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June 2008
ISSUE 6 G.L.M. 2008



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Greetings from the Law Librarian

The *Global Legal Monitor*, an electronic publication of the Law Library of Congress, is intended for those who have an interest in legal developments from around the world.



Globalization is a fact with far-reaching implications including an increasing number of international transactions.

This online publication will be updated frequently, drawing upon information selected from the [Global Legal Information Network](#), official national legal publications, and reliable press sources. Occasionally, a special section may be added to include lectures, conferences, symposia, and exhibits on timely legal topics sponsored by the Law Library of Congress or requests for copies of materials found in the Law Library's collections may be addressed to glm@loc.gov.

Sincerely,

Rubens Medina
Law Librarian of Congress

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AIDS

SOUTH AFRICA – National Defense Force Concedes Discrimination Against HIV Positive Individuals Unlawful

The South African National Defense Force (SANDF) and the Aids Law Project, representing the South African Security Forces' Union and individual members of the military, reached a "concept agreement," which was later turned into a court order, before the Pretoria High Court. Under the agreement, the SANDF concedes that its employment policy prohibiting HIV positive individuals from enlisting in the South African army is unconstitutional.

The court order, in addition to recording SANDF's concession of the illegality of its employment policy, mandates that SANDF develop a "health-classification policy within six months, consider the promotion and foreign deployment of one of its members with HIV, and immediately employ a man prevented from enlisting for the sole reason of his HIV positive status." (*Army Agrees HIV Discrimination Unlawful*, MAIL AND GUARDIAN ONLINE, May 19, 2008, available at http://www.mg.co.za/articlePage.aspx?articleid=339408&area=/breaking_news/breaking_news_national/.)
(Hanibal M. Goitom)



Attorneys and Judges

RWANDA – First Legal Practice Institute

On May 11, 2008, Rwanda's first center for the development of law, the National Institute of Legal Practice and Development, was launched. Prime Minister Bernard Makuza, who officiated at the opening ceremony, stated that the Institute's establishment conformed to the government's aim to reinforce the implementation of judicial reforms, which began in 2003. The Institute will offer a nine-month course in law, a post-graduate Diploma in Legal Practice and Continuing Legal Education, and training to judges, prosecutors, and lawyers. Public notaries, court clerks, bailiffs, and civil servants will also be able to receive training at the Institute.

Vastina Rukimirana Nsanze, Rector of the Institute, stated that because the Institute is new and lacks experienced staff, it will mainly rely on international trainers to work with the Rwandan trainees, with a view to reducing that dependency in two to three years. To bolster staff training and enhance research, Nsanze added, the Institute will seek closer ties with regional and international institutes of legal practice.

Minister of Justice and concurrently Attorney General Tharcisse Karugarama, speaking at the inauguration ceremony, called the opening of the Institute "a timely move that will enhance the rule of Law in the country." Karugarama noted that the Institute will be a "hub for French-speaking African lawyers willing to qualify to do business in English speaking countries and for English-speaking lawyers willing to qualify for doing business in francophone countries" and "will also help lawyers who were educated in the Common Law system adapt to Civil Law and vice versa." He added that, with help from the United Nations Development Program, the Ministry of Justice has established an "Access to Justice Bureau" aimed at bringing justice-related services closer to the Rwandan people. (Paul Ntambara, *Rwanda: Country's First Legal Institute Launched*, THE NEW TIMES (Kigali) May 12, 2008, available at <http://allafrica.com/stories/200805130105.html>.)
(Wendy Zeldin)



Budget

AUSTRALIA – 2008-2009 Budget Passed

The Australian Parliament has passed six appropriations bills to implement the government's 2008-2009 budget. The budget will amend legislation to provide for, among other things:

- amendments to increase the personal income thresholds;
- an increase in the Child Care Tax Rebate (from 30 to 50 percent);
- amendments to Australia's universal health insurance program to include dental check-ups for teenage children; and
- establishment of three new sovereign wealth funds in three nation-building funds: the Building Australia Fund (national transport and broadband infrastructure), the Education Investment Fund (capital expenditure in Australia's higher education institutions), and the Health and Hospitals Fund (hospitals and health facilities and fund major medical research projects).

(Australian Government, Budget 2008-2009 Web site, <http://budget.australia.gov.au/2008-09/index.htm> (last visited May 21, 2008).)

(Lisa J. White)



Capital Punishment

TAIWAN – Proposal to Abolish Death Penalty

On May 21, 2008, the Justice Minister of the Republic of China on Taiwan, Wang Ching-feng, announced plans to try to abolish the death penalty in Taiwan. Draft legislation has been considered in the Cabinet previously, but always failed to pass. Capital punishment retains popular support in Taiwan, with 75 percent opposing abolition, though 50 percent would be willing to end the death penalty if the most serious offenses could be punished with life-long imprisonment, according to a recent survey.

Discussing the proposed abolition, Wang stated: [k]eeping the death penalty has cost the country's international image. Especially when Taiwan is struggling to defend its fragile diplomacy, it is not worth it. ... Abolishing the death penalty is an international trend." There are 29 people on death row in Taiwan at present; no executions have occurred there since 2006. (*Taiwan's New Justice Minister Bids to Scrap Death Penalty*, AFP (Hong Kong), May 21, 2008, Open Source Center No. CPP20080521968223.)
(Constance A. Johnson)



Civil Procedure

RUSSIAN FEDERATION – Supreme Court Lifts Confiscation Clause

On May 18, 2008, the Supreme Court of Arbitration of the Russian Federation, the highest judicial body in the country to resolve commercial disputes, announced its ruling regarding the application of article 169 of the Civil Code, which allows confiscation in the state's favor of revenues from transactions running counter to the fundamental principles of law and morality. This provision was often used by the tax collection authorities to confiscate companies' revenues obtained from transactions aimed at tax evasion. The ruling prohibits this practice and lists specific operations when punishment in the form of confiscation can be applied; namely, deals related to the production and sale of weapons, ammunition, narcotic drugs, and other products hazardous to people's health. The Court stated that the definition of "immoral" may include those businesses related to the production and circulation of literature or other products propagating war or ethnic, racial, or religious enmity or those businesses related to the manufacture or sale of counterfeit documents or securities. The Court's ruling specifies that in tax evasion prosecutions, revenues can be confiscated in cases related to control over the circulation of ethyl alcohol or substances containing alcohol, as they are hazardous to people's health. The Court ruled that in all other cases, the confiscation "is not a measure aimed at ensuring the collection of taxes in the budget." (Ruling of the Russian Federation Supreme Court of Arbitration No. 22, NOVOSTI [NEWS], Apr. 10, 2008, *available at* Russian Federation Supreme Court of Arbitration official Web site.)
(Peter Roudik)



Communications and Electronic Information

CUBA – Government Authorizes Use of Cell Phones by Cuban Citizens

On April 9, 2008, the Cuban government published a resolution that authorizes the acquisition and use of cell phones by Cuban citizens. Previously, it has been reported that cellular phones were offered only to foreigners and Cubans in high-ranking government positions. However, other Cubans already had cell phones through contracts that foreigners opened for them. ETECSA (Empresa de Telecomunicaciones de Cuba, Cuba's cell phone company) recently indicated that Cubans in this situation may change these contracts, in order to appear themselves as the real users of their cell phones. (Resolución 84/2008 del Ministerio de Informática y las Comunicaciones, GACETA OFICIAL, Apr. 9, 2008, *available at* http://www.gacetaoficial.cu/pdf/GO_X_014_2008.pdf; ; *The Cuban Phone Company Reports 7,400 New Cell Phone Accounts*, SAN DIEGO UNION TRIBUNE ONLINE, Apr. 24, 2008, *available at* <http://www.signonsandiego.com/news/world/20080424-1126-cuba-cellphones.html>; *Precisiones sobre el servicio de Telefonía Móvil*, ETECSA (last visited Apr. 30, 2008).) (Gustavo Guerra)

