December, according to these measures, reduced transportation fares for students and veterans will be removed and discounts on utility and phone bills and for government paid health care services, including free medicines, will be eliminated for former prisoners of Nazi camps and victims of the Chernobyl nuclear catastrophe. By way of compensation for these cutbacks, retirement benefits for World War II survivors were increased and low-income families with three or more children will be permitted to purchase discounted medicines. (Tanya Korovenkova, *Lukshenka Signs Population Assistance Edict*, BELAPAN INFORMATION CO. NEWSLINE, Oct. 22, 2007, *available at* ISI Emerging Markets database.) (Peter Roudik)



# Taxation

## SWITZERLAND – Flat Rate Tax

The Swiss Canton of Obwalden is in the process of introducing a flat rate tax on individual incomes, to be applied for the first time in the tax year 2008. The bill has passed the first reading in the cantonal parliament and has to pass another parliamentary reading and a referendum in order to become enacted (*Obwalden will 2008 die "Flat Rate Tax" einführen*, NZZ ONLINE, Sept. 24, 2007). The flat rate tax would be applied at the cantonal level while allowing the municipalities to determine their own tax rate. The reform purports to attract residents by lowering the level of taxation and by making the tax laws more transparent. (*Id.*)

The cantonal government decided to introduce the flat tax rate bill after a judgment of the Federal Court of June 1, 2007 (docket number 2P.43/2006) struck down a previous Obwalden tax reform that applied degressive tax rates by lowering the cantonal income tax rate for annual incomes in excess of Swiss Francs 300,000 (US\$255,698). The Court held that the degressive tax rates violated article 127 of the Swiss Constitution (Bundesverfassung der schweizerischen Eidgenossenschaft of April 18, 1999, SYSTEMATISCHE SAMMLUNG DES BUNDESRECHTS No. 101, (last visited Oct. 25, 2007). This article requires that taxes be imposed in accordance with the economic capacity of the taxpayer.

(Edith Palmer)



# Terrorism

## CANADA – Canadian Government Introduces New Security Certificates Bill

In the case of *Charkaoui v. Canada (Citizenship and Immigration)*, the Supreme Court of Canada ruled that aspects of Canada's law allowing for the detention of suspected foreign terrorists under "security certificates" were unconstitutional (2007 S.C.R. 350). However, the Supreme Court gave the government one year from February 2007 to rewrite the law to provide additional protections for suspects before it would void any outstanding security certificates. At the present time, five men are subject to security certificates; one is being held in custody, the others have been given conditional releases. (Howard Kline, *Canada Government Introduces New Security Certificates Bill After High Court Debacle*, JURIST, Oct. 22, 2007, available at <http://jurist.law.pitt.edu/paperchase/2007/10/canada-government-introduces-new.php>.)

In the new session of Parliament, which opened on October 16, 2007, the government has proposed amendments to the Immigration and Refugee Protection Act, 2001 S.C. c. 27 that are intended to address the Supreme Court's objections to the extant law. The major change is that the new law would, following the example of the United Kingdom, provide for the appointment of special advocates to hear and review evidence against a person when the government claims that the evidence should not be shown to him or her. These special advocates would be required to keep confidential the information they are shown. The bill before the House of Commons also proposes to amend the Act to provide for reviews of detentions by a judge of the Federal Court within 48 hours and for six-month reviews thereafter. A decision of a Federal Court judge could be appealed to the Federal Court of Appeal on questions of general importance. However, the Minister of Public Safety and Emergency Preparedness can apply for non-disclosure of confidential information. Finally, the bill would allow peace officers to arrest and detain persons who they suspect may be about to contravene conditions of release. (An Act to Amend the Immigration and Refugee Protection Act, Bill C-3, 39<sup>th</sup> Parl. 2d Sess. (last visited Oct. 25, 2007).) Bill C-3 is part of the Conservative government's plan to recreate several important provisions of the post-2001 anti-terrorism legislation that were either struck down by the courts or allowed to lapse during the past year. (Stephen F. Clarke)

## ESTONIA – New Measures to Stop Money Laundering

On October 18, 2007, the Government of Estonia approved a set of measures aimed at preventing the financing of terrorist activities and submitted a legislative proposal on amending existing anti-money laundering legislation. Following the government order, the list of persons subject to financial monitoring was expanded, and it now includes all banks and providers of financial services, gaming operators, real estate brokers, pawnbrokers, auditors, and providers of bookkeeping and consulting services. In some cases, this requirement applies to public notaries, attorneys, bailiffs, and bankruptcy trustees.



