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Attorneys and Judges

KENYA – Miscellaneous Amendments Bill 2006

Kenya's Statute Law (Miscellaneous Amendments) Bill 2006, tabled in late April 2006, aims to update statute law to remove anomalies and modernize it. The Bill's proposed amendment of the Judicature Act would increase the number of High Court judges from fifty to seventy and the number of appellate judges from eleven to fourteen. A shortage of judges and magistrates, worsened by a recent purge in the judiciary, has reportedly contributed to a backlog of court cases.

The bill introduces several stringent new anti-corruption measures as well. One would enable the government to request the High Court to appoint a receiver to seize property suspected of having been acquired illegally. The change would remove a major loophole in current law, under which corrupt individuals continue to enjoy ill-gotten gains even after it is established that the gains were obtained through graft. Other proposed measures would give the Kenya Anti Corruption Commission (KACC) premises the same status as a police station, with officers empowered to detain and interrogate suspects; introduce the new offense of "suspected corruption" to facilitate convictions in graft cases; disallow suspects to delay court proceedings; and grant the KACC the power to liaise with foreign governments and international agencies in pursuing proceeds of corruption.

The bill also calls for amendment of the National Assembly and Presidential Elections Act (Cap 7) to remove the requirement for service in person of election petitions on respondents. (Mugumo Munene, *Kenya: Tough New Laws to Tackle Corruption & Kenya: 23 Judges May Be Hired in Wako Proposals*, THE NATION (Nairobi), May 2, 2006; Francis Openda, *Kenya: New Bill to Change Poll Petition Laws*, THE EAST AFRICAN STANDARD, Apr. 21, 2006.) (Wendy Zeldin)



Communications and Electronic Information

BANGLADESH – Petition Against Telecommunications Act

The High Court Division of the Supreme Court issued a ruling upon the Government of Bangladesh on May 17, 2006, to show cause why the provisions of tele-tapping under the Telecommunication (Amendment) Act 2006 should not be declared ultra vires of the Constitution. The Act was signed into law to allow Bangladesh intelligence agencies to intercept phone calls and e-mails in an effort to track down suspects in connection with the wave of bombings in the country. On August 17, 2005, more than 350 bombs were exploded simultaneously in sixty-three districts throughout the country, during the busy office hours, targeting the judiciary and other important office buildings. The militant group that took responsibility for the blasts accused the judiciary of promoting secular laws in a Muslim country.

On February 16, 2006, in an official gazette notification, the Government made the Telecommunication (Amendment) Act 2006 effective, empowering any of its agencies to record, prevent the transmission of, and collect information regarding communication by telephone made by any person under its sections 97 (A), (B), and (C). To justify this enactment, the Government stated that it was necessary for the security of the country and public tranquility. The law took effect immediately, suspending a 2001 law that had made tapping phones illegal. The new law's provisions allow investigators to use tapped telephone conversations as evidence in court. According to investigators, the bombers had used mobile phones to coordinate and carry out the August 17 bomb attacks.

However, a petition was filed as a public interest litigation (PIL) by a human rights group challenging the legality of sections 97 (A), (B), and (C). The petitioners alleged that the Act would be a new tool used by the Government to invade people's privacy and would violate provisions of the Bangladesh Constitution that guarantee freedom of speech and the right to privacy. Counsel for the writ petitioners submitted before the Supreme Court that the sections in question are ultra vires to articles 39 and 43 of the Constitution that guarantee privacy of communication to the citizens of Bangladesh. In response to the writ petition, Justice Awlad Ali and Justice Jinat Are issued the May 17 rule upon the Government of Bangladesh. (Special Correspondent, *Tele Tapping Challenged*, THE NEW NATION, May 18, 2006.) (Shameema Rahman)

COMMONWEALTH CARIBBEAN – Government Responses to Talk Radio and Online Newsletters

Governments throughout the Commonwealth Caribbean have come under increasing attack from talk radio programs and online newsletters. Some of the most critical journalists are operating out of the United States. In 2003 (effective 2005), St. Lucia responded to this situation by including a new provision in its Criminal Code that states as follows:



Anyone who willfully publishes a statement, tale or news that he or she knows is false and that causes or is likely to cause injury or mischief to a public interest is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years. (Criminal Code, ST. LUC. REV. LAWS, s. 361 (2005).

Opponents of the above provision contend that it violates the right to free speech and point to the case of an editor in Grenada who was charged with criminal libel in 1999. However, Trinidad and Tobago, Dominica, and Guyana have all recently indicated that they intend to create legislation that would be similar to St. Lucia's law. Supporters of these proposals contend that there is still freedom of the press in the Caribbean and point to the number of opposition newspapers. These persons contend that the legislation is needed to discourage irresponsible reporting. (Peter Richards, *Caribbean Premier's Lawsuit Sparks a New Tussle with Media*, IPS-INTERPRESS SERVICE, June 15, 2004; *Media Body Says There Are Warning Signs for Press Freedom in the Caribbean*, CARIBBEAN MEDIA CORPORATION, Mar. 22, 2006, LEXIS/NEXIS, News Library, Curnws File; Charles Arthur, *Oppressive Media Laws: A Looming Epidemic*, WORLD PRESS FREEDOM REVIEW 2005 (Overview of the Caribbean), International Press Institute website (last visited June 12, 2006).)
(Stephen F. Clarke)

EUROPEAN UNION – EU Data Retention Rules and Future U.S. Access

The EU Data Retention Directive, which was adopted in February 2006, requires that telephone operators and Internet service providers store data for a period of at least six months for data generated through the use of the Internet and up to two years for data created through telephone and fax services. In early March 2006, at a high-level meeting between representatives of the Directorate on Freedom, Security and Justice (similar to the U.S. Department of Homeland Security) and U.S. officials, the latter expressed a strong interest in accessing the data stored by EU companies. While the U.S. officials stated that they planned to contact each Member State to explore possible access to the data, the EU representatives stated that the European Commission would convene an expert meeting on this issue to ensure that such access does not violate the strict EU rules on privacy and personal data protection. (*US Could Access Data Retention Information*, EUOBSERVER.COM, May 12, 2006.)
(Teresa Papademetriou)

SWITZERLAND – Commercial Gazette

On February 15, 2006, Switzerland revised the regulation governing its official commercial gazette (Verordnung über das Schweizerische Handelsamtsblatt, Feb. 15, 2006, AMTLICHE SAMMLUNG DES BUNDESRECHTS 573 (2006).). Since March 1, 2006, the effective date of this reform, the official commercial gazette, *HANDELSAMTSBLATT*, is available to the public free of charge on the website. The text of an entry is in one of the official languages of Switzerland – German, French, or Italian – depending on the language in which the entry was submitted. Another important innovation is the introduction of a certified electronic signature that guarantees the authenticity and the legally binding effect of an entry. Electronic signatures exist in Switzerland on the basis of the Electronic Signature Act of December 19, 2003



(SYSTEMATISCHE SAMMLUNG DES BUNDESRECHTS 943.03). The official commercial gazette has been in existence for the past 124 years, and it lists commercial events and notices that must be published, including certain corporate information, bankruptcies, and procurement offers. (Edith Palmer)

UNITED STATES - Broadcast Indecency Fines

Congress recently passed a new law increasing tenfold the penalty the Federal Communications Commission (FCC) can impose for violations of television and radio broadcast decency standards. The Broadcast Decency Enforcement Act of 2005, enacted June 15, 2006, provides that the holder of an FCC broadcast license that broadcasts obscene, indecent, or profane language may be fined up to \$325,000 for each violation or day of violation, up to a maximum of \$3 million for any single act or failure to act. ([Broadcast Decency Enforcement Act of 2005](#), Public Law No. 109-235, 120 Stat. 493 (2006).) (Luis Acosta)

UNITED STATES – Freedom of the Press for Electronic News Sources

A California appellate court ruled that online publishers have the same rights to freedom of the press as traditional journalists.

In a decision rendered on May 26, 2006, the California Sixth District Court of Appeals held that online reporters are equally protected as traditional journalists under California's shield law and constitutional reporter's privilege. The court held that the publisher and reporter of an online news magazine, and other online journalists, have the right to protect the confidentiality of their sources and could not be forced to hand over unpublished materials.

The case arose when Apple Computer (Apple) alleged that unknown persons caused the wrongful publication on the World Wide Web of Apple's secret plans. Apple sued several unnamed individuals in an attempt to discover the identity of persons who leaked the confidential information to reporters. Apple sought and obtained subpoenas to the publishers of the Web sites where the information appeared, and to the reporters' email service provider. Apple had argued that the Web sites were not engaged in legitimate news-gathering, but were unlawfully misappropriating trade secrets. The trial court agreed and denied the publishers' motion to prevent the enforcement of the subpoenas.

In its decision overturning the lower court, the appellate court stated it would decline "the implicit invitation to embroil ourselves in questions of what constitutes 'legitimate journalism,'" and ruled that the California shield law and constitutional reporter's privilege applied to online news sources no less than print sources.

The appellate court also held that subpoenas issued by Apple to obtain records and materials from an email service provider used by the reporters were unenforceable because they



violated a federal law known as the Stored Communications Act. ([*O'Grady et al. v. Superior Court \(Apple\)*](#), No. H028579 (Cal. Ct. App. May 26, 2006).)
(Debora Keysor)



Criminal Law

BAHRAIN – Parliament Amends Money Laundering Law

On May 16, 2006, the Bahraini Parliament approved an amendment to the law against money laundering. The amendment establishes penalties of ten years to life imprisonment and a fine of up to BHD100,000 (about US\$266,000). This amendment does not apply, however, to donations made to organizations that fight for freedom, independence, and the ending of occupation. (*Parliament Amends Money Laundering Law*, AL-SHARQ AL-AWSAT, May 17, 2006.)

(Issam Saliba)

CAMEROON – New Criminal Procedure Code

The government of Cameroon is taking extra steps to make certain that the provisions of the new Criminal Procedure Code, due to come into effect on August 1, 2006, are well known. The Minister Delegate at the Ministry of Justice, Professor Maurice Kamto, is traveling around the country holding seminars, such as the one in Buea, a provincial capital in the southwestern part of the country, held May 15-16, 2006. The participants included judges, magistrates, members of the police force, mayors, parliamentarians, lawyers, academics, non-governmental organization staff members, representatives of religious bodies, and other members of the public.

The new Code is said to be based primarily on Anglo-Saxon legal traditions and thus is “more accusatorial than Inquisitorial.” (Nkeze Mbonwoh, *Cameroon: Jurists Urged to Carefully Read New Code*, CAMEROON TRIBUNE, May 17, 2006.) It upholds the presumption of innocence. Among the provisions stressed at the seminars are those governing police procedure, including the use of reasonable force, proportionate to the kind of resistance put up by the suspect to be arrested. Suspects under arrest are to be permitted to be accompanied by a friend or relative, so that they ascertain the place of detention, and to remain in touch with medical doctors, legal advisers, and family members. Any personal searches of those arrested are to be done by officers of the same sex, and no search or arrest in private homes will be carried out before six a.m. or after six p.m.

Human rights groups have criticized the police in Cameroon, describing them as the main human rights violators in the country. The new law will curb the ability of the police to arbitrarily arrest and detain citizens. Barrister Buba Ndiefiembeu said that under the new Code, the judicial police must show a warrant of arrest and tell the person why he or she is being arrested. He said the forces of law and order will no longer have the right to detain anybody for more than forty-eight hours without the authority of the State Counsel. (*Cameroon: New Law Traps Police, Gendarmes*, THE POST (Buea), May 11, 2006.)
(Constance A. Johnson)



CHINA/MYANMAR – Drug Abuse Prevention Agreement, Poppy Survey

On May 27, 2006, in Yangon (Rangoon), Myanmar's Deputy Minister for Home Affairs, Brigadier-General Phone Swe, and China's visiting Deputy Minister for Public Security, Zhang Xinfeng, signed an agreement between the Union of Myanmar and the People's Republic of China on the prevention of drug abuse and illicit trafficking in narcotic drugs and psychotropic substances. They also inked a Memorandum of Understanding between Myanmar's Central Committee for Drug Abuse Control and China's National Drug Abuse Control Commission on a survey of poppy cultivation in northern Myanmar by means of satellite photos, and exchanged the relevant documents. (*Burma, China Sign Drug Abuse Prevention Agreement, Poppy Survey MOU in Rangoon*, THE NEW LIGHT OF MYANMAR, May 28, 2006, Open Source Center No. SEP20060528005005.)