IRAQ – Kurdistan Criminalizes Misuse of Communication Devices

On May 19, 2008, the National Council (parliament) of the Kurdistan Region in Iraq unanimously adopted a law to punish those who use cellular telephones to annoy or cause harm to other persons. The law provides for punishment of six months to five years of imprisonment or a fine of from one to five million Iraqi dinar (1173 dinars=US\$1) as punishment for anyone convicted of using communication devices of any kind to threaten, curse, or publish personal conversations or photographs. Local media have published daily reports about women attacked by relatives on suspicion of contacting or being contacted by strangers. (*Imprisonment for Those Using Cellular Telephones in Kurdistan Iraq*, ALJAZEERA, May 20, 2008.) (Issam Saliba)



Constitutional Law

NIGERIA – State Governments Take Federal Government to Court

It has been reported that seven state governments, of Abia, Bauchi, Benue, Niger, Ogun, Oyo, and Osun States, recently filed a suit against the Federal government before the Nigerian Supreme Court for violation of section 163 of the Nigerian Constitution, by failure to pay “Federal Account entitlements” between 2004 and 2007. The states are seeking N546 billion (about US\$4.7 billion) in refunds from revenues generated from “Excess Crude Proceeds, Signature Bonus, Sales of Government Properties, Cost of Collection from Revenue Agencies, waivers and concessions, Nigerian Liquefied Natural Gas (NLNG) Dividends, Privatization Proceeds, Education Tax Proceeds and other Dividends and IGR.” The states allege that these funds should have been credited to “the Federation Account” and distributed to the states as mandated by the Constitution. (*Governors Seek Refund of “Illegal Deductions” from Federation Account*, THE GUARDIAN (Lagos), May 19, 2008, Open Source Center No. AFP20080519559010.)

According to section 162 of the Nigerian Constitution, “the federation shall maintain a special account to be called the ‘Federation Account,’ in to which shall be paid all revenues collected by the government of the federation.....any amount standing to the credit of the Federation Account must be distributed among the federal, the state governments and the local government councils on such term and manner prescribed by the National Assembly” (Constitution of the Federal Republic of Nigeria, sec. 162, <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm> (official source, last visited June 11, 2008).

(Hanibal M. Goitom)



Criminal Law

CHINA – New Regulations on Defense Lawyers in Capital Cases

On May 21, 2008, China's Supreme People's Court and the Ministry of Justice issued the Circular Distributing Certain Provisions on Fully Guaranteeing Lawyers' Carrying Out Defense Obligations According to Law and Assuring the Quality of Handling of Death Penalty Cases. Some highlights of the Provisions are:

- Where a legal aid institution is to designate a lawyer for a defendant who may be sentenced to death and who has no defense counsel, it must appoint a lawyer with experience in criminal defense in capital cases within three days of receiving notification from the court.
- Lawyers may not transfer capital cases to assistants and must meet with the defendant before trial.
- After being appointed defense counsel, a lawyer must immediately go to the people's court to review the file; if the perused material involves matters such as state secrets, commercial secrets, individual privacy, and witness identities, the lawyer must preserve their confidentiality. Furthermore, if, during a hearing in open court, a lawyer speaks of matters that involve state secrets or individual privacy or launches a personal attack, the judge should issue a warning or suppress the speech.
- Judges must “earnestly listen’ to lawyers’ suggestions, ensure that lawyers are able to complete their presentations, and explain why defense lawyers’ motions are honored or denied.”
- Interested parties, lawyers, and prosecutors are to be informed by the court of any change of a court hearing date three days in advance.
- If prosecutors submit new evidence or re-evaluate the case ahead of the second court session, the court must notify the defense “at the latest” three days before the session opens.
- During the period of review of a death penalty case, if a defense lawyer submits motions or evidential documents, the collegiate bench concerned should receive and record them for the file during work hours and at the court premises, and written opinions submitted by the lawyer should also be appended to the file.

(Zuigao Renmin Fayuan, Sifa Bu yin fa “Guanyu Chongfen baozhang lüshi yi fa lüxing bianhu zhize, quebao si xing anjian banli zhiliang de ruogan guiding” de tongzhi (May 21, 2008), *Xin fagui su di* [New Laws and Regulations Speedily Transmitted] database, available at http://www.law-lib.com/law/law_view.asp?id=259072; *China Clarifies Defense Lawyers' Role in Capital Cases*, CHINA VIEW, May 22, 2008, available at http://news.xinhuanet.com/english/2008-05/22/content_8230677.htm.)

Although the issuance of the Provisions may in general be a positive step towards improving rule of law in China, commentators have raised the issue of how far they will go



towards ameliorating the shortcomings of the country's criminal defense system. As the Congressional Executive Commission on China noted in its 2007 ANNUAL REPORT:

Lawyers have long complained about the 'three difficulties' that they face in criminal defense work: (1) the difficulty in obtaining permission to meet with a client, (2) the difficulty in accessing and reviewing the prosecution's evidence, and (3) the difficulty in gathering evidence in support of the defense. The Commission has reported on multiple cases in which law enforcement officers abused their discretion to deny a defendant access to his lawyer, noting in particular abuse of the 'state secrets' exception. ...

The foregoing problems are made worse by the fact that it is increasingly dangerous for Chinese defense lawyers to carry out their work, especially in high-profile or politically sensitive cases. Law enforcement officials sometimes resort to intimidating lawyers who defend these cases, charging or threatening to charge them with crimes such as 'evidence fabrication' under Article 306 of the Criminal Law. ... Despite official recognition of the chilling effect that such tactics have had on criminal defense work, ... as well as indications that Article 306 would be repealed, ... this problem persists and has become more damaging to China's legal system in the face of unchecked police power.

(Congressional Executive Commission on China, 2007 ANNUAL REPORT 47-48 (Oct. 10, 2007), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:38026.pdf.)

(Wendy Zeldin)

IRAQ – Trial of Tariq Aziz

On May 20, 2008, an Iraqi special tribunal began the trial of seven former officials of the Saddam Hussein regime. Among the defendants is the well known former Foreign Minister and Deputy Prime Minister, Tariq Aziz. The case involves the executions of 42 merchants hours after their arrest and quick trial in 1992. The merchants were accused of having manipulated food supplies and driven prices up at a time when the country was under U.N. sanctions. The prosecutor, Adnan Ali, asked the court to mete out appropriate punishment "that will ease the hearts of widows" and said the seven defendants were responsible for the executions because they were members of the Revolutionary Command Council. (*Iraqi Court Resumes Trial of Aziz*, ASHARQ ALAWSAT, May 21, 2008, available at <http://www.asharq-e.com/news.asp?section=1&id=12812>.)

(Issam Saliba)

LIBYA – New Penal Code Opposed

Libyan legal activists and politicians recently warned against the enactment of a proposed new penal code, claiming it infringes on public liberties, and asked for constitutional guarantees



protecting rights and liberties. Participants in a discussion organized by the Bar Association of Tripoli confirmed their commitment to abolishing the death penalty, except in the case of intentional? homicides. They also recommended the enactment of a constitution that guarantees rights and liberties. (*Libyan Law Professionals Warn Against Enactment of the New Penal Code*, ALJAZEERA, May 24, 2008.)

(Issam Saliba)

UNITED STATES – Supreme Court Upholds Constitutionality of Child Pornography Law

On May 19, the Supreme Court ruled that a federal statute that criminalizes the pandering of child pornography does not violate the United States Constitution.