Under the new measures, all transactions in an amount exceeding US\$30,000 must be reported. The identification of domestic borrowers of all types of loans is required. Cash purchases and other payments in an amount equal to US\$15,000 or more also must be reported. Detailed requirements for the identification and registration of all other providers of financial services, specifically express loan lenders, are provided in government regulations. Similar measures will be introduced by all member states of the European Union by December 15, 2007. (*New Law to Step Up Fight Against Money Laundering in Estonia*, BALTIC NEWS SERVICE DAILY NEWS, Oct. 18, 2007, available at ISI Emerging Markets database.)  
(Peter Roudik)

### **EUROPEAN UNION – New Anti-Terrorist Measures**

On October 4, 2007, the European Commissioner for Home Affairs, Franco Frattini, announced that the European Commission intends to unveil a package of measures to combat terrorism and terrorist organizations. A new initiative, modeled after similar U.S. requirements, calls for checking the personal data of air passengers coming from third countries to the European Union. The proposal requires airlines flying to the 27 EU Member States to furnish certain data to national security agencies. For the time being, flights within EU borders are excluded due to privacy concerns and issues of compatibility with the Schengen rules, which provide for passport-free movement within the EU. Currently, the Schengen area comprises 13 of the original 15 EU Member States (the exceptions being the United Kingdom and Ireland), plus Norway, Switzerland, and Iceland. In 2008, nine more of the Member States brought into the EU by the 2004 enlargement will join Schengen; Cyprus is the only 2004 entrant not scheduled to take part. (Lucia Kubosova, *Brussels Could Extend Anti-Terror Rules to EU Flights*, EUOBSERVER.COM, Oct. 5, 2007.)  
(Theresa Papademetriou)

### **NEW ZEALAND – Environmental Activists Cannot Be Charged Under Anti-Terrorism Laws**

In a public statement made on November 8, 2007, New Zealand's solicitor-general Dr. David Collins QC declined to authorize charging recently arrested environmental activists under the Terrorism Suppression Act, on the basis that there was insufficient evidence to meet the high standard required by the legislation that the group was planning on committing a terrorist act. (Press Release, Solicitor-General, Decision of the Solicitor-General in Relation to the Prosecution of People Under the Terrorism Suppression Act 2002 (Operation 8) (Nov. 8, 2007), available at <http://img.scoop.co.nz/media/pdfs/0711/SolGenTerror.pdf>.)  
(Lisa White)

### **UNITED KINGDOM – Highest Court Reviews Terrorism Control Orders**

On October 31, 2007, the United Kingdom's highest court, the House of Lords, gave broad support to the controversial government control-order regime for terrorism suspects. At present, there are 14 individuals subject to such orders, but three can no longer be located. The court also created new rights for those accused of terror-related crimes. The three judgments



involved concerned nine suspects under control orders, a key measure of the government's anti-terrorism initiative.

Among the new restrictions imposed on control orders are the limit on curfews that may be imposed on suspects and the ruling that to protect the right to a fair hearing, the system of secret evidence must be modified. In one of the cases, six Iraqis were considered to have been subject to conditions that were too draconian, as they had been placed under 18-hour home curfew. This control measure was seen as a breach of the right to liberty as established in the European Convention on Human Rights, but a 12-hour curfew was ruled acceptable. In fact, the curfews currently in place have already been reduced by the Home Secretary, who said of the decision, "I am pleased that the law lords have upheld the control orders regime and judged that no existing control orders need to be weakened. ... I am disappointed that they have found against control orders containing 18-hour curfews which I feel were required to protect national security." Imposition of 16-hour curfews is now being considered; at least one law lord has said they would be acceptable.