(Wendy Zeldin)

LIBERIA – Life Sentence for Rape

In 2005, the National Transitional Legislative Assembly (NTLA) of Liberia passed an act making forcible entry into another person a criminal offense punishable by prison terms ranging from seven years to life. The act was supported by the Association of Female Lawyers of Liberia (AFELL) to address the rising incidence of criminal and statutory rape since the end of the civil war in Liberia.

On April 13, 2006, the first life sentence for rape was handed down since the passage of the act. The Ninth Judicial Circuit Court in Gbarnga, Bong County, imposed the sentence against a twenty-two-year-old man for raping a thirteen-year-old girl at the Salala Internally Displaced Persons (IDP) Camp in lower Bong County. According to the testimony, the victim was returning from a latrine in the camp when the man approached and coaxed her to follow him to his shelter in the vicinity, where he assaulted and raped her. While the defendant argued that the sexual relationship was consensual, the medical records corroborated the victim's testimony. (*Rape Law in Full Swing*, THE ANALYST, May 23, 2006.)

(Karla Walker)

NORWAY – Proposal to Strengthen Position of Victims in Criminal Cases

On May 8, 2006, a working committee presented the Norwegian Minister of Justice with a report highlighting the need to strengthen the protection of victims in criminal cases. Many victims today feel that their participation in the judicial system is unsatisfactory, the report states, and view it in part as but another burden to bear. This is due to the fact that in the victims' experience they are allowed to be heard in cases as witnesses, but they do not have any rights to actively take part in the cases and they receive scant information about them.

The working committee believes that there is a need to look at the victim's position in criminal cases from a new and broader perspective. In its report, therefore, it proposes that in serious criminal cases:



- The aggrieved party and/or surviving relatives be given better and more information. The police, for example, will provide information on the investigation. Information will also be provided on prosecution of the case and appeals. There will also be an increased right for the victim and surviving relatives to know when the perpetrator is released after serving his or her sentence.
- A contact person will be appointed for the victim and surviving relatives.
- A victim and surviving relatives will be allowed to attend all court sessions, even those held behind closed doors.
- Victims and surviving relatives will be given the right to present their opinions during the investigation and during the criminal proceedings.
- During the main hearing, the victim will be given the right to ask questions of the person who is indicted and will also be given the right to make final remarks in the same manner as the person who is indicted.
- The victim and surviving relatives will be given the right to a lawyer and the responsibilities of lawyers representing victims will be clarified and expanded.

(Press Release No. 40-2006, Ministry of Justice and Police, *Styrkede rettigheter for ofrene i straffesaker* (May 8, 2006).)

(Linda Forslund)

PORTUGAL – Revision of Domestic Violence Provision in Penal Code

The Portuguese Government is about to approve a proposal for the revision of the Penal Code making domestic violence an autonomous crime, broadening alternative punishments for incarceration, and increasing the penal responsibility of collective persons. In the new Penal Code, domestic violence would no longer depend on the victim's complaint; according to the proposal, whoever causes physical or psychological injuries, including deprivation of the freedom of the spouse, ex-spouse, or partner (whether of the same sex or not), or of children, would be punished with one to five years in prison.

In the case of less serious crimes, the proposal establishes that the judge would decide whether to substitute incarceration for an alternative punishment, specifically, one year of incarceration for a fine. Additionally, an inmate would be able to work during the week and serve time on the weekends. Another option offered by the proposal is the possibility of semi-detention, whereby the inmate would be able to work or study during the day and sleep in a detention center.



The proposal also increases the penal responsibility of collective persons – corporations, associations, and foundations – for violations of security rules, trafficking in persons, slavery, sexual crimes against minors, pornography, pandering, internet and communication crimes, and crimes against the environment. (*E Agrava Violência Doméstica. Governo Alarga Penas Alternativas à Prisão*, AGENCIAFINANCEIRA, Apr. 13, 2006.)

(Eduardo Soares)

RUSSIAN FEDERATION – Parents Fined for Children’s Administrative Violations

On March 24, 2006, the Russian Code of Administrative Violations was amended with provisions introducing administrative liability of parents for consumption of alcohol and/or tobacco by their children. The amount of the fine varies depending on what was purchased by the child. Fines for the purchase of tobacco products are between 100 and 200 *rubles* (about US\$3.50-\$7.00). If minors are caught purchasing alcoholic beverages, including beer, their parents will be fined an amount equal to US\$8.15. These fines appear to be substantial in a country where the average monthly salary is less than US\$200. However, parents will be considered responsible and fined only in cases when law enforcement authorities are able to prove that the parents knew that their minor children were purchasing illegal products and did not undertake measures to prevent these violations. (*Parents of Young Smokers Will Be Fined*, NEWSRU, May 1, 2006.)

(Peter Roudik)

SWEDEN – Standing Committee on Justice Approves Government Bills on Coercive Measures

The Standing Committee on Justice approved on May 18, 2006, the government’s proposals to allow bugging and preventive coercive measures that had been presented to the Swedish Parliament (the Riksdag) on March 16, 2006. The new law on bugging would allow the police to use bugging to investigate crimes that carry a minimum sentence of four years in prison. Such crimes include terrorist crimes, murder, and manslaughter. Bugging may also be used to investigate crimes for which a minimum sentence of less than four years in prison is prescribed where it seems likely that the actual punishment will be more severe, such as crimes involving narcotics. A second government bill approved by the Standing Committee proposes that the police be allowed to use certain coercive measures early in an investigation to prevent serious crimes such as terrorist crimes. At this time, such measures may only be used to investigate crimes that have already been committed. (*See 4 W.L.B 2006.*)

The bills, which have been criticized by both the Committee on the Constitution and the Council on Legislation, will now be referred to the Chamber of the Riksdag for debate. Four political parties that voted against approving the bills aim to postpone the proposals’ adoption. (Press Release, Sveriges Advokatsamfund, *Justitiekottet Godkände Buggning och Preventiva Tvångsmedel Trots KU-kritik*, May 18, 2006.)

(Linda Forslund)



TAIWAN – Amendments to Law on “319” Shooting

On May 1, 2006, amendments to Taiwan’s controversial Statute on the Special Truth Investigation Commission for the March 19 [2004] Shooting Incident were promulgated with a caveat from President Chen Shui-bian. The purpose of the Statute is to provide a legal basis for setting up a seventeen-member commission to probe the alleged foiled assassination attempt against incumbent President Chen and Vice President Annette Lu on the eve of the March 2004 presidential election. In promulgating the new law, Chen sent letters to various branches of the government questioning its constitutionality, stating that it was necessary to either file for an interpretation of its constitutionality or ask for its further legislative amendment. In late 2004, the Council of Grand Justices had ruled that the original Statute and a commission formed to investigate the shooting were unconstitutional, on the grounds that some of the law’s articles would give the commission the same powers as those of prosecutors in conducting an investigation and prosecuting persons responsible for the shootings. The law was amended by the opposition-controlled legislature in April 2006; opposition legislators contend that they made the necessary changes to provisions challenged by the Grand Justices.

Under the revised Statute, legislators and members of the Control Yuan (the highest government watchdog body) or of other executive or examination organs or state-owned institutions cannot serve on the Commission. Among other new provisions, the Statute stipulates that Commission investigators may, if necessary, temporarily seal off or take away or set aside all or part of the files and that results of the probe are to be referred to the prosecutor or military prosecutor for prosecution, with investigative proceedings to be concluded within six months. ([Zong-tong fu gong-bao](#) [Gazette of the Office of the President], No. 6686 (May 1, 2006), p. 1, Global Legal Information Network, GLIN ID 177641; CNA: *Amended Law for Probe into ‘319’ Shooting Promulgated with ‘Caveat,’* CENTRAL NEWS AGENCY, May 1, 2006, Open Source Center No. CPP20060501968055; [Council of Grand Justices](#), Interpretation No. 585, Dec. 15, 2004.)

(Wendy Zeldin)



Elections and Politics

BAHRAIN – Proposal to Ban Sermons by Electoral Candidates

Dr. Farid al-Muftah, Undersecretary of the Ministry of Islamic Affairs in Bahrain, told *Al Sharq al-Awsat* newspaper that the Ministry is considering issuing an order to prohibit any candidate in the parliamentary elections, scheduled at the end of this year, from making speeches or giving sermons in mosques or other places of worship during the election campaign. He explained that this is intended to insure a fair election and prevent the exploitation of places of worship for electoral purposes. (*Election Candidates Not Allowed to Give Sermons*, AL-SHARQ AL-AWSAT, May 16, 2006.)

(Issam Saliba)

BENIN – Peaceful Transition of Power

President Mathieu Kerekou of Benin, in power for twenty-nine years, observed the constitutional age and two-term limits and ceded the presidency to Boni Yayi, a former banker and political novice sworn in as president on April 6, 2006. A Cameroonian newspaper was quoted as stating that General Kerekou had not given in to temptation (i.e., he stood down), “which is remarkable in Africa.” Yayi, who ran without any party backing based on the support of a coalition of small groups, won almost seventy-five percent of the vote in the final round of the presidential election, securing almost two million votes versus about 640,000 for his main challenger, veteran politician Adrien Houngbedji of the Democratic Renewal Party. The second and decisive round of the election took place on March 19. This was the fourth presidential poll since multi-party politics were introduced in the country in 1991, but the first to involve a transition of power. Benin is only one of three West African countries deemed free by the U.S. non-governmental organization Freedom House, the other two states being Ghana and Senegal. (*Benin: President Mathieu Kerekou Leaves After 29 Years*, Apr. 7, 2006; *Benin: President-to-Be Pledges Change with God’s Blessing*, Apr. 3; *Benin: Political Novice Boni Yayi Set to Become New President*, Mar. 23, 2006; all in IRINNEWS.ORG.)

(Wendy Zeldin)

NEPAL – Reinstatement of Parliament May Be Unconstitutional

King Gyanendra of Nepal, in the wake of nearly three weeks of pro-democracy protests, announced on April 24, 2006, in a nationwide telecast, that he was handing power over to the people and reinstating the House of Representatives, the lower house of Nepal’s Parliament. He summoned the legislature to convene its first meeting in almost four years on April 28; the King had dissolved the House in May 2002, sacked then Prime Minister Sher Bahadur Deuba in October of that year, and appointed three prime ministers without installing a new parliament. A petition lodged with the Supreme Court in 2002, seeking to have it revive the House, has languished. The recent royal announcement made no specific mention of another key demand made by members of the political alliance opposed to the King’s rule, namely, the creation of a special assembly to overhaul the constitution, which could result in the dissolution of the monarchy.



In the meantime, Yubaraj Sangroula, Executive Director of Kathmandu School of Law and an expert on Nepal's constitutional law, has stated that the King's act of reinstatement of Parliament through a royal proclamation is unconstitutional. In Sangroula's view, "[t]he constitution doesn't give the King such sweeping powers. ... By reviving the house on his own, he signals he still has absolute power to make and unmake such stupendous decisions on his own." Nepal's Supreme Court would have had to order the reinstatement in order for the action to be legitimate, according to Sangroula. (*Delhi Daily: Expert—Nepal King's Act 'Unconstitutional,' May Try Seizing Power*, HINDUSTAN TIMES, Apr. 26, 2006, Open Source Center No. SAP20060426377001; Henry Chu, *Protests Force Reinstatement of Nepal Parliament*, LOS ANGELES TIMES, Apr. 25, 2006.)
(Wendy Zeldin)

POLAND – Court of Appeals Upholds Verdict Against Deputy Prime Minister

The Warsaw Court of Appeals rejected on May 8, 2006, Deputy Prime Minister Andrzej Lepper's appeal against a 2005 verdict finding him guilty of slandering politicians in the opposition Civic Platform and Democratic Left Alliance parties. During a parliamentary debate in 2001, Lepper, then leader of Self-Defense, an anti-European Union party, asked five politicians "if they met local gangsters and took bribes from them." (*Court Upholds Suspended Jail Term for Poland's New Deputy Prime Minister*, ASSOCIATED PRESS, May 8, 2006.)