Section 2252A(a)(3)(B) of the U.S. Criminal Code prohibits offers to provide or requests to obtain obscene material depicting actual or virtual children engaged in specified sexually explicit conduct, and any material depicting actual children engaged in sexually explicit conduct. Respondent Michael Williams pleaded guilty to this offense, but reserved the right to challenge his conviction's constitutionality. The district court rejected his challenge, but the U.S. Court of Appeals for the Eleventh Circuit reversed, finding the statute both overbroad under the First Amendment and impermissibly vague under the Due Process Clause. The Supreme Court accepted review of the case, and reversed the judgment of the Eleventh Circuit, holding that the statute is neither overly broad nor impermissibly vague.

The Court first interpreted the statute to require that the Government either establish (1) that the defendant actually believed the material at issue was child pornography, or (2) that he intended the person to whom he offered it to believe the material to be child pornography, or (3) that the material showed sexually explicit conduct that a reasonable viewer would believe was actually engaged in on camera.

The Court found the statute interpreted in this way was not overbroad under the First Amendment, because it only criminalizes offers to provide, or requests to obtain, material that is illegal to possess, and such speech categorically falls outside First Amendment protection.

The Court also found the statute not impermissibly vague for Due Process purposes. The Court found that the statute adequately gives the public notice of what is prohibited, namely pandering material that the speaker believes, or intends the listener to believe, is child pornography. The Court said that what makes a statute impermissibly vague is not the difficulty of proving a violation, but the indeterminacy of what is prohibited. The Court said that while the defendant's state of mind may be a difficult factual question for the Government to prove, what is prohibited by the statute is not indeterminate. (*United States v. Williams*, No. 06-694 (May 19, 2008), available at <http://www.supremecourtus.gov/opinions/07pdf/06-694.pdf>.)

(Luis Acosta)



Criminal Procedure

BRAZIL – Chamber of Deputies Amends Code of Criminal Procedure

On May 14, 2008, the Brazilian Chamber of Deputies approved a law amending the Code of Criminal Procedure. According to the new law, criminal convictions for which the punishment exceeds 20 years of prison time will no longer trigger an automatic appeal for a new trial. The law also reduces the speaking time allotted to both the prosecution and the defense during a jury trial. The law now awaits the sanction of President Luiz Inácio Lula da Silva. (*Câmara Aprova Fim do Novo Julgamento para Condenados a Mais de 20 Anos de Prisão*, O GLOBO (O)NLINE, May 15, 2008.)
(Eduardo Soares)

NEW ZEALAND – Securities Prosecution to Be Funded

It was announced on May 21, 2008, that the New Zealand government is implementing amendments to permit the use of the Securities Commission's Litigation Fund for criminal prosecutions (under the Securities Act) brought against finance companies that have misled investors. Previously this fund could only be used in relation to civil litigation. The amendment is likely to increase the number of criminal prosecutions undertaken and speed up those that are undertaken. (Press Release, Minister Lianne Dalziel, Government Fund to Speed Up Finance Company Prosecutions (May 21, 2008), New Zealand Government Beehive Web site.)
(Lisa J. White)



Customs

MEXICO – New Import Rules for Passengers

According to the General Rules on Matters of Foreign Trade for 2008 that were published officially in the Mexican federal official gazette on April 30, 2008, passengers who come into the country by land, air, or sea may import up to US\$3,000 in merchandise without having to use the services of a customs broker and without paying an overall tax rate of 15 percent. According to the Rules, this importation ceiling is in addition to the ordinary duty-free importation allowance of US\$75, or US\$300 during tax holidays. The Rules, which came into force on May 1, 2008, clarify that computer equipment may be imported without having to go through a customs broker for a maximum value of US\$4,000, the total sum of merchandise. Previously, passengers who imported more than US\$1,000 in merchandise had to pay for the services of a customs broker, in addition to having to pay the corresponding importation duties. The Treasury Secretariat also stated that the allowance of US\$300 of duty-free importation for the summer tax holiday period will be in effect from June 27 to July 28 this year. During the Christmas holidays, the allowance will start on November 24, 2008, and end on January 9, 2009. In December 2007, the Treasury Secretary published a resolution in which the allowance of US\$50 for importing duty-free merchandise on ordinary days was increased to US\$75. (*Se Pueden Importar Ya Dolares, Tres Mil Sin Aduanal*, EL NORTE, May 2, 2008.)

(Norma C. Gutiérrez)



Disasters

TAIWAN – Disaster Prevention and Rescue Law Amended

Taiwan's Disaster Prevention and Rescue Law (promulgated on July 19, 2000) was amended on May 14, 2008. Among other changes, the term "disaster" is redefined to include mine disasters and forest disasters (and to remove the word "major" from the list of non-natural disasters in which these two types of disasters are also found). The powers and responsibilities of the central authority in charge of disaster prevention and rescue are newly set forth as well. The revised Law stipulates that governments at various levels are to cover matters including disaster reduction, preparations, contingency measures, and restoration and reconstruction in a disaster prevention and rescue operation plan, to be implemented by public utilities; penalties are imposed on those utilities that violate disaster prevention and rescue regulations, resulting in serious damage. The amended Law states that governments at various levels are to take appropriate measures to encourage or enforce the removal of any facilities or objects that would multiply disasters or obstruct rescue.

Under other amendments, lists are provided of particular disaster contingency measures and of specific post-disaster restoration and reconstruction measures to be implemented by government at various levels. The statute of limitations for claiming damages caused by a disaster has also been revised, to allow two years from the time that there is known to be damage to make a claim, with the limit of five years' passage since the damage occurred (as opposed to the government giving compensation within six months after an investigation and confirmation of damage and a statute of limitation of four years after the disaster occurs to lodge a claim). New provisions specify that governments at various levels may simplify administrative proceedings in order to carry out disaster rescue and reconstruction work. If a local government lacks the capacity to fund restoration and reconstruction work necessary as a result of a serious natural disaster, it may file an application with the central government for a subsidy. (Amendment to Disasters [sic] Prevention and Rescue Law, 6798 THE GAZETTE OF THE OFFICE OF THE PRESIDENT, May 14, 2008, available at <http://content.glin.gov/summary/205271>.)
(Wendy Zeldin)



Discrimination

UNITED STATES – Genetic Information Nondiscrimination Act of 2008 Signed into Law

On May 21, 2008 the President signed into law House bill H.R. 493, the Genetic Information Nondiscrimination Act of 2008 (“GINA”). GINA provides broad protection from discrimination against individuals based on their genetic information.

To accomplish its purpose in the area of health insurance discrimination, GINA amends the Employee Retirement Income Security Act of 1974 (“ERISA”), the Public Health Service Act, the Internal Revenue Code, and the Medicare provisions of the Social Security Act; it also directs the Secretary of Health and Human Services to revise Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) privacy regulations. The effect of these amendments is to prevent health insurers from discriminating against individuals on the basis of genetic information, and to prevent insurers from requesting individuals to take genetic tests. The prohibitions against discrimination apply to both private and government entities, and to non-federal as well as federal government employers.

In the area of employment discrimination, GINA makes it unlawful for employers, labor organizations, and other covered entities to discriminate against potential or current employees on the basis of the individual's genetic information. This prohibition against discrimination applies to hiring, discharging, classifying, and segregating employees, as well as access to training or internship programs. GINA also requires genetic information to be treated as a confidential medical record, and prohibits employers from requiring, requesting, or purchasing such information, with limited exceptions, such as forensic laboratories which conduct DNA analysis for law enforcement purposes, and genetic monitoring of the biological effects of toxic substances in the workplace. (Genetic Information Nondiscrimination Act of 2008, Public Law No. 110-233, 122 Stat. 881, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h493enr.txt.pdf.)
(Gary Robinson)

UNITED STATES – Supreme Court Rules 1866 Civil Rights Provision Encompasses Retaliation Claims

On May 27, the Supreme Court ruled that a provision of the Civil Rights Act of 1866 codified at 42 U.S.C. § 1981, which protects against racial discrimination in the making and enforcing of contracts, also prohibits retaliation against persons who complain of violations of this law.