Another aspect of the ruling is the decision that evidence based on intelligence cannot be kept secret from suspects and their lawyers. The government had been providing suspects with special advocates who are attorneys with security clearances. These special lawyers were intended to protect the interests of suspects in secret hearings, but were not allowed to discuss the classified material they reviewed with the suspects. The law lords determined that this system of special advocates was not a sufficient guarantee of a fair trial and that suspects must be able to see all the key evidence against them. Two cases were sent back to the high court that had considered them.

The human rights group Liberty, commenting on the judgments, called them a "significant blow" to the control order regime, but went on to state that the decisions would "cause few celebrations at Liberty or the Home Office, and fully satisfy neither fairness nor security." (*UK Law Lords Give Legal Backing to Control Orders for Terrorism Suspects*, THE GUARDIAN (London), Nov. 1, 2007, Open Source Center No. EUP20071101015002.) (Constance A. Johnson)

### **YEMEN – Al-Qaeda Leader Turns Himself In**

On October 16, 2007, Yemeni sources announced that Jamal al-Badawi, an al-Qaeda leader who is the mastermind behind the escape from a Yemen prison in February 2006 of 22 al-Qaeda detainees, had turned himself in to Yemeni authorities. The Yemeni judiciary convicted al-Badawi as one of those involved in the bombing of the USS Cole and he was serving a 15-year prison term when the escape occurred. (*Leader of the "Great Escape" of al-Qaeda detainees Turns Himself In*, ASHARQ ALAWSAT, Oct. 17, 2007.) (Issam M. Saliba)





## Trade and Commerce

### CHINA – No Foreign On-Site Export Control Investigation

On September 11, 2007, China's Ministry of Commerce (MOC) issued a public announcement to reiterate that without the MOC's approval, "no enterprise or public institution registered in China shall promise to accept or accept any on-site interview or investigation concerning export control carried out by representatives of foreign governments." (Public Announcement No. 60 of 2007 of the Ministry of Commerce, iSinoLaw online subscription database, ID No. 76687;77205 – 10028245; Zhonghua Renmin Gongheguo Shangwu Bu gonggao 2007 nian di 60 hao, MOC Web site, Sept. 12, 2007; *Announcement No.60, 2007 of Ministry of Commerce of the People's Republic of China*, MOC Foreign Economic Cooperation Web site, Sept. 13, 2007.)  
(Wendy Zeldin)

### EUROPEAN UNION – Introduction of Settlement Procedure for Cartels

The European Commission has recently proposed two legislative measures that call for settlement of cartel cases in which the parties involved admit their involvement in the cartel and liability but also agree to follow an expedited and simplified procedure. The two measures consist of a Regulation and a Commission Notice. Under the proposal, the European Commission would impose lesser fines on parties who agree to settle a cartel case in this manner. The Commission has called for a public consultation from interested parties. (Press Release, RAPID, Antitrust: Commission Calls for Comments on a Draft Legislative Package to Introduce Settlement Procedure for Cartels IP/07/608 (Oct. 26, 2007), *available at* <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1608&format=HTML&aged=0&language=EN&guiLanguage=el>.)  
(Theresa Papademetriou)

### INDONESIA – New Company Law

According to the INTERNATIONAL FINANCIAL LAW REVIEW, in August 2007 a new Company Law (Law 40/2007), on limited liability companies, was signed into law in Indonesia. The Law prescribes that the takeover or acquisition of a controlling interest in a privately-held Indonesian company must now be approved by the shareholders and published in an Indonesian newspaper. Objections that creditors may have to the acquisition must also be settled, but the Law does not address how such objections are to be handled. The new Law, like the former law, contains no definition of acquisition of control. If the company itself is involved in the takeover, a different regime applies to the acquisition. Implementing regulations to be issued in accordance with Law 40/2007 may provide more details on such takeovers and on identity disclosure requirements for the purchaser and seller, among other matters. (Theodoor Bakker & Emir Nurmansyah, *Indonesia: M&A*, INTERNATIONAL FINANCIAL LAW REVIEW (Oct. 2007), *available at* <http://www.iflr.com/?Page=10&PUBID=33&ISS=24205&SID=695005&TYPE=20>.)