A lower court sentenced Lepper in 2005 to a term of fifteen months in prison, to be suspended for five years, and fined him approximately US\$6,300. Judge Jerzy Leder said, "defendant Lepper had taken advantage of the parliamentary rostrum and used it for his own benefit and interest to slander politicians without providing any evidence of their alleged corrupt activities." (*Polish Court Upholds Verdict Against Deputy Premier*, POLISH RADIO 1, May 8, 2006, Open Source Center No. EUP2006508950026.) Marek Antoni Nowicki, a member of the Helsinki Committee in Poland, pointed out, however, that Lepper's statements, which were considered as imputations, were made during parliamentary debate and that such statements must enjoy special protection. It seems that Andrzej Lepper will appeal the ruling to the European Human Rights Tribunal in Strasbourg. (Marek Antoni Nowicki, *Helsinki Committee Defends Freedom of Parliamentary Debate*, HUMAN RIGHTS HOUSE NETWORK, May 9, 2006; *Verdict Against Vice-Premier Lepper Is Upheld*, POLSKIE RADIO EXTERNAL SERVICE, May 8, 2006.)
(Grazyna Kolondra, Visiting Scholar in Residence)

ZAMBIA – Electoral Bill Enacted

On May 22, 2006, Zambia's chief government spokesperson reported that President Levy Mwanawasa had assented to the passage of the electoral bill, which will govern the 2006 general elections. The bill prescribes a code of conduct to be complied with by every political party and candidates during an election campaign and provides for the President to announce the date for general elections in consultation with the Electoral Commission of Zambia (ECZ). Constitutional issues such as a parentage clause and the fifty-plus-one threshold of a winning presidential candidate, still contentious subjects, are not included in the bill; they are to be dealt with by the Constituent Assembly (CA).



The new law states that when proclaiming the dissolution of the Parliament, the President, in accordance with the Constitution, will set a date for new elections no later than ninety days from the date of the dissolution of Parliament. Additionally, the ECZ is empowered to postpone the polling day for an election if it deems the postponement necessary to ensure a free and fair election. Transparent ballot boxes will also be used during this year's general elections as provided for in the new piece of legislation, and new voter cards are computerized and contain a portrait and the national registration card number of the holder.

The bill emphasizes the need for candidates and their political parties to have their campaign propaganda reported in all public media in a fair and balanced manner. Campaign propaganda is defined as any activity, statement, or any other form of expression aimed at promoting particular political ideas, policies, and strategies for purposes of obtaining votes for any candidate or political party contesting an election. (*Levy Nods New Electoral Bill*, REPUBLIC OF ZAMBIA STATEHOUSE, May 22, 2006.)
(Karla Walker)



Employment Law

KENYA – Minimum Wage Increased

The Government of Kenya increased the minimum wage by twelve percent on May 1, 2006, under the General Wages Order. The lowest wage for workers will now be Sh5,395 (about US\$76), up from Sh4,817 (about US\$68). The minimum wage for agricultural laborers was also raised, by eleven percent, to Sh5,346 (about US\$75) from Sh4,817. President Mwai Kibaki announced the increases during Labor Day celebrations. He further stated that, among other programs, the Government was drafting a comprehensive policy paper on developing micro and small enterprises and was going to establish a revolving fund, through the Ministry of Youth Affairs, from which youth could access funds at a reasonable interest rate to help them launch small businesses. (Tony Kago, *Kenya: Minimum Wages Increased*, THE NATION (Nairobi), May 2, 2006.)

(Wendy Zeldin)

SAUDI ARABIA – Ratification of Contractors' Categorization Law

On April 26, 2006, a Royal Decree was issued in Saudi Arabia approving the new Contractors' Categorization Law. Article 3 of the Law entrusts the Minister of Municipal and Rural Affairs with specifying and modifying the scope and grades of categorization and the maximum limit for each grade subject to a joint agreement with the Minister of Planning and Minister of Finance and the Economy. Government institutions may not accept offers or tenders from any person subject to the categorization unless the contractor falls within the scope and grade under which he has been categorized. Contractors will be graded according to their financial, technical, administrative, and executive competence in one or more fields of the categorization subject to the standards set by the regulation. The Law mandates conformity with other laws in general and with the Foreign Investment Law in particular. (Hani Hijji, *Contractors Categorization Law Approved*, AL-WATAN NEWSPAPER, Apr. 27, 2006.)

(Dr. Abdullah F. Ansary)

UNITED STATES - Mine Safety

In response to several recent deadly coal mine accidents, Congress enacted a law designed to enhance mine safety. The Mine Improvement and New Emergency Response Act of 2006 amends existing law to require coal mine operators to improve accident preparedness. The new law requires mine operators to adopt or update accident response plans for saving persons trapped underground. The accident response plans are required to include specified safety features, including redundant means of communication, emergency air supplies, escapeways, and flame-resistant lifelines. Within three years, mine operators will be required to have the capacity for wireless communications with persons underground, and for the electronic tracking of trapped persons. The new law increases penalties for noncompliance. ([*Mine Improvement and New Emergency Response Act of 2006*](#), Public Law No. 109-236, 120 Stat. 493.)

(Luis Acosta)



UNITED STATES – Public Employees' Free Speech Rights

The Supreme Court recently held that government employees generally lack freedom of speech under the First Amendment of the U.S. Constitution with respect to communications made in the course of their official duties.

This ruling came in a case involving a county district attorney, Respondent Richard Ceballos, who alleged he was retaliated against by his employer, the Los Angeles County District Attorney's Office, after writing a memorandum recommending a criminal case be dismissed because of apparent inaccuracies in a police affidavit. Ceballos filed a lawsuit in the U.S. District Court for the Central District of California, claiming his civil rights under the First Amendment had been violated when his employer retaliated against him for writing the memorandum. He lost in the District Court, but the U.S. Court of Appeals for the Ninth Circuit reversed, holding that the memorandum was protected speech under the First Amendment.

The Supreme Court reversed the Ninth Circuit's holding, ruling that as a general matter, the First Amendment does not protect from employer discipline speech by public employees made pursuant to official responsibilities. The Court held that while public employees' expression as citizens on matters of public concern is constitutionally protected, when public employees communicate in the course of their official duties, they are not speaking as citizens for First Amendment purposes. The Court concluded that because Ceballos' memorandum was written pursuant to his official responsibilities, his employer's alleged retaliation against him did not violate the Constitution. The Court stated that its opinion does not reach the question whether public employees whose official responsibilities involve scholarship or teaching may have First Amendment rights with respect to such expression made in the course of their official employment. ([Garcetti v. Ceballos](#), Docket No. 04-473 (May 30, 2006).) (Luis Acosta)



Environmental Law

CAFTA – Secretariat of Environmental Issues Created

Environmental officials representing the Central American Free Trade Agreement (CAFTA) countries, meeting in Guatemala City on May 25, 2006, agreed to establish an Environmental Issues Secretariat. The new entity will handle complaints of environmental violations under the CAFTA provisions. It will also resolve cases in which the CAFTA environmental mechanisms are applied inappropriately or laxly and become barriers to commerce and investment. The Secretariat will be located in Guatemala City and will initiate operations on September 1, 2006. (*Crean Secretaría Ambiental para CAFTA-RD*, AP, May 24, 2006; Evelyn Boche, *Crean Secretaría del Ambiente*, SIGLO XXI, June 9, 2006.)
(Norma C. Gutiérrez)



Family Law

INDIA – Muslim Couple to Stay Together Despite Islamic Law Divorce

The husband of an Indian High Court petitioner, Nazma Biwi, in Bhadrak City, the State of Orissa, pronounced the triple formula of Islamic divorce in an inebriated condition to his wife in 2004. Realizing his mistake, they decided to continue living together with their three children. Under the Islamic personal law, applicable in family matters to Muslims in India, such a pronouncement of divorce normally constitutes severance of the marital tie. Following the issuance of a *fatwa* (which is not legally binding) of local clerics that the divorce was complete, the couple was forcibly separated and made to live apart. The *fatwa* stated that if the wife wanted to live with her husband, she must perform “halala”: marry and consummate her marriage to another man, after which she may obtain a divorce should she wish to remarry her first husband. Instead of obeying the *fatwa*, the wife filed a petition in the High Court.

Accepting the wife’s petition to forbid local clerics’ interference in their family relations, the Supreme Court of India, on April 21, 2006, ordered the State of Orissa to provide the couple police protection and observed that “[n]o one can force them to live separately. This is a secular country. All communities – Hindus or Muslim – should behave in a civilized manner.” The observation of the Court was in response to the petitioner’s counsel that the couple continues to be ostracized by the community. (*SC Allows Couple to Live Together After Triple Talaq*, THE TIMES OF INDIA, Apr. 21, 2006.)

(Krishan Nehra)

IRAN – Court-Issued Divorce May be Revoked by Husband

The Legal Research Department of the Iranian judiciary issued an advisory opinion in answer to an inquiry regarding the legal status of a divorce decree issued by a court in an uncontested case, in which both the husband and the wife had agreed on the rights, responsibilities, property, alimony, custody and other related issues. The husband later refused to register and perform the divorce as required by law, and the opinion given was:

When the divorce decree is issued solely on the basis of incompatibility of the parties to the marriage with no other reasons for divorce, if the husband changes his mind and refuses to perform and register the divorce, the court decree may not be enforced.

(OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN, Apr. 2006, at 1 & 2.)
(G.H. Vafai)

VATICAN – Marriage and Family

On the occasion of the twenty-fifth anniversary of the founding of the John Paul II Pontifical Institute for Studies on Marriage and Family, which coincided with the anniversary of



the serious attempt against the life of John Paul II in Saint Peter's Square, Pope Benedict XVI stressed the fact that the sexual difference between men and women is not a simple biological characteristic, but an expression of a kind of love aimed at the communion of persons open to the transmission of life. He invited the participants to avoid confusing marriage and other types of unions based on a "weak love" – in regard to which the Pope specifically mentioned the "civil pact of solidarity" (an agreement between two persons of the opposite sex or the same sex, stipulated for the purpose of regulating their own personal and patrimonial relationships related to their life in common) and the "de facto union" (the stable and continuous cohabitation between two persons of the opposite sex or the same sex who are living together as a couple). (These definitions are in Bill No. 3296, submitted in 2002 by more than 130 Deputies of the Italian Parliament, and still pending in the relevant parliamentary committee.)

The daily newspaper CORRIERE DELLA SERA of May 11, 2006, noted that it is very significant that the Pope took this opportunity to speak out in defense of traditional marriage and the family just a few days after the election of the new Italian President Giorgio Napolitano. (*Papa a Napolitano: promuova valor cristiani [Pope to Napolitano: promote Christian values]*, (last visited May 12, 2006); *La roccia dell'amore totale e irrevocabile [The rock of total and irrevocable love]*, L'OSSERVATORE ROMANO, May 12, 2006.) (Dario Ferreira)



Health Law & Regulation

CHINA – New Office for Emergencies Established

On April 10, 2006, the General Office of the State Council (GOSC) of the People's Republic of China issued a circular on the establishment of a new GOSC office, called the State Council General Watch Office (*Guowuyuan Zong Zhiban Shi*), to deal with emergencies. According to the circular, the duties of the General Watch Office are, among others, to issue warnings and conduct drills; gather and distribute information; coordinate and organize relevant research proposals for state emergency management policies, laws and regulations, and plans; and coordinate emergency efforts. The Office is also to handle work involving disaster prevention and control; industrial, communications, environmental, consumer safety, and overcrowding accidents; major epidemics, terrorist activities, and other major emergencies. (*PRC State Council Sets Up New Emergency Office*, XINHUA, May 1, 2006, Open Source Center No. CPP20060501054028; General Office of the State Council, *Guowuyuan Bangongting guanyu shezhi Guowuyuan Yingji Guanli Bangongshi (Guowuyuan Zong Zhiban Shi) de tongzhi*, Apr. 10, 2006.)

(Wendy Zeldin)

WORLD HEALTH ORGANIZATION – Human Medical Research

On May 19, 2006, the World Health Organization (WHO) announced new standards for registering human research (News Release, WHO, *The World Health Organization Announces New Standards for Registration of All Human Medical Research* (May 19, 2006)) and it urged all research facilities and companies to make use of these standards when registering all clinical trials on patients and healthy volunteers within the framework of the International Clinical Trials Registry Platform. The WHO launched the latter in August 2005, to overcome the reluctance of drug companies to share information. The new platform will link information held in national and other registers and make it accessible through universal clinical trial numbers and standardized information formats. (Fiona Godlee, *An International Standard for Disclosure of Clinical Trial Information*, BMJ.COM, May 2006). It is expected that this Registry Platform will restore the public's faith in the transparency and ethical responsibility of medical research. Later this year, the Registry Platform intends to launch a web-based search portal to allow the scholarly community and the public to gain access to registered clinical studies.