Section 1981 provides in part that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens.” Hedrick G. Humphries, a former assistant manager at a Cracker Barrel restaurant, filed suit under section 1981 and other laws, claiming that CBOCS West, Inc., the owner of Cracker Barrel, dismissed him because of racial bias, as well as in retaliation for his



complaining that another employee had been dismissed because of racial bias. The district court granted summary judgment to CBOCS on all claims. The U.S. Court of Appeals for the Seventh Circuit upheld the grant of summary judgment on Humphries's claim of direct discrimination, but reversed and remanded with respect to the retaliation claim, ruling that section 1981 encompasses retaliation claims. The Supreme Court granted the petition for certiorari of CBOCS to review this judgment with respect to retaliation.

The Court held that retaliation claims are permitted under section 1981. The Court observed that:

1. a 1969 Supreme Court case ruled that a related provision from the 1866 Civil Rights Act, codified at 42 U.S.C. § 1982, encompasses retaliation actions;
2. the Court has long interpreted sections 1981 and 1982 alike;
3. while a 1989 Supreme Court case narrowed section 1981 by excluding post-contract-formation conduct such as retaliation, Congress overturned that ruling in 1991; and
4. since 1991, the lower courts have uniformly interpreted section 1981 as encompassing retaliation actions.

Under these circumstances, the Court concluded that considerations of *stare decisis* – the principle that the Court will usually respect well-embedded precedent – strongly support the view that section 1981 encompasses retaliation claims.

The Court rejected various arguments by CBOCS resting on textual analysis, the legislative intent of the 1991 amendment, the fact that section 1981 claims overlap with claims under Title VII of the Civil Rights Act of 1964, and recent case law highlighting the distinction between status-based and conduct-based retaliation. (*CBOCS West, Inc. v. Humphries*, No. 06-1431 (May 27, 2008), available at <http://www.supremecourtus.gov/opinions/07pdf/06-1431.pdf>.) (Luis Acosta)



Elections and Politics

SUDAN – Opposition Leader Al-Turabi Arrested

On May 12, 2008, Sudanese security forces arrested the leader of the People's Congress opposition party, Hassan al-Turabi, along with ten of his senior assistants. Mahjoub Fadl, media consultant for the Sudanese President, declared that the detention of al-Turabi, senior officials of the People's Congress Party, and others, whom he did not name, was in connection with the attack on Um Darman, one of the districts of the capital Khourtom, carried out by the militants of the Justice and Equality Movement. The spokesman for the Justice and Equality Movement, Ahmed Hussein Adam, denied any relation between his movement and the People's Congress Party and told ALJAZEERA that his movement is independent and carried out the attack on its own. (*Detention of al-Turabi in Connection with the Attack on Um Darman*, ALJAZEERA, May 12, 2008.)

(Issam Saliba)



Employment

CZECH REPUBLIC – New Rules for Sick Leave Benefits

On May 15, 2008, the Constitutional Court of the Czech Republic invalidated the package of reform legislation initiated by the government that had provided for the elimination of payments to all employees nationwide during the first three days of an illness. The current legislation allows people to receive payments in an amount equal to 60 percent of their salary from the fourth to the thirtieth day of illness, and 72 percent of their salary later. Assessing the law at the request of the opposition, the Constitutional Court stated that the situation where people receive no sickness benefits for the first three days of an illness contradicts the Constitution. The ruling will enter into force as of June 30, 2008, but it will not have retroactive force. Newly proposed legislation now being considered by the legislature provides for tax credits for employers who will be obligated to pay employees their salary during the first two weeks of sickness. (*Czechs to Get “Early” Sickness Benefits Again in July* CTK-DAILY NEWS, May 15, 2008, available at <http://www.securities.com>.)
(Peter Roudik)



Energy

MALAYSIA – Foreigners Banned from Getting Cheap Gas

Malaysian Domestic Trade and Consumer Affairs Minister Shahrir Abdul Samad announced on May 26, 2008, that operators of foreign-registered vehicles will be forbidden to buy any gasoline in border areas of Malaysia. Subsidies have kept prices for both gasoline and diesel fuel substantially lower in Malaysia than in neighboring Singapore and Thailand, and foreigners had already been subjected to a 20-liter limit. The Minister said the prohibition was “a stern act by the government to reduce the leak in subsidy” and that the subsidy “should actually be enjoyed by the lower-income group in the country,” rather than by foreigners. He also stated that the policy was temporary, designed to be in place “until we come up with better management of our subsidy system.” Those found breaking the rule will be subject to fines and may be imprisoned for up to three years. The move is not universally popular in Malaysia, as some fear it will adversely impact the tourist trade. (Julia Zappei, *Malaysia to Ban Foreigners from Filling Up on Subsidized Gasoline Near Borders*, AP, May 27, 2008 (last visited May 30, 2008).)

(Constance A. Johnson)



Environment

NORWAY – New Hazardous Waste Strategy

On April 21, 2008, Norway's Pollution Control Authority (*Statens forurensningstilsyn*, or SFT) announced that it is considering amending chapter 11 of the Waste Regulations (930/2004) "to improve opportunities for households to dispose of hazardous waste and to make collection targets legally binding." The SFT also stated that it may revise the rules on hazardous content of products so that "where possible, new products coming onto the market produce less hazardous waste than their predecessors." (Marcus Hoy, *Norway Waste Strategy Aims to Reduce Hazardous Material, Improve Treatment*, 31:10 INTERNATIONAL ENVIRONMENT REPORTER 440 (May 14, 2008), available at <http://pubs.bna.com/ip/bna/IER.NSF/eh/a0b6k6y4q2>.)

The current regulations are deemed adequate for defining and regulating hazardous waste, but the changes aim to encourage households and industry to use better handling and disposal techniques and increase the amount of waste collected. The focus of the new hazardous waste strategy, which covers 2008-2010, is on "small electronic devices, household cleaning substances containing tetrachloroethene; firefighting foam containing perfluorooctane sulfonates; wood impregnated with copper, chrome, and arsenic; and insulating materials containing brominated flame retardants, which are commonly used in construction." (*Id.*) The new strategy also prioritizes the collection of types of waste according to the level of danger, seeks to reduce the use of environmental poisons in industrial production, and aims to facilitate environmentally friendly consumer purchases. According to SFT official Hilde Skaalevaag, a major overhaul of Norway's industrial waste laws is not necessary because "[t]he existing EU Hazardous Waste Regulations [91/689/EEC] have been sufficient to identify new hazardous waste areas such as building insulation material containing brominated flame retardants." "[T]he regulations on the recovery and treatment of construction waste," she added, "were amended in January 2008 to require companies to submit detailed plans regarding treatment and disposal," and Norway is also now implementing the European Union's RoHS Directive (2002/95/EC) restricting the use of certain hazardous substances (e.g., lead and mercury) in electrical and electronic equipment. (*Id.*; see also SFT, *Strategi for Farlig Avfall 2008-2010* [Strategy for Hazardous Waste] (Apr. 2008) (in Norwegian), available at <http://www.sft.no/publikasjoner/2385/ta2385.pdf>.) (Wendy Zeldin)



Family

CANADA – Senate Passes Anti-Spanking Law

In 2004, Canada's Supreme Court ruled that the exception to the assault provisions of the Criminal Code allowing for limited corporal punishment of children was not unconstitutional on the grounds that it subjected children to cruel and unusual punishment or denied their rights to equality. (*Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76 (official source)). This exception states that "every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances." (Criminal Code, R.S.C. c. 46, s. 43 (1985, as amended) (official source)). The Court did place some limitations on this section by finding that corporal punishment of children under the age of two or above the age of twelve is unreasonable and that what constitutes reasonable corrective discipline is partly determined by social consensus. However, it did not rule that all physical discipline of children is unconstitutional.