The World Bank is reported to be of the view that Law 40/2007 should be amended, especially in regard to minimum capital requirements, which is one indicator of ease of doing business in a country. Based on the IFC's DOING BUSINESS 2008 REPORT, Indonesia ranks 123<sup>rd</sup> in ease of doing business, out of 178 countries surveyed. According to Hans Shrader, General Manager of advisory services of the International Finance Corporation (IFC), the World Bank's private investment organization, "I think amending the minimum capital requirement from the current position to zero level is the step that must be taken." However, because the Law stipulates a minimum core capital requirement of IDR50 million (about US\$5,537), it would be difficult to revise the implementing regulations, Shrader stated. (*WB Suggests Indonesia Amend Limited Liability Company Law*, ANTARA [Indonesian National News Agency], Sept. 26, 2007, available at <http://www.antara.co.id/en/arc/2007/9/26/wb-suggests-indonesia-amend-limited-liability-company-law/>.)

(Wendy Zeldin)

### VIETNAM – Pharmaceutical Price Controls

On September 7, 2007, the Ministry of Health (MOH) of the Socialist Republic of Vietnam (SRV) issued a decree on new regulations aimed at stabilizing rising drug prices in the country. Heretofore, the means of enforcing SRV price controls has been mandatory reporting of prices to the state Drug Administration and posting of the prices on the Internet. There was a loophole in the law, however, because pharmaceutical companies could sell their products without having to wait until the prices were approved, making retail prices higher than the real ones. (*Additional Regulations to Restrain Drug Prices in Vietnam*, 7:10 ASIAN MEDICAL NEWSLETTER (Oct. 5, 2007), available at [http://www.pacificbridgemedical.com/newsletter/newsletter\\_v7n10.htm](http://www.pacificbridgemedical.com/newsletter/newsletter_v7n10.htm); *Pharmaceutical Prices to Be Placed Under Stricter Control*, VIETNAM ECONOMY, May 16, 2007, available at <http://www.vneconomy.com.vn/eng/?param=article&catid=11&id=69c15756b2e2e6>; *New Drug Decree May Cure Swelling Prices*, VIETNAMNET BRIDGE, Sept. 10, 2007, available at <http://english.vietnamnet.vn/social/2007/09/739191/>.)

The new regulations prescribe that price controls will be more directly administered, with pricing split into three sets, each differently regulated by the government. The first set covers prices of drugs directly purchased by the government; the MOH and provincial people's committees will determine these prices. The second set of prices is for essential drugs used by State-owned medical institutions. The drugs are to be sold to the institutions on the basis of a tender system; the distributor with the lowest bid automatically wins the tender. The third set is prices for drugs sold on the open market. The prices may be proposed by retailers but the government will regulate and approve them, and drug companies and vendors must publicize each drug's cost and retail price. Among the penalties prescribed for violators of the regulations, it is stipulated that the MOH will temporarily suspend the import license of a trading company found to engage in price gouging. (*Id.*)

Aside from the issuance of the above-mentioned decree, the Ministries of Health, Finance, and Industry and Trade recently issued a circular prescribing that importers compile a



list of CIF (Cost + insurance + freight) prices in Vietnam and in countries in the region to enable authorities to determine whether the SRV drug prices are reasonable. If they are found to be unreasonable, the authorities will not permit the imported pharmaceuticals to circulate on the domestic market. (*Ministry Investigate [sic] Drug Price Hike*, VIETNAMNET BRIDGE, Oct. 15, 2007, available at <http://english.vietnamnet.vn/biz/2007/10/749447/>.) In addition, the MOH issued Decision No. 151/2007/QD-TTg of September 12, 2007, promulgating the Regulation on the Import of Drugs Without Registration Number in Vietnam (*New Regulation on Import of Drugs*, VIETNAMNET BRIDGE, Sept. 15, 2007, available at <http://english.vietnamnet.vn/social/2007/09/741203/>.) The MOH had announced in May 2007 that it would issue regulations governing requirements for distributors, “including good storage practices (GSP), good distribution practices (GDP) and good pharmacy practices (GPP)” (*Pharmaceutical Prices to Be Placed Under Stricter Control*, *supra*.)