(Edith Palmer)



Human Rights

BURMA (MYANMAR) – Anti-Human Trafficking Measures

Under Notification No. 2/2006, dated February 11, 2006, the Government of the Union of Myanmar (Burma) formed the Central Committee for Anti-Trafficking in Persons (CCATP), with the Minister for Home Affairs as Chairman. On February 27, 2006, the CCATP issued a notification on the formation of three work committees: on anti-trafficking and protection of victims, led by the Deputy Minister for Home Affairs; on legal affairs and trials, led by the Deputy Attorney-General; and on reception, organization, and rehabilitation [of victims], led by the Deputy Minister for Social Welfare, Relief and Resettlement. In addition, the notification stipulated the formation of committees for anti-trafficking in persons at the state/division, district, and township levels of government. (*Burma Forms Committees for Anti-Trafficking in Persons at All Levels*, THE NEW LIGHT OF MYANMAR, Mar. 1, 2006, at 9, Open Source Center No. SEP20060301035004.)

The legal authority for establishment of the CCATP is sub-section (a), section 5, of the Anti-Trafficking in Persons Law. The Law was enacted on September 13, 2005, by Myanmar's nineteen-member State Peace and Development Council, the name since 1997 of Myanmar's ruling military junta (formerly known as SLORC, the State Law and Order Restoration Council). The Law's ten chapters cover, among other topics, the formation of the CCATP and its functions and duties; safeguarding of the rights of trafficked victims; special protection for victimized women, children, and youth; repatriation, reintegration, and rehabilitation of victims; and offenses and penalties. Persons convicted of trafficking in women, children, or youth will be subject to a term of ten years' imprisonment to life in prison and a possible fine; if this offense is committed in connection with organized crime, the minimum punishment on conviction is twenty years' imprisonment. (*Burma Releases Apparent Text of 'Anti Trafficking in Persons Law,'* THE NEW LIGHT OF MYANMAR, Sept. 14, 2005, Open Source Center No. SEP20050914000099; *Burma's State Peace and Development Council, the Ruling Junta*, BURMA FUND, (last visited May 30, 2006).)

(Wendy Zeldin)

CAMBODIA – Judges Selected for Khmer Rouge Trial

On May 8, 2006, the list of Cambodian and international judges who will adjudicate the trial of former Khmer Rouge leaders, determined by the Supreme Council of Magistracy (SCM) (chaired by the King and entrusted by the Cambodian Constitution to guarantee the independence of the judiciary), was made public. Reach Sambath, a spokesman for the administration of the extraordinary chambers, stated that the prosecutors and judges would not start work until June, that they would undergo from three to six months of training before holding the hearings, and that the trial might commence in the beginning of 2007. Under a 2003 agreement between the United Nations and the Cambodian Government, a Trial Chamber of three Cambodian judges and two international judges and a Supreme Court Chamber of four Cambodian judges and three international judges were to be established as the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the



Period of Democratic Kampuchea. As part of the agreement, the U.N. Secretary-General was to provide a list of not less than seven nominees for the international judges, with the appointments to be made by the SCM. Then Secretary-General Kofi Annan provided such a list, along with the names of other legal experts, on March 7, 2006.

However, Cambodian legal experts have voiced criticism of the national judges nominated. One expert remarked that, even though it is “the second important step in the process” after resolution of the budget issue, some local judges have good training, others do not, but “most of all, they lack experience in this kind of tribunal. ... These nominations are made according to politics ...” A Cambodian lawyer pointed out that some judges do not have a good reputation and Cambodian women were under-represented. Keo Remy, a Sam Rainsy Party Member of Parliament from Phnom Penh, stated: “the composition of the tribunal was obviously prepared by the council of ministers, this is like having engineers recruiting doctors.” (*‘Sharp Reaction’ Voiced over Selection of Cambodian Judges for Khmer Rouge Trial*, KI MEDIA (PhnomPenh), May 9, 2006, Open Source Center No. SEP20060510021002; *Annan Nominates International Judges for Cambodia’s Khmer Rouge Trial*, UN NEWS CENTRE, Mar. 8, 2006.) (Wendy Zeldin)

CHINA – Compensation to Mother of 1989 Crackdown Victim

It was reported on April 30, 2006, apparently in the first known case of its kind, that China has paid compensation to Tang Deying, the mother of Zhou Guocong, a young victim of the suppression of the 1989 pro-democracy demonstrations, which took place not only in Beijing’s Tiananmen Square but throughout the country. Ms. Tang, a resident of Chengdu, Sichuan Province, recently received 70,000 yuan (about US\$8,750) for the loss of her son. Chengdu police apprehended Zhou, who was fifteen at the time, two days after the crackdown began. Although the authorities cremated his body, photographs later surfaced indicating that he had been severely beaten. According to Huang Qi, a local activist who helped make Zhou’s case public, there are special reasons behind the government’s decision to pay the compensation, which it refers to as a form of “hardship subsidy.” They are that Ms. Tang began early and was persistent in seeking justice for Zhou and that it was “the only case of a 1989 victim where photos of the body were widely shown on the Internet.” (*AFP: China Pays Compensation to Mother of Tiananmen Victim*, AFP (Hong Kong), Apr. 30, 2006, Open Source Center No. 20060430052015.)

(Wendy Zeldin)

IRAN – Clothing Code for Men and Women

By a vote of 137 to 45, the Islamic House of Representatives voted to take up a bill recommending that Iranians wear special clothing when appearing in public. The question of Iranian-Islamic clothing has been discussed in the press, pro and con. The current dress code, approved in February 1987, is entitled “The Law Defining the Procedure to Be Followed in Prosecution and Punishment of the Sellers of Dress and Clothing the Use of Which in Public Is Against the Islamic Law or Violates Public Decency.” It provides in article 4:



Those persons whose dress and make-up in public is against the Islamic law, induces corruption, or violates public decency shall be arrested and tried in an appropriate court in an emergency hearing and may receive the following punishments: 1- Warning. 2- Reprimand. 3- Threat. 4- Fine of 20 to 200 thousand *Rials* [about US\$2-20] and 10 to 20 lashes.

Conservatives are complaining that the current clothing for men is adopted from the West and women's dress is not modest. The draft legislation does not specify what designs Iranians would be expected to wear. It provides for the Ministry of Culture to oversee a design competition that will produce clothing in line with Iran's "national and Islamic identification and culture." (*Clothing Code for Iranian Men and Women* (in Persian), IRAN TIMES INTERNATIONAL, May 19, 2006, at 1.) (G.H. Vafai)

NEPAL – Torture Found to Be Systematic

On May 2, 2006, Manfred Nowak, a United Nations expert on torture, reported in Geneva that in Nepal "torture was conducted on a systematic basis." He had completed missions to China, Georgia, Mongolia, and Nepal and gave a briefing to the U.N. Committee Against Torture in which he singled out Nepal as the only country of the four in which, according to Committee reports,

torture was being conducted both by the Government and by the Maoists, who were using shocking forms of torture, including on their own members. ... One of the reasons he concluded that the practice of torture was systematic was that he had had fairly frank admissions at a high level. ... One official had said that 'a little bit of torture helps.'

Nowak is a Special Rapporteur, an unpaid expert serving as an independent observer under a mandate formerly from the U.N. Commission on Human Rights. The Special Rapporteurs now report to the new Human Rights Council. (*Torture Conducted on "Systematic Basis" in Nepal: UN Rapporteur*, UNNEWS, May 2, 2006, from UNNews@un.org.) (Constance A. Johnson)

POLAND – Ex-President Jaruzelski Charged with Crimes for Introducing 1981 Martial Law

On March 31, 2006, prosecutors from the investigative department of the National Remembrance Institute (IPN) in Katowice, Poland, charged General Wojciech Jaruzelski with "crimes that consisted of the deprivation of freedom through internment" and "crimes of a military nature." (*Jaruzelski Charged with Commie Crimes*, POLONIA TODAY.) General Jaruzelski imposed martial law in Poland on December 13, 1981, in order to halt the activity of the "pro-democracy Solidarity movement" led by Lech Walesa. During the martial law period,



about 10,000 people were arrested without being charged and were held in internment camps. Moreover, about 100 arrested members of the Solidarity movement died while interned.

Jaruzelski has argued that his decision to impose martial law was necessary for maintaining order and preventing the intervention of Soviet troops, which would have led to bloodshed. “This was our own sovereign decision – but one which took into account the realities of those times. At that time the Socialist system was the reality of that state – its backbone. And toppling that reality would have meant both civil war and foreign intervention.” (*Jaruzelski Charged over Crackdown*, BBC NEWS, Mar. 31, 2006; Nishat Haasan, *Poland Prosecutors Charge Communist-Era Leader for Imposing Martial Law*, JURIST LEGAL NEWS AND RESEARCH, Mar. 31, 2006.)

(Grazyna Kolondra, Visiting Scholar in Residence)

POLAND – Warsaw Court Convicts Publisher of *Nie* Magazine for Insulting Late Pope

On March 8, 2006, Poland’s Court of Appeals upheld a ruling of a Warsaw court that convicted Jerzy Urban of publicly insulting a head of state and fined him approximately US\$6,200. On August 15, 2002, prior to Pope John Paul II’s pilgrimage to Poland, Urban wrote and published in *Nie* magazine an article entitled “Walking Sado-Masochism.” Allegedly offensive terms used in the article, such as “old worship idol,” “impotent old man,” and “Brezhnev of the Vatican,” spurred public protest after it was published. Prosecutors based their charges on laws criminalizing insults to a head of state and the media ethics law.

Urban had argued that when writing the article he had exercised his freedom of expression. He has recently announced that he will appeal the sentence to the European Human Rights Court in Strasbourg. The International Press Institute expressed concern that “there might be a strong correlation between laws that hinder press freedom, including criminal defamation and insults laws, and the existence of corruption.” (IPI International Press Institute, *2005 World Press Freedom Review*; *Polish Court Convicts Columnist for Insulting Pope*, CBC.CA, (last visited May 18, 2006); *Polish Court Fines Editor for Insulting Late Pope*, PAP, Mar. 8, 2006, Open Source Center No. EUP 20060308950063.)

(Grazyna Kolondra, Visiting Scholar in Residence)

RWANDA – Indictments Released for Genocide Fugitives

On May 5, 2006, Rwanda launched a campaign to bring to justice individuals responsible for genocide who are now outside the country. Indictments were issued for 200 suspects who are now fugitives. According to a government official, the Attorney General and the Minister of Foreign Affairs planned to hand the indictments to the diplomatic representatives of the countries where Rwanda believes the fugitives are currently living. For the most part, the suspects are thought to be in Europe. The group includes former leaders and influential businessmen. Previously, Rwanda had issued arrest warrants for individuals believed to be responsible for the 1994 massacre of close to one million Rwandans; this is the first time that warrants have been accompanied by indictments and summaries of details for each case. (*Rwanda: Country to*



Release Indictments for Most Wanted Genocide Fugitives, HIRONDELLE NEWS AGENCY, May 5, 2006.)

(Constance A. Johnson)

SWEDEN – School Unlawfully Bans Headscarves in Class

According to the Swedish National Agency for Education (SNAE), schools do not have the right to hinder Muslim girls from wearing headscarves. In a recent decision, the agency criticized a privately run school for compelling a seven-year-old to change schools because of the school's ban on wearing headgear such as baseball caps and hats during class. The ban covers all headgear, and the principal deemed headscarves to fall under it and asked the girl to remove her scarf or leave the school. The girl's parents reported the school to the SNAE and the Agency decided that the school's decision was unlawful. The school's actions were deemed to be in violation of the Education Act. Following the school's reasoning, the SNAE stated, students who wear headscarves because of religious beliefs would be shut out from school, whereas schools should be open to all. (Björn Malmström, *Fel Förbjuda Sjal I Skolan*, SVENSKA DAGBLADET, May 23, 2006.)