Corporal punishment has been banned by school boards throughout Canada and is no longer a major issue. However, opinions on parental discipline continue to be divided. In response to the Supreme Court's 2004 decision, Canada's Senate passed an "anti-spanking" bill on June 18, 2008, and sent it to the House of Commons. This bill would amend the Criminal Code to read as follows:

1. Every schoolteacher, parent or person standing in the place of a parent is justified in using reasonable force other than corporal punishment toward a child who is under their care if the force is used only for the purpose of
 - (a) preventing or minimizing harm to the child or another person;
 - (b) preventing the child from engaging or continuing to engage in conduct that is of a criminal nature; or
 - (c) preventing the child from engaging or continuing to engage in excessively offensive or disruptive behaviour.
2. In subsection (1), "reasonable force" means an application of force that is transitory and minimal in the circumstances.

(Bill S-209, 39th Parl. 2d Sess., http://www2.parl.gc.ca/content/Senate/Bills/392/public/S-209/S-209_3/S-209_text-e.htm (last visited June 20, 2008).

Canada's Senate is an appointed body and the majority of its current members were appointed by the Liberal Prime Ministers in the former government. The current government is a minority government in which the Conservatives hold the largest number of seats. The Conservatives appear to be opposed to changing the law. The Senate bill could still be passed by the combined opposition parties, but even the sponsor of the bill believes that its greatest chance of being enacted is through a Liberal victory in the next general election. However, even if the Liberals were to form a government, it is not clear that the bill would be assured of enactment as opinions on it appear to be divided even within that party. (Tim Naumetz, *Anti-Spanking Bill*



Heads to House of Commons After Senate Approval, CANADIAN PRESS, June 18, 2008, available at http://ca.news.yahoo.com/s/capress/080618/national/spanking_bill).

(Stephen Clarke)

GERMANY – Paternity Testing

The Act for the Establishment of Paternity Without a Proceeding to Contest Paternity, enacted on March 28, 2008 (BUNDESGESETZBLATT (BGBL, official law gazette of the Federal Republic of Germany) I at 441), became effective on April 1, 2008. This Act makes it easier for the presumptive father of a child, the husband of the mother, to insist on genetic testing to establish whether he is the biological father. Prior to this reform, paternity could only be contested for two years after birth, under limiting circumstances that required the presumptive father to bring evidence that he had reason to doubt his paternity (Bürgerliches Gesetzbuch, repromulgated on Jan. 2, 2002, BGBL 2003 I at 738, as amended, §§ 1599 – 1600 e). This led presumptive fathers to engage in surreptitious testing, a practice that had no effect before the German courts because it violated the privacy rights of the child by testing his or her genetic material without his or her consent (M. Wellenhofer, *Das neue Gesetz*, 61 NEUE JURISTISCHE WOCHENSCHRIFT 1185 (2008)). The impetus for the new Act came from a decision of the Federal Constitutional Court that held that a presumptive father has a constitutional right to know whether he is the biological father (Bundesverfassungsgericht decision of Feb. 13, 2007, Docket No. 1 BvR 421/05, Federal Constitutional Court official Web site). The new Act, however, does not afford equal treatment for the putative natural father of the child who is not married to the mother. If, during the critical period, the mother was married to someone else, a natural father can claim paternity only through a complex court proceeding that examines whether the establishment of paternity would be in the best interests of the child (Wellenhofer, *supra*, at 1188).

(Edith Palmer)



Gambling

SOUTH AFRICA – Internet Gambling Law Passed

The South African Parliament approved a new gambling law designed to curb gambling-related negative socio-economic problems; it was published on May 19, 2008. The bill introduces rules on player protection, licensing, taxation, and advertising. It requires that every player be registered with a licensed interactive gambling provider and submit an affidavit indicating age, to make sure that minors do not participate in games. In addition, the bill allows electronic monitoring systems to do away with “potentially addictive behavior and restrict credit extensions to players.” The bill will go in to effect once it has been approved by the President of South Africa. (*RSA Parliament Approves Internet Gambling Law to Counter Crime*, THE MERCURY (Durban), May 19, 2008, Open Source Center No. AFP20080520543005.) (Hanibal M. Goitom)



Government Ethics

UGANDA – Anti Corruption Policy Under Criticism

The Ugandan government has come under heavy criticism for its “go slow policies” in cleaning up corruption. Niels Hjordal, head of the Danish International Development Agency (DANIDA), recently criticized the Ugandan government “for failing to punish officials linked to graft-related scandals,” even with the improvements in laws, regulations, and institutions enabling the government to effectively do so. Hjordal pointed to lengthy and slow prosecutions of several high-profile cases to make his point. He announced that Denmark will phase out its anti-corruption assistance program, launched in 2004 to help Uganda institute efficient and transparent mechanisms for handling public finances and control procurement fraud, by next year. Uganda’s efforts to tackle corruption, for which the country also received \$10.4 million from the United States last year, are going to be evaluated next year by U.S.-run Millennium Challenge Corporation.

Since 2005, Uganda has lost \$300 million annually to corruption and procurement malpractice, World Bank records show. (*Danish Official Criticizes Uganda’s Anti-Graft Policies*, THE MONITOR (Kampala), May 19, 2008, Open Source Center No. AFP20080519950019.)
(Hanibal M. Goitom)



Human Rights

CAMBODIA – Former Khmer Rouge Minister Charged with Crimes Against Humanity

Ieng Thirith, the former Khmer Rouge Social Affairs Minister, has been charged by the Extraordinary Chambers in the Courts of Cambodia (ECCC) with crimes against humanity (murder, extermination, imprisonment, persecution, and other inhuman acts) in accordance with articles 5, 29(new), and 39(new) of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia. (ECCC, *Pre-Trial Chamber – Report of Examination (Ieng Thirith)*, http://www.eccc.gov.kh/english/cabinet/courtDoc/75/Report_of_Examination_Ieng_thirith_C20_I_22_EN.pdf (last visited May 21, 2008).)

(Lisa J. White)

UNITED NATIONS/ICTY/ICTR – Tribunal Officials Urge More Support for Genocide Trials

On June 4, 2008, the Presidents and Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) stated to the United Nations Security Council that more efforts must be made to arrest fugitives responsible for genocide and other atrocities. They also called for additional funding and cooperation so that the trials can continue.

The ICTY Prosecutor, Serge Brammertz, stated, “[w]e strongly believe that the remaining fugitives – Ratko Mladić, Radovan Karadžić, Stojan Župljanin, and Goran Hadžić – are within reach of the authorities in Serbia, and the Serbian authorities can do more to locate and arrest them.” He further asked that Croatia provide key documents immediately and that Bosnia and Herzegovina “adopt a more pro-active approach against those helping the fugitives evade justice.” He also pointed out the need to continue funding the war crimes department of the Prosecutor’s office in Bosnia and Herzegovina, referring to that country’s justice system as “fragile.” (*Officials from UN War Crimes Tribunals Urge Enhanced Global Support*, UN NEWS, June 4, 2008.) The President of the ICTY, Fausto Pocar, stressed the importance of international support and stated: “[t]he Tribunal should not close its doors before all of those fugitives are tried.” (Press Release, Security Council, Mandate of Former Yugoslavia Tribunal Will Not Be Fully Achieved Without Arrest, Trial of Four Remaining Fugitives, Security Council Told, SC/9347 (June 4, 2008), available at <http://www.un.org/News/Press/docs/2008/sc9347.doc.htm>.)