A study recently conducted by the SRV’s Social Science Institute attributed the steep rise in pharmaceutical prices in Vietnam to “[l]imited regulation of pharmacies, lack of market information and inefficient domestic production.” The relevant government agencies, according to the head of the study’s research group, “consistently failed to provide timely and updated price information on the [medicines] that circulate on the domestic market” and “[t]he listing of prices, in fact, has been merely a formality, an empty exercise as authorities lack information about the costs of medicines as a reference point.” A key factor in the price rise, the study noted, was the monopoly of pharmaceutical distribution by importers (the SRV restricts domestic production of drugs, and 95% of the raw materials for drugs are imported, according to the Drug Administration), with the result that the foreign producers and domestic distributors have been able to “fully decide on prices” and the importer-distributors could raise them “without any control.” (*Ministry Investigate [sic] Drug Price Hike*, *supra*.)  
(Wendy Zeldin)



# Transportation

## ITALY - Safety on Roads and Highways

On October 2, 2007 the Italian Parliament approved Law no. 160 raising to the category of Law, with amendments, Decree-Law no. 117 of August 3, 2007, which included urgent provisions amending the transit code to increase the levels of safety on roads and highways.

This Law imposes fines of between 2,257 and 9,032 Euros (about \$3,306 to \$13,232) to anyone driving a motor vehicle without a driver's license. The same fine applies to those who drive with revoked licenses or licenses that have not been renewed. Repeat offenders are subject in addition to a prison sentence of up to a year.

Violators of speed limits are punished with fines and other penalties. Those driving over 40 km/h but less than 60 km/h over the speed limit will be fined in the amount of 370 to 1,458 Euros (about \$542 to \$2,136) and will be punished with the suspension of their driver's license. Those traveling in excess of 60 km/h of the speed limit will receive a fine of 500 to 2,000 Euros (about \$732 to \$2,930) and suspension of their driver's license for between six to twelve months.

This Law amends also articles 186 and 187 of Legislative Decree no. 285 of 1992 in the area of driving under the influence of alcohol or narcotics. Depending upon the level of alcohol in the blood, fines imposed are in the amount of between 500 to 6,000 Euros (about \$732 to \$8,790), suspension of the driver's license from three months to two years, and arrest. Those driving under the influence of alcohol who cause a road accident will receive double amount of the penalties listed above and the administrative seizure of the vehicle for a period of 90 days. Those driving under the influence of narcotics or psychotropic substances will be punished with a fine of between 1,000 to 4,000 Euros (about \$1,465 to \$5,860), arrest of up to three months, and suspension of the driver's license for six months to a year.

This Law also adds new norms aimed at promoting the knowledge of the risks of road accidents while driving under the influence of alcohol; and creates, within the jurisdiction of the Presidency of the Council of Ministers, the Fund against night (road) accidents. (Parlamento Italiano, *Gazzetta Ufficiale*, no. 230, October 3, 2007.)  
(Dario Ferreira)



## War Crimes

### **INTERNATIONAL CRIMINAL COURT/CENTRAL AFRICAN REPUBLIC – Protocol Agreement**

On October 18, 2007, the International Criminal Court (ICC) and the Central African Republic (CAR) concluded an agreement on cooperation, including provisions on protection by the CAR government for court officials. The ICC staff members will be investigating whether war crimes have taken place in the CAR since 2002. The document was signed by Bruno Cathala, the ICC registrar, and Thierry Maleyombo, the Justice Minister of the CAR.

The ICC will be opening a field office in the CAR capital city, Bangui, in response to a request from the CAR for an investigation. The agreement's provisions cover the operations of teams from the ICC, which will include investigators, security officials, and witness protection officers. ICC Prosecutor Luis Moreno-Ocampo has said that his office believes that during the years 2002 and 2003, "grave crimes falling within the jurisdiction of the Court were committed." The crimes against civilians in those years are said to include murder, rape, and looting, at a time when there was armed conflict between the government and rebel forces. Moreno-Ocampo further said that sexual assaults are thought to have outnumbered killings in the period, as rape was a widespread problem during the conflict. The ICC will also be monitoring the current situation in the CAR. (International Criminal Court Signs Protocol Deal with Central African Republic, UN News, Oct. 19, 2007.)

(Constance A. Johnson)



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