(Linda Forslund)

UGANDA – Law on Persons with Disabilities

The Ugandan Parliament passed the Persons with Disabilities Bill, 2005 into law on April 27, 2006. The new law prohibits employers from discriminating against persons with disabilities and obliges them to ensure that the physical features of the workplace do not place such employees at a disadvantage. The law also provides that the disabled will not be denied the right to experience their sexuality and other sexual intimate relationships, including the right to marry and to start a family. Persons with disabilities reportedly make up about ten percent of Uganda's population. (*Uganda: Parliament Passes Persons with Disabilities Bill*, THE NEW VISION (Kampala), Apr. 29, 2006, Open Source Center No. AFP20060429950011.)

(Wendy Zeldin)

UNITED STATES - Military Commissions for Guantanamo Detainees

The Supreme Court ruled on June 29 that procedures for a military commission established to try al Qaeda prisoners detained at the U.S. military base at Guantanamo Bay, Cuba, violate the Uniform Code of Military Justice (UCMJ) and the Geneva Conventions.

The case concerned Salim Hamdan, who was captured in Afghanistan in 2001 during military operations against al Qaeda. In 2002 Hamdan was taken to a U.S. military prison in Guantanamo Bay, Cuba. Over two years later, the President charged Hamdan with conspiracy "to commit . . . offenses triable by military commission," referring to a commission established pursuant to a November 13, 2001 order of the President pertaining to the detention and trial of certain non-citizens such as al Qaeda members. In habeas corpus and mandamus petitions, Hamdan asserted that the military commission lacks authority to try him. The U.S. District Court for the District of Columbia granted habeas relief and stayed the commission's proceedings



on the ground that they were unlawful under the Geneva Conventions and the UCMJ. The U.S. Court of Appeals for the District of Columbia Circuit reversed, ruling that Hamdan was not entitled to relief because the Geneva Conventions are not judicially enforceable, and that Hamdan's trial before the commission would violate neither the UCMJ nor Armed Forces regulations implementing the Geneva Conventions.

The Supreme Court reversed the D.C. Circuit, ruling that the military commission's structure and procedures violate both the UCMJ and the Geneva Conventions.

The Court ruled that the commission's procedures violate the UCMJ by departing, without explanation, from the rules governing courts-martial, such as the right to be present during the proceeding, certain evidentiary standards, and the right of access to the evidence against the accused.

With respect to the Geneva Conventions, the Court first held that they are judicially enforceable because they are part of the law of war, which is incorporated into the UCMJ. The Court next rejected the government's argument that the Geneva Conventions do not apply because al Qaeda is not a Convention signatory, holding that Common Article 3 of the Conventions provides some minimal protection to all individuals, including those associated with nonsignatories. It then ruled that Common Article 3's minimum protections include the procedures of a "regularly constituted" court, such as an ordinary military court, and that a military commission that deviates from ordinary court-martial practice can be "regularly constituted" only if some practical need explains such deviations. The Court found that the military commission's procedures fail to meet these minimum requirements. ([Hamdan v. Rumsfeld](#), Docket No. 05-184 (June 29, 2006).) (Luis Acosta)

ZIMBABWE – Witchcraft Trials Now Possible

On July 1, 2006, practicing witchcraft will be recognized as a crime in Zimbabwe, as amendments to the Witchcraft Suppression Act go into force. Before amendment, the Act made it a criminal offense to accuse anyone of practicing witchcraft. However, under the amended Act, "any person who engages in any practice knowing that it is commonly associated with witchcraft shall be guilty of engaging in a practice commonly associated with witchcraft if having the intention to cause harm to any person." If the practice inspires in the person against whom it is directed a real fear or belief that harm will occur to them or their family, then the person convicted of engaging in the practice will be liable to a level ten fine or imprisonment for a period not exceeding five years, or both.

The Court may consult experts for advice on practices commonly associated with witchcraft. Any person who groundlessly or by purported use of non-natural means (presumably divination) accuses another of being a witch or wizard is liable for a fine or imprisonment for one to five years. A genuine belief that a person is a witch will be no defense against charges of



murder or assault committed on that person, although a court might consider such a belief a mitigating factor when determining the sentence.

The 50,000-member Zimbabwe National Traditional Healers Association was instrumental in pressing for amendment of the Act, and in January 2006 a judge of the High Court also supported amending the law on the grounds that “the strongly held conviction of belief in witchcraft and traditional healers cannot be wished away.” The Chairman of the Traditional Medical Practitioners’ Council described the amendments as a great victory for recognizing African values that had been disparaged by the colonial government, which had no respect for indigenous thought or practice. (*Witchcraft Act Amendment Hailed*, THE HERALD, May 10, 2006; *Zimbabwe Outlaws Practise of Witchcraft*, Apr. 23, 2006, NewZimbabwe.com.) (Donald R. DeGlopper)



Immigration and Nationality Law

CHINA – Passport Law Adopted

The Standing Committee of the National People's Congress passed the first Passport Law of the People's Republic of China (PRC) on April 29, 2006; it was promulgated the same day and will enter into effect on January 1, 2007. The Law divides passports into three categories: regular, diplomatic, and service passports. The documents are both human- and machine-readable. The relevant exit and entry agency (under the public security (police) organ) must explain its reasons in writing when it refuses to issue a passport because the application does not conform to the rules; it must also inform the applicant that he or she has the right to seek an administrative review or to lodge an administrative lawsuit.

There are also several circumstances in which the issuing organ will refuse to issue a passport; e.g., if the applicant is not a PRC national, if there is no means to prove the applicant's identity, if the applicant has resorted to deception in the application process, if the applicant has been sentenced to criminal punishment and is serving the sentence, and so on. In addition, the issuing organ will not issue a passport for a period of six months to three years from the time that a criminal sentence has been served or the person has been returned to China in cases where the applicant is: 1) subject to criminal punishment for having violated the national border controls, or 2) is repatriated after having illegally exited, resided, or obtained employment abroad. (*China Passes Law Aiming to Standardize Passport Application, Issue, Management*, XINHUA, Apr. 29, 2006, Open Source Center No. CPP20060429052008; *Zhonghua Renmin Gongheguo huzhao fa* [Copyright Law of the People's Republic of China], LAW-LIB.COM.)
(Wendy Zeldin)

ESTONIA – Change of Alien Status

On June 1, 2006, new rules regulating the status of aliens in Estonia entered into force. The rules abolish permanent residence permits; the permit holders will automatically be deemed long-term residents. This move will allow aliens staying in Estonia on a permanent or fixed-term residence permit to acquire rights in the European Union that are more consistent with those enjoyed by citizens, such as the right to move to another EU member state. A long-term resident who wishes to start living in another EU member state must, within three months after arrival, seek a residence permit in that country.

At present, more than 200,000 individuals in Estonia have permanent residence permits. In order to change their status and obtain long-term residence permits, they need to provide proof of having medical insurance, of stable and regular income, and of not posing a threat to public order or security. The change of status is allowed to those who have lived in Estonia on a fixed-term residence permit during the last five years and who have not been away from Estonia for more than six months at a time and for no longer than ten months combined. Starting in June 2007, a basic-level proficiency test in Estonian will be added for applicants wishing to obtain



long-term residence permits. (*Permanent Residence Permits to Be Swapped for Long-term Permits in Estonia*, BNS DAILY NEWS, Apr. 24, 2006.)
(Peter Roudik)

FRANCE – Draft Law on Immigration

On May 17, 2006, the French National Assembly adopted a draft immigration law prepared by Interior Minister Nicolas Sarkozy. Three hundred sixty-seven deputies, mostly from the ruling party Union for the People's Movement, UMP, approved the proposal, while 164 deputies from the Socialist Party and other left-wing parties opposed it. The Senate is scheduled to start debating the draft law on June 6, 2006. Some of the main measures in the law are as follows:

- **Long-term immigrants:** In order to settle in France on a long-term basis, immigrants will be required to sign an integration contract before being granted a temporary residence card and to attend civic education and, if necessary, language courses.
- **Family reunification:** The applicant will have to show that he has sufficient means to support his family and pay for lodging. In addition, the residence requirement for applying for family reunification has been increased from one year to eighteen months.
- **Regularization of illegal immigrants:** The provision stating that after a ten-year residency in France an illegal immigrant has automatic legal status is abrogated. Decisions will be made on a case-by-case basis.
- **Removals:** When refused a residency card, the applicant must leave France within one month or face removal.
- **Mixed marriages:** A non-French spouse will be able to apply for a ten-year residence card only after a three-year period and will have to show that he/she is integrated into French society.
- **Residence card:** A “competency and talents” card is created. It is valid for three years and renewable. It will be issued to those immigrants who can significantly participate in the economic, intellectual, cultural, scientific, sportive, and humanitarian development of France. Residence cards valid for four years may be issued to students with the high levels of education
- **Asylum right:** A national list of safe countries of origin is created.



- **French overseas territories:** Specific measures will be taken against illegal immigration and to prevent nationality fraud.

(National Assembly, [Draft Law on Immigration and Integration](#), May 17, 2006.)

(Nicole Atwill)

IRAN – Conscripts Living Abroad May Obtain Exemption from Military Service

Iranian conscripts who had left Iran prior to March 20, 2004, and lived outside the country continuously or intermittently for two years may apply for a certificate of exemption from military service by paying an amount equivalent to almost US\$550. In announcing this, the spokesman for the Military Service Authority added that there is no need for such military draftees to travel to Iran and present their cases in person. They can mail their applications, together with the necessary documents, or send them through Iranian consulates and receive their military service exemption certificates in return. Only military draftees requesting medical exemptions have to be present in Iran. Iranian students who have been admitted to one of the foreign universities certified by the Ministry of Science may also be eligible to obtain a military exemption certificate. (*Conscripts Living Abroad May Obtain Exemptions from Military Service* (in Persian), IRAN TIMES INTERNATIONAL, May 5, 2006, at 2 & 10.)

(G.H. Vafai)

ISRAEL – Temporary Law Preventing Palestinian Spouses of Israeli Citizens from Acquiring Entry and Citizenship Upheld

On May 14, 2006, Israel's High Court of Justice rejected by a six-to-five majority seven petitions against the constitutionality of the Nationality and Entry into Israel (Temporary Provision) 5763-2003. The majority opinion by Justice Cheshin held that the benefit provided by the law to the security and life of residents of Israel outweighs the harm to the limited number of Israeli citizens who married residents of areas under the control of the Palestinian Authority and wish to reside with them in Israel. According to Justice Cheshin, in order to protect its residents, the state is entitled to prevent the immigration of enemy nationals, including those married to its citizens, as long as the state is engaged in an armed conflict with that enemy. The minority opinion, by Chief Justice Barak, held that the law disproportionately harmed the constitutional right to family life and equality and therefore is void, and that, accordingly, human rights should be protected in times of peace as well as in times of war. ([H.C. 7052/03 Adalla - the Legal Center for the Rights of the Arab Minority In Israel et al. v. the Minister of Interior et al.](#))

(Ruth Levush)

IVORY COAST – Registration of Undocumented Citizens

On May 14, 2006, the Ivorian Prime Minister Konan Banny's office announced a pilot program to identify and register some of the millions of Ivorian citizens who have no birth certificates, nationality papers, or voter registration. This is a necessary preliminary to a national election that must be held by October 31, 2006, under a United Nations-backed peace plan for



ending the civil war. An estimated three million people out of a total population of nineteen million, many of them first- or second-generation immigrants, have no identity documents.