Trials related to the Rwandan genocide will not be completed until 2009, due to the recent arrests of three defendants made in the Democratic Republic of the Congo, France, and Germany. ICTR Prosecutor Hassan B. Jallow called for an additional arrest, of Felicien Kabuga, thought to be living in Kenya, and asked Kenya to “proceed to maintain an active search for the fugitive within its territory with a view to arresting him and transferring him to the ICTR” Jallow also asked that Kenya freeze Kabuga’s bank accounts. (UN NEWS, *supra*.) (Constance A. Johnson)



Identification

CROATIA – Personal Identification Numbers Issued

On May 9, 2008, the Croatian Parliament adopted the Law on Personal Identification Numbers, under which personal identification numbers (PINs) will be introduced in Croatia for both individuals and businesses at the beginning of 2009. The numbers will be determined randomly, so that personal data cannot be identified. The PIN for new-born babies and newly established companies will be introduced at the beginning of 2009 and for existing companies and private citizens at the beginning of 2011. The new PINs will have 11 digits, preceded by the designation HR. They will be issued by the Tax Authority and allocated to Croatian citizens, companies that have their corporate seat in Croatia, and foreign nationals wishing to do transactions in Croatia. The number allocation procedure will be determined by special rules adopted by the government. (*Parliament Adopts Law on Personal Identification Numbers*, HINA (Croatian News Agency) English-Language Service, May 9, 2008, available at <http://www.securities.com>.)

(Peter Roudik)

FRANCE – Biometric Passports

On April 30, 2008, the French government issued a decree implementing biometric passports and creating a national database to store fingerprints, photographs, and information relating to the civil status of passport applicants. The decree was published in the official gazette of May 4, 2008. It is designed to comply with European Council Regulation No. 2252/2004 of December 13, 2004, on the Introduction of Common Security Standards and Biometrics into Passports and Other Travel Documents Issued by Member States.

The French passport will carry digital images of the bearer's face and eight fingerprints. Children under the age of six will not be digitally fingerprinted. Under the European Union regulation, Member States must issue passports able to store the holder's digital image and two fingerprints by June 28, 2009.

The decree was reviewed by the National Commission on Data and Liberties (*Commission Nationale de l'Informatique et des Libertés*, CNIL), France's data protection independent authority, prior to its promulgation. The CNIL found that the decree exceeds the EU specifications by requiring eight fingerprints instead of two and by creating a national database. It stated that "although legitimate, the government's stated ends do not justify storage, on a national level, of biometric data such as digital fingerprints, and that the planned processing of such data will subject individual freedoms to excessive encroachment." (CNIL Opinion 2007-368 of Dec. 11, 2007 on the Draft Decree Modifying Decree 2005-1726 of Dec. 30, 2005, on Electronic Passports [in French], available at <http://www.cnil.fr/id=2427>.)

The government claims that the data processing is necessary to facilitate the establishment, renewal, and replacement of passports and to detect any falsification or



counterfeiting. (Decree 2008-426 of Apr. 30, 2008, Modifying Decree 2005-1726 of Dec. 30, 2005, on Electronic Passports, JOURNAL OFFICIEL, May 4, 2008, at 7446.)
(Nicole Atwill)



Immigration and Nationality

BANGLADESH - High Court Grants Citizenship to Stateless Bihari Refugees

The people known in *Bangladesh* as “Biharis” are the people of *Bihar* who migrated to *East Pakistan* prior to the *partition of India* and *Pakistan* in 1947. Neither *Pakistan* nor *India* offered citizenship to these migrants, and as a result the Biharis have remained stateless and living in refugee camps for the thirty-six years following the independence of *Bangladesh*. The non-governmental organization *Refugees International* has urged the governments of *Pakistan* and *Bangladesh* to grant citizenship to the Biharis. *Pakistan* has not taken action on this issue despite repeated requests from the *Bangladesh* Government.

On May 19, 2008, the *Bangladesh* High Court ruled to approve citizenship and voting rights for about 150,000 refugees who were minors at the time of *Bangladesh's* war of independence in 1971 or were born after independence. The rest would continue to live in the camps, run by the *Bangladesh* government and the U.N. High Commissioner for Refugees. (Shahnaz Parveen, *Citizenship Debate Comes to End But Doubts and Worries Remain*, DAILY STAR, June 5, 2008, available at <http://www.thedailystar.net/story.php?nid=38148>.) (Shameema Rahman)

JAPAN – Acceptance of Indonesian Healthcare Workers Based on Agreement

Japan and Indonesia signed the Agreement for an Economic Partnership (EPA) on August 20, 2007, under which Japan agreed to issue visas and allow resident status for qualified Indonesian nurses and nursing-care workers. The workers will receive Japanese language classes for six months. Then, they will work at hospitals and nursing homes and prepare for the appropriate national examination. Nurses will be allowed up to three years to prepare and nursing-care providers up to four years. Those who fail to pass the exams must go back to Indonesia. Those who pass the exams will be qualified for resident status that can be renewed every three years.

On May 19, 2008, the Japanese government decided to accept the first 200 nurses and 300 nursing-care workers in July and August 2008 under the terms of the EPA. (*Indonesia jin kangoshi ra 500 nin, 7-8 gatsu no rainichi ga seishiki kettei* [500 Nurses and Others, an Official Decision Made for Acceptance of Them in July and August], YOMIURI ONLINE, May 19, 2008 (on file with author); & *Nichi-Indonesia keizai renkei kyotei ni motodoku kangoshi kaigo fukushishi kohosha no ukeire* [Acceptance of Nurses and Nursing-Care Workers Based on Japan-Indonesia EPA], Ministry of Health, Labor and Welfare Web site (last visited May 20, 2008).) (Sayuri Umeda)

KOREA, SOUTH – Permanent Residence for Investors

The Korean government will ease the rule contained in the Immigration Control Enforcement Decree to give investors permanent resident status. Foreigners will be able to obtain permanent residence status beginning in September 2008 when they invest more than



US\$500,000 and employ more than five Koreans. (Park Si-soo, *More Foreigners to Become Permanent Residents from Sept. 1*, KOREA TIMES, Apr. 22, 2008, available at http://www.koreatimes.co.kr/www/news/nation/2008/04/117_22957.html.)
(Sayuri Umeda)

TAIWAN – Changes to Nationality Law Proposed

Legislators of the Kuomintang (Nationalist, or KMT) Party may seek an amendment to the Nationality Law to establish conditions and limitations on Taiwan government officials' holding permanent resident status in foreign countries, such as the rank of civil servants allowed to obtain it and the time limit for renouncing it before their assumption of official duties. The proposed amendment would also create a declaration system requiring civil servants to report that status. The move came in the wake of questions about the loyalty of certain Cabinet members who hold or are alleged to hold U.S. green cards. The Civil Servants Work Act (Gongwu renyuan fuwu fa (as amended on July 19, 2000), Ministry of Civil Service Web site, (last visited June 9, 2008)) does not permit dual nationality, but because green card or other types of foreign permanent resident status does not constitute dual nationality, the Act does not cover it. (Mo Yan-Chih & Shih Hsiu-Chuan, *KMT Proposes Amendment to Nationality Law*, TAIPEI TIMES, June 8, 2008, at 1, available at <http://www.taipeitimes.com/News/front/archives/2008/06/08/2003414151>.)
(Wendy Zeldin)