The pilot registrations will be done in five towns in the government-held south and two sites in the rebel-held north. Supporters of President Laurent Gbagbo oppose the program, arguing that hundreds of thousands of foreigners will fraudulently obtain voter registration documents that will enable them to vote for his opposition. The identification program is also a necessary precondition for the planned disarmament of contending militias. (*Cote d'Ivoire: Prime Minister Nudges Divided Country to Peace*, IRINNEWS.ORG, May 15, 2006.)
(Donald R. DeGlopper)

NETHERLANDS – New Regulations for Foreign Clerics

The Dutch Government's Cabinet has decided to introduce a single regulation to apply to all foreign nationals wishing to come to The Netherlands to propagate their religion. It will apply to priests, ministers, imams, members of religious orders, and evangelists, for whom there are now separate regulations. Those foreign clerics wishing to be admitted to the country and those already resident will be required to pass an extra civic integration test and demonstrate that they possess additional skills and knowledge of Dutch society. (This presumably means that they will be required to have more knowledge of Dutch society and culture than ordinary immigrants.) The Foreign Nationals (Employment) Act will continue to apply to clerics. This law stipulates that foreign nationals will only be admitted to work if there are too few suitable candidates for the same job in The Netherlands or another EEA (European Economic Area) country. (*New Regulations for Foreign Pastors*, GOVERNMENT.NL NEWS TOPICS, Apr. 21, 2006.)
(Donald R. DeGlopper)

NETHERLANDS – Problems with New Citizenship Test

An analysis of the potential problems in implementing the new law of The Netherlands that mandates an examination on Dutch society and culture for all migrants has identified several issues that require resolution before the law goes into force in 2007. A report carried out by the BMC Consultancy Office at the request of Parliament's Second Chamber (the Upper House) notes that there appears to be no way for migrants to appeal unsatisfactory test results, nor is it clear what the precise demands are for taking the test. The report also notes that the funds budgeted for administering the test (€240 million in 2006 and €255 million for 2007, about US\$307 million and \$326 million, respectively) may not be adequate, and that not all local municipalities, which will administer the test, may be able to manage the task. Furthermore, the entire process of testing migrants is to be dependent on a computerized file system of all applications for citizenship, which has yet to be developed. (*Still Major Flaws in Social Integration Bill*, NRC HANDELSBLAD, May 13, 2006, Open Source Center No. EUP20060513024007.)
(Donald R. DeGlopper)



SAUDI ARABIA – Enforcement of Tourist Visas Law

The Secretary General of the Supreme Commission for Tourism, Prince Sultan bin Salman bin Abdul Aziz, recently announced a number of initiatives for upgrading the tourism sector in Saudi Arabia. Among them is enforcement of the Law for the Issuance of Tourist Visas, which will allow the provision of tourist-group visas by tour organizers accredited by the Commission for Tourism. Prince Sultan announced the initiation of this measure to eighteen tour organizers in the Kingdom, who upon fulfilling the requirements will be able to procure tourist visas for groups, to facilitate their task of attracting tourist groups from abroad. In addition, the Prince Sultan stated that licenses for tour guides would be issued in June 2006. He asserted that the Commission for Tourism has finalized plans for issuing licenses to all competent and qualified Saudi nationals to work in the field of tour guidance. Such individuals must be “interested in presenting a respectful view of their country and in depicting it as a tourist and economic attraction.” (Ahmed Ghawi & Arsheed Al-Ayid, *Affirming the Existence of Initiatives for the Promotion of the Saudi Tourism Sector, Prince Sultan bin Salman Announces Initiation of the Enforcement of the Tourist Visas Law, 18 Tour Organizers to Be Licensed by the End of the Current Month*, AL-RIYADH NEWSPAPER, May 3, 2006.)

(Dr. Abdullah F. Ansary)

SPAIN (CANARY ISLANDS) – Illegal Immigration

About 1,000 illegal immigrants landed on the Canary Islands within four days recently, after a perilous journey in precarious vessels from sub-Saharan African countries, mostly from Senegal, which has no repatriation accord with Spain. The Canaries are a Spanish-owned group of islands off the coast of Morocco. The new arrivals were crammed into the local police headquarters, police vans, and a courthouse as well as a pre-fabricated barracks already housing 200 people. The Government of the Canary Islands described the situation as an unprecedented emergency, with some 1,400 immigrants having arrived in May. The Government also called for the immediate involvement and intervention of the central government, which, it said, should consider this a “state matter.”

The central government called for an emergency meeting and decided to immediately increase border surveillance by air and sea, using three patrol boats and three spotter planes, to check the massive arrival of immigrants. At the same time, the Spanish Government will continue diplomatic efforts to convince the countries of origin to accept the return of their citizens. In Madrid, the Government also inaugurated an extended radar surveillance system along the southern coast of the mainland. The system is already acting as a deterrent on the Canary Islands' Fuerteventura Island.

Among other crisis measures, Madrid promised to reinforce maritime and aerial coastline surveillance and deploy satellite technology to detect the immigrants before they land on Spanish soil. Spain's First Deputy Prime Minister, Maria Teresa Fernandez de la Vega, has announced the signing of repatriation agreements with Cameroon, Cape Verde, Mali, Ghana, and Senegal. Repatriations will commence in the coming days to Mauritania, to be followed by Senegal,



Niger, Mali, and Guinea Bissau. (*El Gobierno reforzara la vigilancia con un satelite para intentar frenar la inmigracion ilegal*, EL MUNDO, May 15, 2006.)
(Graciela Rodriguez-Ferrand)

UKRAINE – Official Status of Russian Language

In late April 2006, the legislative assemblies of three major provinces in eastern Ukraine, including the autonomous Republic of Crimea, adopted laws that provide for the official status of the Russian language in their territory. These provincial acts are aimed at the implementation of the Ukrainian Law of May 15, 2003, on Ratification of the European Charter on Regional or Minority Languages, which came into force on January 1, 2006. This Law lists the languages that Ukraine recognizes as regional languages or languages of ethnic minorities. The list also includes the Russian language, which is traditionally used by people within the territories that adopted this provision. Under the new Law, all official publications of provincial laws and regulations, as well as broadcasts of government-owned electronic mass media, will be conducted in Russian. Russian is declared the official language for use in government institutions, and government-issued documents will be in the Russian language with a simultaneous translation into Ukrainian. There was no official opposition to this action from national government institutions. (*Decisions to Grant Russian Language Regional Status Are Legal*, UKRAINIAN NEWS AGENCY, May 2, 2006.)
(Peter Roudik)



International Relations

BANGLADESH – Extradition of U.S. Citizen

On April 17, 2006, in Dhaka, intelligence personnel of Bangladesh's Government arrested Mr. Ehsanul Islam Sadequee, a U.S. citizen of Bangladeshi-origin. He was produced before the Federal Court in New York on April 23. Sadequee has been charged with making false statements to agents of the FBI's Joint Terrorism Task Force (JTTF) on August 18, 2005, at John F. Kennedy Airport, just prior to the departure of his outbound flight to Bangladesh. If convicted, Sadequee faces a maximum sentence of eight years' imprisonment and a \$250,000 fine. Defense attorney Doug Morris argued that Sadequee, though charged with making materially false statements, technically is not facing terrorism charges. (Department of Justice, *Defendant Arrested and Charged with Making False Statements to the FBI*, Apr. 21, 2006; *Terror Suspects Filmed U.S. Capitol*, CNEWS, Apr. 28, 2006.)

The Government of Bangladesh is now facing charges brought by different human rights groups and Sadequee's relatives concerning the extradition procedure followed in this case under existing Bangladeshi law. It has been argued that the extradition of a U.S. citizen of Bangladeshi-origin to the FBI was not done according to the Extradition Act 1974. Under section 4 of the Act, if the Government wants to hand over a "deportee," the Foreign Ministry would be required to notify the Home Ministry for approval. After obtaining such approval and after the issuance of a notification in the official gazette, the Government can hand over the deportee to the foreign authority concerned. Describing Sadequee as a foreign citizen, Law, Justice and Parliamentary Affairs Minister Barrister Moudud Ahmed said that any country can hand over a foreign citizen to his home country and that there is no barrier in Bangladesh law to doing so, as was done in the case of Sadequee. (Deepak Acharjee & Asrafu Huq, *Sadequee Produced Before NY Court, Bail Rejected*, THE INDEPENDENT, Apr. 24, 2006.)

In May, following two writ petitions, one filed by Sadequee's wife and another by Supreme Court advocate M.K. Hasan as Public Interest Litigation (PIL), a High Court Division Bench issued a ruling requiring the Government to explain why the arrest, detention, and deportation of Sadequee to the United States should not be declared illegal. (*HC Asks Govt to Explain Sadequee's Deportation*, THE DAILY STAR, May 16, 2006.)
(Shameema Rahman)

CENTRAL AMERICA – Treaty of Free Regional Mobility

On May 24, 2006, in San Salvador, the capital of El Salvador, Nicaragua and Honduras signed the Treaty of Free Regional Mobility, which was initially entered into only by Guatemala and El Salvador. The Treaty, which entered into force on June 1, 2006, will allow the nationals of the four States Party, known as the CA-4, to cross each other's borders simply by showing an identification document. Moreover, under the terms of the Treaty, any of the four States Party will serve as a port of entry into the region for citizens from other countries of the world. Thus, for example, after June 1, 2006, a citizen of a Middle Eastern country who is in Guatemala



would not require a visa to enter Nicaragua. This agreement is a further step of the Central American countries, with the exception of Costa Rica, towards achieving the Central American union. (Vladimir López, *Entramos al Tratado de Libre Circulación*, EL NUEVO DIARIO (last visited on June 9, 2006).)

(Norma C. Gutiérrez)

CHINA/SPAIN – Landmark Extradition Treaty

On April 29, 2006, China's National People's Congress Standing Committee (NPCSC) ratified an "unprecedented" treaty of extradition with Spain. It is reportedly the first such treaty that China has signed with a European or North American country and the first in which it has agreed that it will not execute repatriated criminal suspects. The state-run news agency XINHUA quoted Dr. Xu Hong, a counselor with the Department of Treaty and Law under the Ministry of Foreign Affairs, as stating that the treaty indicates "China's major shift in tactics in bringing fugitive corrupt officials back to justice under its own legal jurisdiction" and that it "will help China weave a global extradition net to bring back corrupt officials who have fled abroad." According to XINHUA, from 1993 to January 2005, more than 230 criminal suspects had been repatriated to China from more than thirty countries and regions, through the assistance of Interpol. A 2004 report sponsored by the Chinese Ministry of Commerce indicated that since 1978, when economic reforms were launched in China, about 4,000 Chinese officials suspected of embezzlement had fled overseas.

The NPCSC also ratified an extradition treaty with Brazil and treaties on legal assistance in criminal matters with Spain and France at the April 29 meeting. China reportedly has signed extradition treaties with more than twenty countries since 1993, but observers contend that its use of the death penalty, in particular for "serious" economic crimes, has made it difficult to reach agreement on extradition with Western developed countries that do not impose a death sentence for economic offenses. (*PRC Pledges Not to Execute Extradited Suspects from Spain*, CHINA DAILY, May 1, 2006, Open Source Center No. CPP20060501144006; *China Ratifies Extradition Treaty with Spain*, GOV.CN, Apr. 29, 2006.)

(Wendy Zeldin)

EUROPEAN UNION – Announcement of EU Entry Date for Bulgaria, Romania Postponed

On May 16, 2006, the European Commission published a report on the EU's entry negotiations with Bulgaria and Romania. Both candidate countries hoped that they would be able to join the EU on January 1, 2007. However, the report indicates that an exact entry date will be issued in October 2006, after the Commission prepares an additional report on the progress made by the two countries. The Commission could postpone the entry date for another year should it deem in the October report that Bulgaria and Romania lag behind in meeting the established criteria. The European Parliament has already given its formal assent to the countries' accession, but the final decision rests with the EU Members. (*Romania and Bulgaria Must Wait Until Autumn for EU Entry Date*, EUOBSERVER.COM, May 16, 2006.)

(Teresa Papademetriou)



EUROPEAN UNION – New Code of Conduct on Arms Purchasing

On May 15, 2006, the Ministers of Defense of twenty-four Members of the European Union signed a new code of conduct dealing with defense procurement. Denmark did not participate because it has decided not to take part in EU defense and security issues. The code, which is not legally binding and will enter into force on July 1, 2006, opens up the purchase of defense equipment to European Community competition rules. It requires EU Members to make public tenders on the Internet for purchases of defense equipment. EU Members are still permitted to exempt “highly sensitive” products in order to keep some tenders secret. However, in order for such an exemption to be granted, justification for it must be made. The European Commission has the right to delineate which types of materials fall within the definition of “highly sensitive.” (*Member States Agree [sic] New Rules on Arms Purchasing*, EUOBSERVER.COM, May 15, 2006.)
(Teresa Papademetriou)

EUROPEAN UNION – Stalemate over Cyprus Issue

Among the requirements established by the EU for opening EU talks on the future accession of Turkey was the signing of the so-called Ankara Protocol. Under this Protocol, Turkey is obliged to extend a customs agreement with the EU to the ten new Members, including Cyprus. In the summer of 2005, Turkey proceeded to sign the Protocol, but it refuses to implement it by opening its ports and airports to vessels and aircraft from Cyprus. While the EU Enlargement Commissioner stressed that Turkey is obliged to implement the Ankara Protocol regarding Cyprus, Turkey’s chief EU negotiator emphasized that Turkey and the European Commission hold completely opposing views as to the obligations arising therefrom. In addition, he linked Turkish implementation of the Protocol to the overall solution of the Cyprus problem and stated that the EU must allow direct trade with the Turkish-occupied northern part of Cyprus. The latter lacks international recognition. On the other hand, Turkey refuses to recognize the Government of Cyprus as the only internationally recognized authority in the island. Meanwhile, even though Cyprus looks favorably on the future accession of Turkey to the EU provided that it meets all EU criteria, it has the right like any other EU Member to use its veto to block further EU talks with Ankara. (*EU and Turkey in Limbo over Cyprus Issue*, EUOBSERVER.COM, May 19, 2006.)
(Teresa Papademetriou)

ISRAEL – Legality of Constructing a Separation Barrier in West Bank

Israel’s High Court of Justice rejected two petitions by both Israelis and Palestinians regarding the route of a barrier constructed between the Palestinian village of Abud and the Israeli communities of Beit Arye and Ofarim in the West Bank. The Court held that in accordance with the laws of belligerent occupation, the military commander is authorized, for military considerations, to order the construction of a separating barrier in the West Bank. The commander’s authority extends to the construction of a barrier to defend the lives and safety of Israelis residing in Israeli settlements in the West Bank even if they are not considered “protected persons” in accordance with the Fourth Geneva Convention.