UNITED KINGDOM – Points-Based Immigration System Declared Unlawful

The recently introduced points-based immigration system in the UK, under which migrants are awarded points for meeting various criteria to obtain entry into the UK, has been introduced unlawfully, according to British courts. The new regime unlawfully prejudiced migrants already in the country under the old system by increasing the requirements to obtain permanent residency, resulting in many migrants ineligible to lawfully remain in the UK. (*Regina (HSMP Forum Ltd) v Secretary of State for the Home Department*, THE TIMES, May 29, 2008, available at <http://business.timesonline.co.uk/tol/business/law/reports/article4023151.ece> (last visited June 20, 2008).)
(Clare Feikert)



Insurance

UZBEKISTAN – Car Insurance Made Obligatory

On April 21, 2008, the President of Uzbekistan promulgated the Law on Mandatory Civil Liability Insurance of Vehicle Owners, making Uzbekistan the first post-Soviet country where the law obligates vehicle owners to insure against civil liability for any harm caused to the life, health, and (or) property of third parties that occurred while driving. The insurance must be acquired within ten days after purchasing a vehicle or after receiving it for operational use. The Law prohibits the use of vehicles whose owners do not have their liability insured in the territory of the Republic of Uzbekistan. The maximum insurance rates, their structure, and the order of their application by the insurance companies will be established by the Cabinet of Ministers.

Special requirements were introduced in regard to the insurance companies that provide this type of coverage. They should possess an additional license and have representatives in all regions of the country authorized to sign contracts, consider the claims, and make insurance coverage payments. Traffic policemen are assigned the duty to monitor motorists' compliance with the requirement to have civil liability insurance. The Law allows police to revoke a vehicle's registration if it is not insured. (*President Promulgates Law on Mandatory Insurance of Auto Civil Liability*, BVV BUSINESS REPORT, May 6, 2008, available at <http://www.securities.com>.)
(Peter Roudik)



International Law

SWEDEN – Supreme Court Rejects Extradition of Chechen Rebel

On June 10, 2008, the Supreme Court of Sweden rejected a request by Russia, made in July 2007, to extradite a Chechen rebel suspected of the commission of “a long line of crimes between May and July 2002, including terrorism, the attempted murder of a state employee and participating in an armed group.” (*Swedish Supreme Court Rules Against Extraditing Chechen Rebel to Russia*, AFP (North European Service), June 10, 2008, Open Source Center No. EUP20080610102037.) The Court stated that the alleged crimes were “part of, or are directly connected to, acts of battle during the so-called second Chechen war, which was presented as a rebellion aimed at liberating the Chechen Republic from the Russian Federation” and “are to be considered as political due to the political motivation for them.” The 39-year-old Chechen suspect claimed that he was being persecuted by the Russian authorities for such activities as publishing a Web site critical of the government and he told the court that Moscow’s charges were based on “incorrect statements” made by the authorities that were aimed at securing his forcible return to Russia “for political reasons.” (*Id.*)
(Wendy Zeldin)



International Relations

JAPAN – Controversy over Payment for U.S. Military Bases

The Japanese government has paid a large part of the expenses for U.S. military bases in Japan since 1978. Those expenses include housing, schools, and recreational facilities for U.S. soldiers and base employees, salaries of Japanese employees, utility bills, and expenses to relocate training sites. The opposition party, the Democratic Party of Japan, opposed a part of the renewal of the U.S. base support deal. The Democratic Party pointed out that it was inappropriate for Japan to pay the salaries of U.S. employees of leisure facilities. For example, the highest annual salaries paid in the past per type of occupation are:

- bartenders (total number 76): ¥5.49 million (US\$528,000);
- club managers (total number 25): ¥7.14 million (US\$687,000);
- party managers (total number 9): ¥5.76 million (US\$554,000); and
- golf course maintenance workers (total number 47): ¥5.79 million (US\$557,000).

In December 2007, the U.S. and Japanese governments concluded an agreement that requires Japan to pay some 140 billion yen annually to help run U.S. military bases in Japan for three years, from April 2008. After the Japanese House of Representatives, which is dominated by the ruling political parties, approved the agreement, the opposition-dominated House of Councillors rejected it on April 25, 2008. The House of Representatives approved it again one day later. In this situation, under Japan's Constitution, the decision of the House of Representatives prevails. The Cabinet made the decision to implement the agreement on April 30, 2008, and it came into force on May 1, 2008. This is the first time that either House has disapproved of an international agreement since the current Constitution became effective in 1947. (*Omoiyari yosan 1 ka getsu okure no shonin* [One Month Delay of Approval of the Sympathy Budget], SANKEI NEWSPAPER, Apr. 26, 2008 (on file with author); & *Omoiyari yosan hakko* [Sympathy Budget Became Effective], SANKEI NEWSPAPER, May 1, 2008 (on file with author).)

(Sayuri Umeda)

MALAYSIA/SINGAPORE – Court Rules in Maritime Dispute

In a May 23, 2008, ruling of the International Court of Justice, Singapore has been accorded sovereignty over an island in the Straits of Singapore. The island, often called Pedra Branca but known in Malaysia as Pulau Batu Puteh, has a lighthouse and was the subject of a dispute between Singapore and Malaysia. In the same decision, Malaysia was given control over a series of uninhabited, above-water rocks. The 12 to 4 decision of the justices stated that the island had been Singapore's territory since at least 1980. The vote on giving control over the "Middle Rocks" to Malaysia was 15 to 1. The Court, which sits in The Hague, is also known as the World Court; its decisions are binding and there is no appeal. (*UN Court Rules in Maritime Dispute Between Singapore and Malaysia*, UN NEWS, May 23, 2008; AP, *World Court Gives Lighthouse Island to Singapore* (last visited May 27, 2008).

(Constance A. Johnson)



Languages

PORTUGAL – Parliament Approves Second Protocol to Orthographic Agreement

On May 16, 2008, the Portuguese Parliament approved the second protocol that modified the Orthographic Agreement of the Portuguese Language of 1990, an agreement between several Portuguese speaking nations. Portugal now will have to change 1.42% of its words and will have six years to adapt to the new rules. According to the agreement, the letters “K,” “W,” and “Y” will be reintroduced in the alphabet, and a few grammatical rules will also change. After the agreement is published in the official gazette (DIÁRIO DA REPÚBLICA), it will be sent for the sanction of the Portuguese President, Cavaco Silva, who has already expressed his support for the agreement. (*Em Decisão Histórica, Portugal se Une a Brasil e África a Favor da Unificação da Ortografia*, O GLOBO (ONLINE), May 16, 2008.)
(Eduardo Soares)



Legislation

KENYA – Lawyers to Help Draft New Laws

Members of the Kenyan Parliament and the Law Society of Kenya (LSK) have agreed to jointly take part in drafting legislation under a “structured engagement” between the two groups. In her May 8, 2008, letter to members, LSK secretary and chief executive officer Betty Nyabuto urged the lawyers to volunteer and be available to help critique new bills, create new laws, and propose amendments to existing statutes. The LSK members had until May 30 to sign up for the pro bono experiment, in which they are “to work closely with Parliament's principal legal counsel Jeremiah Nyegenye.” The participating lawyers must be available to work on short notice once a bill is published; be conversant with law drafting; and be ready to make presentations before House departmental committees that deal with the specific legislation.