The Court ruled that in reaching a decision regarding the route of the barrier, the military commander should evaluate the security-military situation, the interests of the local Arab population, and the protection of the human rights of the Israeli residents as guaranteed by Israeli law. Since these considerations conflict with each other, the military commander should balance them in accordance with the principle of “proportionality,” the Court determined, noting also that the commander’s decision is subject to judicial review. The Court held that in the circumstances of these specific petitions the balancing of security needs, the rights of Israeli residents, and the rights of Palestinian residents was proportional. ([*H.C. 11651/05 Local Council of Beit Arve v. the Minister of Defense.*](#))

(Ruth Levush)

MAURITANIA/SENEGAL – Cross-Border Cattle Drive Agreement

On April 25, 2006, Mauritania and Senegal signed an agreement to regulate the annual migration of pastoralists and their herds from Mauritania to Senegal. Every year at least a million head of Mauritanian cattle cross into Senegal and Mali to stay until the annual rains restore the grasses in Mauritania. Under the new agreement, herdsman will have to apply for official permits to cross the border, and crossing will be limited to fixed points and daylight hours. The herders will also have to provide information on the vaccination of their cattle. An official of Senegal’s Ministry of Rural and Environmental Development said the agreement offered a way to limit the increased competition and contention between farmers and pastoralists. In 1989, disputes over the cattle drive caused a brief border war between Mauritania and Senegal in which hundreds of people were killed. (*Mauritania-Senegal: New Cattle Migration Accord Cools Long-Standing Flashpoint*, IRINNEWS.ORG, May 5, 2006.)

(Donald R. DeGlopper)

MEXICO/U.S. – Government Officials Announce Partnership to Combat Methamphetamines

On May 18, 2006, the Attorney General of the United States and his Mexican counterpart announced a partnership aimed at fighting trafficking in methamphetamines. The announcement was made during the National Methamphetamine and Chemicals Initiative (NCMI) Strategy Conference. The NCMI Conference, held on May 17 and 18, 2006, in Dallas, Texas, brought together federal, state, and local investigators and agents, prosecutors, intelligence analysts, and government chemists from across the United States whose primary responsibilities are enforcement of laws against trafficking in methamphetamine and related chemicals.

Among the U.S-Mexico partnership efforts is an agreement between the U.S. Drug Enforcement Administration (DEA) and the Government of Mexico to establish specialized methamphetamine enforcement teams on either side of the border. In Mexico, these teams will focus on investigating and targeting the most wanted Mexican methamphetamine drug-trafficking organizations, while DEA-led efforts on the U.S. side will focus on the methamphetamine traffickers and organizations transporting and distributing the finished methamphetamine being produced in Mexico. (Press Release 640/06, *Mexico Department of*



Justice, México and the United States Announce a Partnership to Combat Meth Trafficking (May 19, 2006) (last visited May 22, 2006).
(Gustavo E. Guerra)

NIGERIA/CAMEROON – Progress in Border Delineation

In compliance with an International Court of Justice judgment of October 12, 2002, on their land and maritime boundary dispute, Nigeria and Cameroon are progressing in delineating their land boundary. The Cameroon-Nigeria Mixed Commission claims success in establishing 342 kilometers of the 1,800-kilometer boundary and thereby promoting peace and security in the region. A consequence of the border demarcation is the reconstruction of the Trans-African Highway linking Ikom in Nigeria with Mamfe in Cameroon. This is expected to promote cross-border trade and economic growth in both nations. (*Senior Official Describes Nigeria-Cameroon Border Delineation as ‘Success Story,’* NAN, May 2, 2006, Open Source Center No. AFP20060502636016.)
(Donald R. DeGlopper)

TAIWAN – First National Security Strategy Report

The Taiwan Government issued its first *National Security Strategy Report* on May 18, 2006. This report outlines President Chen Shui-bian's strategies for cross-strait defense and security-related foreign policy for the remainder of his term. Chen also set democracy, sustainable development, dialogue with China, and peace as the strategic goals for Taiwan. Chen remarked on the report before concluding the National Security Council meeting he chaired on May 18, 2006. Chen has called six meetings with senior security personnel and high-ranking officials over the past year to discuss the contents of the report. The report is legally binding and will be updated every two years. (*Long-Awaited Security Report Released,* TAIPEI TIMES, May 19, 2006.)
(Rui Geissler)

UNITED NATIONS – Unexploded Ordnance Protocol

The United Nations-sponsored Protocol V on Explosive Remnants of War, part of the Conventional Weapons Convention, will enter into force in November 2006. Ninety-two countries had adopted the Protocol at the U.N. offices in Geneva in 2002. Liechtenstein and Switzerland deposited instruments of consent to the Protocol with the U.N. on May 12, 2006, bringing up the number of ratifications to the threshold needed for it to enter into force in six months. The Protocol requires parties to armed conflicts to mark, clear, and destroy all explosive remnants of war in the territories they control. The goal is to reduce the number of people injured and killed by unexploded ordnance years after the end of the conflicts in which they were first put in place. (*With New Parties, Pact to Clear Unexploded War Ordnance Will Take Effect,* UN NEWS CENTRE, May 15, 2006.)
(Constance A. Johnson)



Research and Technology

CZECH REPUBLIC – Law on Embryonic Cell Research

Czech President Vaclav Klaus signed into law, on May 12, 2006, a bill on embryonic cell research. The new law bans the reproduction of cloned cells and other illegal uses of human embryos. Research institutions that violate the prohibition would be subject to a fine of up to CZK2 million (about US\$91,000) and the scientists involved would face a ban on their activities or a prison term of up to eight years. Only selected facilities that meet all the ethical requirements associated with the donation of unused embryos will be allowed to conduct embryonic cell research. The new law also provides for the creation of a National Registry of Assisted Reproduction, to track the success of infertility treatments and the state of health of “test-tube” babies. Under the law’s provisions, there are no restrictions on artificial fertilization for married or partner couples. However, for anonymous donors of eggs, an age limit of from eighteen to thirty-five years is introduced, and for anonymous donors of sperm, a limit of forty years. The law prescribes that it is solely the decision of doctors as to whether a couple’s state of health allows for artificial reproduction.

In 2003, Dr. Petr Dvorak and his team of twelve scientists and technicians made international headlines when their lab in Brno isolated a new line of human embryonic stem cells, one of the few laboratories (only the second in Europe, after a Swedish facility) to have succeeded in doing so (a U.S. lab was the first, in 1998). The lab is part of the Institute of Experimental Medicine at the Czech Academy of Sciences. (*Klaus Signs Law on Embryonic Cell Research*, PRAGUE MONITOR, May 12, 2006; Grant Podelco, *World: Czech Lab on Cutting Edge of Human Stem-Cell Research*, RADIO FREE EUROPE/RADIO LIBERTY, Apr. 21, 2005; *DRAFT BILL on Research on Human Embryonic Stem Cells* (last visited May 31, 2006).) (Wendy Zeldin)

FRANCE – New Law on Research and Innovation

Law 2006-450 of April 18, 2006, on research aims at boosting France’s research industry. It provides for an unprecedented public contribution of €19.4 billion (approximately US\$24 billion) between 2006 and 2010. It reforms the research governance system by creating the High Council for Science and Technology (*Haut conseil de la science et de la technologie*) and an evaluation agency (*Agence d’évaluation de la recherche*) that uses a recognized evaluation system to assess research activities taking place in the public sector. The High Council, which is under the supervision of the President of the Republic, is tasked with ensuring that major research and innovation objectives match with the expectations and interests of the society as a whole.

One of the Law’s objectives is to enhance cooperation between public research and private enterprises by, for example, funding joint public/private research projects and encouraging professional mobility between the public and private sectors (researchers also may be able to work part-time as public servants and part-time in the private sector). The Law also



encourages small research bodies – public or private – to group some or all of their activities together to create larger bodies with more visibility in the international community. Other objectives of the Law include making scientific careers more attractive and reinforcing the integration of the French research system into the broader European research industry. (*Loi de programme pour la recherche*, LEGIFRANCE.GOUV.FR, (last visited June 2, 2006).)

(Nicole Atwill)



Taxation

BOTSWANA – Tax Law Change Effective

Changes in income tax exemptions adopted three years ago in Botswana are now being put into effect. Churches, private schools, and sports and social clubs will no longer enjoy tax-free status and will have to file separate tax returns in 2006 for the years 2004 and 2005.

The exemption was ended because of concerns that it was being improperly used by individuals who set up income-earning institutions to take advantage of the exemption for churches, schools, and clubs. Legitimate organizations will pay very little even without the exemption, as long as most of their income is spent on development and social welfare projects. Otherwise, additional monies received will be subject to the basic twenty-five percent income tax.

Existing organizations of the type impacted by the change will be able to file for a one-year extension to spend their surplus funds in approved ways. Craig Granville, a tax specialist, said that under the new system it would take longer for schools to save up for major projects.

Up till now, when schools wanted to build a swimming pool or make some other development, they would carry a surplus for three or four years to save up the money. Now one-quarter of that surplus is going to disappear in taxes each year, so it will probably take 25 percent longer to raise development funds.

While schools are not expected to generate much income for the nation through taxes, it may be a different story for major churches, which will not be taxed on direct donations but will have to pay twenty-five percent of income such as rental fees on church-owned property. (*Botswana: Law Change Targets Churches and Schools*, THE VOICE, May 2, 2006.)
(Constance A. Johnson)



Terrorism

ISRAEL – Internet Café Closed Under Terrorism Law

On April 30, 2006, the Supreme Court of Israel, sitting as a High Court of Justice, rejected a petition to void an order issued by the Superintendent of the Israeli police to close Café Internet, a business located in Jerusalem, for a year. The closing order was issued in accordance with the Prevention of Terrorism Ordinance, 5708-1948, based on evidence that the place was used for activities of the organizations Kach and Kahane Chai, Jewish organizations that had been designated by the government in 1994 as terrorist organizations. The Court held that there was no evidence that required reevaluation of this designation. Moreover, books and additional items related to the organizations' ideology were found there, indicating that the place was used for propagation of their ideology, which incites violence and racism.

In evaluating the legality of the closing order in accordance with the criteria provided by the Basic Law: Human Dignity and Liberty, the Court concluded that the order was based on sufficient evidence and was befitting the values of the state. The order was intended to prevent the near certainty of serious harm to public peace and order, the Court held. The Court was convinced that in the circumstances of the case there was no alternative proportional measure that would cause less harm to the petitioner's rights to property and freedom of occupation. ([*H.C. 951/06 Ezra Stein v. Superintendent Moshe Karedi*](#) (last visited May 9, 2006).) (Ruth Levush)

PHILIPPINES – Anti-Terror Law “Can Still Be Effective” Without Death Penalty

On May 2, 2006, Philippines Senator Aquilino Pimentel stated that an anti-terror law without capital punishment could still be an effective tool in thwarting terrorism. One of the leading opponents of the death penalty, Mr. Pimentel said the absence of capital punishment in the law against terrorism does not mean it would have less impact. “I will steadfastly oppose the death penalty especially now that even children are being used by rebel and extremist organizations in carrying out terrorist missions, including suicide bombings,” Pimentel said. He pointed out that the imposition of life imprisonment as a maximum punishment without the possibility of parole or pardon is spelled out in the Senate version of the anti-terrorism bill.

Pimentel claimed that the Senate version of the anti-terror proposal is enough to strike fear in the hearts of terrorists or would-be terrorists. He joined other members of the Philippines Congress, led by Representative Edcel Lagman, in pushing for repeal of the death penalty. Pimentel and Lagman were among those who expressed support for President Arroyo's decision to commute all death sentences to pave the way for the eventual abolition of the death penalty law. The President has certified as urgent the proposal to abolish the death penalty law as well as the proposal to pass the anti-terror bill.

The Philippines House of Representatives approved an anti-terror bill, but Members expressed reservations on the imposition of capital punishment because of parallel moves by the



Philippines President to abolish the death penalty law. To reconcile the differences between the two proposals, government officials said President Arroyo might allow some exceptions to her decision to abolish the death penalty, particularly in the anti-terror bill. (*Filipino Senator: Anti-Terror Law 'Can Still Be Effective' Without Death Penalty*, THE PHILIPPINE STAR, May 3, 2006, Open Source Center No. SEP20060503018005.)

(Gustavo E. Guerra)

SAUDI ARABIA – Released Detainees Will Be Investigated

On May 22, 2006, Prince Naif, the Interior Minister of Saudi Arabia, confirmed that the Saudi nationals who were released to the Saudi Government from the detention center at Guantanamo Bay would be investigated to determine their guilt or innocence with respect to terrorist activities. He denied that those who worked before would automatically regain their previous employment, saying this would depend on the results of the investigation. (*Released Detainees Will Be Investigated*, AL-SHARQ AL-AWSAT, May 23, 2006.)

(Issam Saliba)

VATICAN – Counter-Terrorism Strategy

On May 11, 2006, at the Sixtieth Session of the U.N. General Assembly on "Informal Consultations of the Plenary on a Counter-Terrorism Strategy," the Permanent Observer of the Holy See expressed his delegation's position on terrorism. He stated their support for the report of the Secretary General containing a condemnation of any kind of terrorism resulting in the "deliberate killing or maiming of civilians and non-combatants." To build effective counter-terrorism strategies, the Permanent Observer noted, nations should focus the debate on finding common ground; Pope Benedict XVI asked not just Catholics, but all people of good will, to link their efforts "to reflection, cooperation, dialogue and prayer, intended to overcome terrorism and build a just and peaceful coexistence in the human family." These days, the Permanent Observer stated, terrorism is based not only on political and social causes but is also motivated by cultural, religious, and ideological differences, and the Secretary General's report recognizes the importance of cultural and religious components in the global terrorism strategy. This recognition by the United Nations can be the first step in cooperation among religions and in bringing cultures and civilizations closer, in the Permanent Observer's view.

In regard to the impact of technology on terrorism, the Permanent Observer mentioned that it is well known that terrorism became transnational through the expert use of the Internet and the mass media and, therefore, a response should be just as powerful and global in dimension. Another important factor that cannot be ignored, he stated, is that excluding immigrant communities from political, social, and economic participation can result in the creation of a fertile recruiting ground for terrorism.

The Permanent Observer stated his delegation's support for Security Council resolution 1673 on non-proliferation and concluded by saying that nations should have a common goal of securing and eliminating, if possible, "nuclear, biological, chemical and radioactive weapons and



implementing effective domestic and export controls on dual-use materials related to weapons of mass destruction.” (Press Release, Holy See Press Office, [Intervento di S.E.Mons. Celestino Migliore](#) (May 12, 2006).)
(Dario Ferreira)

YEMEN – Guilty Verdict Against Fourteen Members of Al Qaeda

On April 19, 2006, a Yemeni court convicted fourteen members of al Qaeda for plotting to attack Western and American interests in Yemen. Judge Mohammed al-Baadani declared that the sentences meted out were between one and a half and seven years of imprisonment. The verdict was issued by a specialized court having jurisdiction over cases related to state security and may be appealed to a higher court. (*Guilty Verdict Against Fourteen Member of Al Qaeda*, AL-SHARQ AL-AWSAT, Apr. 20, 2006.)
(Issam Saliba)



Trade and Commerce

FRANCE – Establishment of National Commission on Fair Trade

On May 3, 2006, Renaud Dutreil, the French Minister for Small and Medium Enterprises, unveiled before the Council of Ministers a draft decree providing for the creation of a Commission nationale du commerce équitable, or CNCE (National Commission for Fair Trade). This decree will implement article 60 of Law 2005-882 of August 2, 2005, in Favor of Small and Medium Enterprises, which defines fair trade as “organizing the exchange of goods and services in the areas of trade activities, handicrafts, and services among developed countries and disadvantaged producers located in developing countries.” The Law further provides that fair trade “aims at establishing durable relations having an effect that ensures the economic and social progress of these producers.”

The Commission’s main task will be to recognize persons or legal entities that ensure respect for the conditions of fair trade as defined above. Persons or legal entities recognized by the Commission will be able to publicly use the label “recognized by the CNCE.” The draft decree sets forth the composition of the Commission and the criteria it will use to recognize these persons or legal entities. The decree will become effective after review by the Council of State and after publication in the JOURNAL OFFICIEL, the French official gazette. (Ministère des petites et moyennes entreprises, *Projet de Décret relatif à la reconnaissance des personnes veillant au respect des conditions du commerce équitable, DISPOSITIF OFFICIEL DE RECONNAISSANCE DU COMMERCE ÉQUITABLE*, (last visited May 8, 2006).)
(Nicole Atwill)

INDIA – Court Bans Use of Name ‘Scot’ for Local Whisky

In the first ruling in India on the World Trade Organization’s Trade-Related Intellectual Property Rights Agreement (TRIPS), the High Court in Delhi has fined a company more than US\$18,000 for marketing a locally produced whisky under the name Red Scot. The United Kingdom’s Scotch Whisky Association went to the Court to prevent the Rajasthan-based company from using the name, alleging it was misleading the public into thinking it was a Scotch whisky. Although there have been previous cases of Indian courts ruling against local distilleries’ use of terms such as Scot or copying the design of the Glenfiddich bottle, this is the first time a court has referred to the TRIPS Agreement. The Association’s lawyer is quoted as saying the ruling would also have a bearing on the marketing of teas labeled as Darjeeling or Assam, but not actually produced in those regions. (*No Scotch Tag for Indian Whisky*, BBC NEWS, Apr. 25, 2006.)
(Donald R. DeGlopper)

SLOVENIA – New Company Legislation

On May 4, 2006, a new Companies Act entered into force, replacing the 1993 law and changing the system of Slovenian corporate legislation. Among major changes, the law provides for the possibility of establishing a European joint-stock company, a supra-national institution



that can operate in all European Union countries without having to establish subsidiaries or branch offices. The previous two-tier management system is replaced with a new one-tier system. The new Act abolishes supervisory boards and introduces new management boards consisting of executive and non-executive members. Upon request of the trade unions, a provision allowing the workers to have a representative on the board was included in the Act. An individual is not allowed to be a member of more than three management boards.

The Act also lowers the minimum amount of capital required to establish a limited liability company. Now, this amount will be equal to €7,500 (about US\$9,560). The previous requirement that a third of the start-up capital be in cash has also been eliminated. The Act includes provisions linked to Slovenia's adoption of the euro, scheduled for 2007, and states that companies will have to express their total capital stock in euros and not in local currency. Another novel feature of the Act is the option given to corporations to convert the price of the company's shares into euros or convert the whole capital stock into euros and then divide that into a new number of shares, in order to avoid problems with rounding off. (*Companies Act Enters into Force*, STA ENGLISH NEWS, SLOVENE PRESS AGENCY, May 4, 2006.) (Peter Roudik)

TAIWAN – Better Protection for Bank Depositors

On April 28, 2006, Taiwan's legislature adopted similar amendments to the Banking Law and the Deposit Insurance Regulations that aim to better protect clientele with large deposits in banks and enhance financial stability. The new provisions stipulate that deposit obligations have priority over non-deposit obligations at the same bank when customers in both of these categories seek compensation from the same failed financial institution. According to legislator Lee Chih-chu, this means that financial institutions with non-deposit funds in the given bank can obtain compensation only after the debts for all clients with deposits have been repaid.

The maximum insurance coverage for each bank account deposit was retained at the current amount of NT\$1 million (about US\$31,435) (even though the Central Deposit Insurance Corp. had proposed a ceiling of NT\$1.5 million), but the amendments will give priority to compensation for that portion of deposits exceeding that limit if a bank goes bankrupt or ceases operation. Under the old rules, the depositor would share compensation for the amount of deposits in excess of NT\$1 million with other banks by a proportional splitting of the assets of the failed bank. This placing of deposit money on a seemingly equal percentage-based footing with the non-deposit money (chiefly interbank loans), Lee stated, actually put individual depositors in a disadvantageous position. (*China Post: Legislature Ratifies New Rules on Bank Deposits, Health Food*, THE CHINA POST, Apr. 29, 2006, Open Source Center No. CPP20060429968012; [Zong-tong fu gong-bao](#) [*Gazette of the Office of the President*], No. 6689 (May 17, 2006).) (Wendy Zeldin)



UNITED STATES – Injunctions in Patent Infringement Cases

The Supreme Court recently issued a ruling in a patent case involving eBay, the popular Web-based auction site, that clarified the standard for granting injunctions for patent infringement. It held that the standard for determining whether to grant permanent injunctive relief in patent disputes is the same four-part test traditionally used in other types of cases involving requests for permanent injunctions.

Petitioner eBay's Web site allows private sellers to list goods they wish to sell and allows purchasers to bid and purchase through the site. MercExchange holds a business methods patent for an electronic market designed to facilitate the sale of goods between private parties. MercExchange argued that eBay's Web site infringed its patent and demanded that eBay pay it for the license to use its patent, which eBay refused. MercExchange then filed suit against eBay in the U.S. District Court for the Eastern District of Virginia. A jury found that MercExchange's patent was valid, that eBay had infringed the patent, and that an award of monetary damages was appropriate. MercExchange then moved for permanent injunctive relief, which the District Court denied. The U.S. Court of Appeals for the Federal Circuit reversed the denial of injunctive relief, holding that there is a "general rule that courts will issue permanent injunctions against patent infringement absent exceptional circumstances." The Supreme Court granted certiorari to consider the standard applied by the Court of Appeals.

The Supreme Court reversed the Court of Appeals, ruling that the same traditional principles of equity governing permanent injunctions in other contexts apply also to patent disputes. The Court reasoned that the Patent Act, which provides that injunctions may issue "in accordance with the principles of equity," shows that Congress did not intend a departure from traditional principles of equity in patent cases. The Supreme Court held that a plaintiff seeking a permanent injunction in patent cases must meet the traditional four-factor test by showing (1) irreparable injury; (2) the inadequacy of monetary damages to compensate for the plaintiff's injury; (3) the equitable weighing of the hardships between the parties favors the plaintiff; and (4) the injunction is consistent with the public interest.

The Court vacated the judgment of the Court of Appeals with instructions that the District Court be permitted to apply the traditional four-factor framework in a manner consistent with this opinion. ([*eBay, Inc. v. MercExchange, L.L.C.*](#), Docket No. 05-130 (May 15, 2006).) (Luis Acosta)

VENEZUELA – Petroleum Royalties Increase

On May 15, 2006, Venezuela's Congress approved higher royalties for privately owned companies like Exxon Mobil and Chevron that are shareholders in four heavy-oil ventures, as President Hugo Chávez seeks a bigger share of industry profits. The law increases royalties to 33.3 percent from 16.67 percent on all oil companies operating in the country, including the four heavy-oil ventures. The increase would represent a tax increment of 16.7 points for private companies and 3.3 for PDVSA (Venezuelan State Oil Company). PDVSA already pays 30



percent in royalties a barrel, so this increase mainly affects companies like Exxon Mobil, Chevron Texaco, and the French Total.

This measure would increase the government's control over its natural resources and also will increase public revenues. The reform provides for the possibility of reducing royalties to 20 percent in case the projects become unprofitable, but experts think this is very unlikely due to the high price of oil in the world markets. (*Aprobado incremento de regalías petroleras al 33,3%*, BANCA Y NEGOCIOS, May 22, 2006.)
(Graciela Rodriguez-Ferrand)



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