Kenya’s President Mwai Kibaki reportedly refused to sign into law a number of bills adopted by the previous Parliament, citing the existence of loopholes. The legislators were in many cases criticized for “shoddy work”, but, as a news report points out, “the crucial, initial work of law making” is the responsibility of the office of the attorney-general, whose drafting department is said to be understaffed. (Owino Opondo, *Kenya: Lawyers to Help in Writing Fresh Laws*, THE NATION (Nairobi), May 13, 2008, available at <http://allafrica.com/stories/200805130169.html>.)

(Wendy Zeldin)



Money Laundering

BRAZIL – Punishment for Money Laundering Increased

On May 7, 2008, the Brazilian Federal Senate approved a proposal for a law that increases the punishment for the crime of money laundering from ten years to eighteen years of imprisonment and allows the police to have access to the data kept by financial institutions, phone companies, electoral justice systems, and internet providers related to persons accused of this type of crime. The punishment is further increased by two-thirds if the crime is repeated or is committed by a criminal organization, and accomplices in acts of money laundering are also punishable. In addition, in cases in which bail is granted, the draft law stipulates that the amount of the bond will be equal to the amount illegally laundered. The proposal will now be analyzed and voted on by the Chamber of Deputies. (*Senado Aprova Pena Maior para Lavagem de Dinheiro*, O GLOBO (O)NLINE, May 8, 2008.)
(Eduardo Soares)



Religion

MALAYSIA – Woman May Return to Buddhism

News media agencies have reported that the *Sharia* court of the Malaysian State of Penang has ruled that a Malaysian woman who converted to Islam may return to being Buddhist. The court ruled that Siti Fatimah Tan Abdullah may return to Buddhism following the cessation of her marriage to a Muslim man as she had not received appropriate counseling during her conversion and did not practice as a Muslim during her marriage.

In general, Malaysians may not renounce their faith, and non-Muslims marrying Muslims must convert to Islam. As a state court decision regarding a state matter (religious affairs), this decision is unlikely to set a precedent across the rest of Malaysia. (*Malaysian Woman Can Leave Islam*, BBC WORLD NEWS, May 8, 2008, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/7389874.stm>.)

(Lisa J. White)



Taxation

GUATEMALA – Congress Passes Reform to Tax Free Zones Law

On April 30, 2008, the Guatemalan Congress approved a reform to the Organic Law on Tax Free Zones, *Zona de Libre Industria y Comercio Santo Tomás de Castilla (Zolic)* that will permit the creation of new, special economic zones to attract investments and generate jobs in regions that need them. These regions include zones with economic indicators showing extreme poverty and zones that are strategically attractive to foreign companies, such as the area on the border with Mexico. Companies that establish their operations there will be exempt from income tax, value-added tax, and stamp tax for ten years. The reform also aims to stimulate investments through non-fiscal incentives, such as land and services. (Ana Lucía Blas, *Congreso Aprueba Reformas a Zolic*, PRENSA LIBRE, May 1, 2008.)
(Norma C. Gutiérrez)



Terrorism

BANGLADESH - Anti-Terrorism Ordinance Approved

On May 18, the Council of Advisors of the present Caretaker Government approved a new law, the Anti-Terrorism Ordinance 2008. The new law's definition of terrorism includes acts that pose a threat to the sovereignty, unity, integrity or security of Bangladesh or create panic among the general masses or obstructs official activities; the use of bombs, dynamite or other explosives, inflammable substances, firearms, or any other chemicals in a way that may injure or kill people to create panic among the public and damage public or private property; and other related acts.

The law provides for speedy trial of terrorists by special courts, with punishments including the death penalty, life imprisonment, or imprisonment for three to twenty years, along with pecuniary measures. Organizations or individuals involved in aiding terrorist activity and sheltering terrorists may also be punished under the new legislation.

Under the new law appropriate government authorities would be able to ban organizations which spread extremist ideology. The Bangladesh Bank has been empowered with special powers to detect and counter terrorist financing. Offences relating to terrorist activities were part of Bangladesh Penal Code and there was no separate law for dealing with terrorists or extremists before the new law was approved. Anti-Terrorism Ordinance of 2008. (*Anti-terror Ordinance Okayed, Death Penalty Provision For Offenders*, DAILY STAR, June 5, 2008, available at http://www.thedailystar.net/pf_story.php?nid=37211.)
(Shameema Rahman)



Transportation

ESTONIA – Restrictions on Transit Fine Imposition

On May 12, 2008, the Supreme Court of Estonia decided that the company that runs public transportation in the capital city of Tallinn and inspects whether passengers have paid for their rides has no right to impose fines on passengers for unpaid rides and other violations of the Public Transportation Act. The Court ruled that the penalty authority cannot be delegated to a legal entity governed by private law and decided that the issuance of fines will remain an exclusive public function. The Court emphasized that individuals who cannot produce a valid ticket or otherwise prove their right to use public transportation can be fined only by police, other law enforcement agencies, and authorities of local or municipal governments. (*Supreme Court: Uhisteenused Cannot Impose Fines*, BALTIC BUSINESS NEWS, May 16, 2008, available at <http://www.securities.com>; “Uhisteenused” is the name of the Tallinn public transport company.) (Peter Roudik)

MEXICO – Supreme Court Upholds Gasoline and Diesel Tax

Mexico’s Supreme Court of Justice validated most of the fiscal reform package, known as the *gasolinazo*, “gasoline boom,” on May 12, 2008. The Court upheld the new federal tax that the public has had to pay since January 2008 when buying gasoline and diesel. The Court considered that the new federal tax on energy is not unconstitutional and does not infringe on the principles of legality, proportionality, and fiscal equity. In addition, the Court held that the states may not apply a local, alternative tax on the sale of gasoline and diesel, because this is a federally pre-empted legislated subject area. The Justices had practically no debate before upholding the constitutionality of the taxes. Three of the votes taken in connection with the ruling were decided unanimously and the other passed ten to one. (Fernando Ramírez de Aguilar, *La Suprema Corte Avala el Gasolinazo*, EL FINANCIERO, May 13, 2008; & Victor Fuentes, *Avala Suprema Corte Impuesto a Gasolina*, REFORMA, May 13, 2008.) (Norma C. Gutiérrez)



War Crimes

CONGO (Democratic Republic of)/INTERNATIONAL CRIMINAL COURT – Former VP Arrested

On May 24, 2008, Jean Pierre Bemba Gombo, a former Vice-President of the Democratic Republic of the Congo (DRC), was arrested in Belgium. The Belgian police were carrying out a sealed arrest warrant issued on May 23, 2008, by the International Criminal Court. The charges include two counts of crimes against humanity and four counts of war crimes, for actions taken in 2002-2003 in the Central African Republic (CAR), which borders the DRC. Bemba heads the Mouvement de Libération du Congo, an armed group that intervened in the conflict in the CAR. The Court found in a pre-trial procedure that there were reasonable grounds to believe that forces led by Bemba systematically attacked the civilian population in the CAR and committed rape, torture, and other attacks on personal dignity, in addition to pillaging.

The Court's prosecutor, Luis Moreno Ocampo, stated: "Mr. Bemba's arrest is a warning to all those who commit, who encourage, or who tolerate sexual crimes." He went on to say that for the victims, "[w]e cannot erase the scars. But we can give them justice." (*Former DR Congo Vice-President Arrested by International Criminal Court*, UN NEWS, May 27, 2008.) The CAR, which is a State Party to the Rome Statute, had referred the situation in its territory to the Prosecutor of the Court in December 2004. Bemba's arrest is the first carried out in connection with the events in the CAR. (Press Release, International Criminal Court, Jean-Pierre Bemba Gombo Arrested for Crimes Allegedly Committed in the Central African Republic (May 24, 2008), available at <http://www.icc-cpi.int/press/pressreleases/370.html>.) (Constance A. Johnson)



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