



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

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China	Lebanon	Turkey
Columbia	Mauritania	United Kingdom
Economic Community of West African States (ECOWAS)	Mexico	United States
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	Nepal	Zimbabwe
	Pakistan	
	Philippines	

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Sincerely,

Rubens Medina  
Law Librarian of Congress

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## Abortion

### **POLAND/EUROPEAN COURT OF HUMAN RIGHTS – Abortion Ruling to Be Appealed**

On June 19, 2007, Poland's Prime Minister, Jaroslaw Kaczynski, announced a plan to appeal the European Court of Human Rights (ECHR) decision on abortion. The ECHR had ruled that Poland was in violation of article 8 of the European Convention on Human Rights because of a prohibition on abortion for a woman who had a risk of vision loss if she continued the pregnancy ([Tysi c v. Poland, Application no. 5410/03](#), ECHR, Mar. 20, 2007).

Because the woman's requests for an abortion were repeatedly denied in Poland and she did in fact lose her vision, the ECHR awarded her compensation in the amount of €39,000 (about US\$52,000) in non-pecuniary damages, costs, and expenses. The Court also found that there was no procedural framework in place in Poland to resolve any disputes over which pregnancies constituted threats to the woman's health.

Poland currently has among the strictest anti-abortion laws in Europe, permitting the procedure only if a woman's life or health is threatened by the pregnancy, if the baby is likely to be handicapped, or if the pregnancy occurred due to a rape. In April 2007, the legislature rejected proposed constitutional amendments to ban or more severely restrict abortions. ([Poland to Appeal ECHR Abortion Ruling](#), PAPER CHASE NEWSBURST, June 20, 2007.)  
(Constance A. Johnson)



## Administrative Law

### CHINA – Implementation Regulations for Administrative Review Law

On May 23, 2007, China's State Council approved the Implementation Regulations of the Law on Administrative Reconsideration of the People's Republic of China. The Regulations were issued on May 29 and will be in force as of August 1, 2007. The Law on Administrative Reconsideration was adopted on April 29, 1999, and effective as of October 1, 1999; circulars on its implementation were subsequently issued in May 1999 and September 2006. According to a spokesman of the State Council Legislative Affairs Office, on average more than 80,000 administrative disputes are resolved annually on the basis of the administrative reconsideration process. (*PRC: Xinhua Interviews Official on Administrative Reconsideration Regulations*, XINHUA, June 8, 2007, Open Source Center No. CPP20070608073001.)

The Regulations are divided into eight chapters: general provisions, application for administrative reconsideration (with sections on the applicant, the party against whom an application is filed, time limits, submission of the application), acceptance of the applications, administrative reconsideration decisions, guidance and supervision of administrative reconsideration, legal responsibility, and supplementary provisions. The State Council spokesman indicated that the Regulations include new provisions that allow for on-the-spot investigations by administrative reconsideration organs in order to verify evidence; voluntary reconciliation on the part of the applicant or the respondent before a decision on an application is reached; and the use of arbitration to close a case. In addition, the circumstances under which suspension or termination of administrative reconsideration is applicable are now clearly stipulated. In regard to new provisions regarding administrative reconsideration decisions, the Regulations prescribe categories of decisions involving rejection of applications, clearly define the time limit for a respondent to undertake a specific administrative act anew when ordered to do so by an administrative reconsideration organ, and prohibit administrative reconsideration organs from making decisions more unfavorable to the applicant within the scope of the person's administrative reconsideration request. (*Id.*; Zhonghua Renmin Gongheguo Xingzheng fuyi fa shishi tiaoli, www.GOV.CN [Web site of the Central People's Government of the PRC].)

(Wendy Zeldin)



# Adoption

## NEPAL – Adoption

On June 29, 2007, Nepal's HIMALAYAN TIMES reported that since March 5, the Ministry of Women, Children and Social Welfare had suspended inter-country adoptions, returning 442 related case files. The Ministry has drawn up a draft bill, "Terms and Conditions for Inter-country Adoptions," in conformity with the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. The drafting of the bill followed the International Conference on Intercountry Adoption held in March, which issued the "Kathmandu Declaration" urging the government to ratify the 1993 Convention. The Ministry hopes the new legislation will facilitate the intercountry adoption process in Nepal and curtail irregularities and malpractice. The bill has been passed on for scrutiny to the Ministry of Law, Justice, and Parliamentary Affairs. Heretofore the intercountry adoption process had been regulated under the provisions of the Child Act 1991. (*Xinhua: Nepali Government Takes Move Against Adoption*, XINHUA, June 29, 2007, Open Source Center No. CPP20070629968051.)  
(Wendy Zeldin)



## Border Zones

### MEXICO/UNITED STATES – State-Level Border Security Meeting

In June 2007, Arizona's Governor, Janet Napolitano, and the Governor of Sonora, Mexico, Eduardo Bours, met with local, state, and federal officials to discuss the necessary steps to secure the U.S.-Mexico border and stop the increasing violence in border communities. Governor Napolitano joined Governor Bours, Deputy Attorney General of Mexico Jose Luis Santiago Vasconcelos, and Patricio Patiño Arias, Undersecretary for Mexico's Secretariat of Public Security, in a border security briefing to discuss international public safety partnerships and the necessary steps the agencies must take together to decrease the violence along the border. Action items included:

- Implementing the same process for “damming warrants” in Sonora that Arizona has successfully used to hinder human smuggling organizations. The damming warrants involve techniques of monitoring wire transfers of money used to pay smugglers. As a result of their use, criminal organizations have moved their activities across the international border into Sonora. To remedy the problem, Arizona investigators will now train Sonoran detectives in how to investigate these kinds of financial crimes.
- Setting aside \$1 million in RICO [Racketeer Influenced and Corrupt Organization] funds to increase the number of license-plate readers in law enforcement vehicles to catch stolen vehicles crossing the border.
- Extending the use of cross-border communications technology between federal, state, and local law enforcement to jointly apprehend “coyotes,” drug dealers, human smugglers, and other criminal organizers crossing the border.

([Governors Advance Border Security Partnerships](#), Arizona-Mexico Commission Web site, June 17, 2007.)

(Gustavo Guerra)





## Capital Punishment

### UNITED STATES – Death Sentence Reversed for Delusional Defendant

On June 28, the U.S. Supreme Court ruled that a state cannot execute a person suffering apparent delusions unless he has a rational understanding of the reason for his execution. Petitioner Scott Louis Panetti had been convicted of murder by a Texas state trial court despite a history of mental illness. The Fifth Circuit had held that Panetti's awareness that he was to be executed, and of the government's stated reason for his execution, was sufficient for the execution to go forward. The Supreme Court reversed and remanded the case for further inquiry into Panetti's mental state. The Court noted evidence that Panetti believed that the actual reason for his execution was to stop him from preaching. The Court ruled that a prisoner's awareness of the state's rationale for an execution is not the same as a rational understanding of it, and further proceedings were warranted to determine if Panetti was competent to be executed. ([Panetti v. Quarterman](#), No. 06-6407 (June 28, 2007).)  
(Gary Robinson)



## Communications and Electronic Information

### EUROPEAN UNION – Google and Personal Data Protection

Although the Google company has its headquarters in the United States, because it provides services to citizens in Europe and maintains a European center that processes the personal data of European Union citizens, it is subject to EU legislation on privacy and personal data protection. On May 16, 2007, the Data Protection Working Party (WP), which serves as an advisory body to the European Commission, sent a letter to Google concerning certain practices related to data retention. Google's current policy regarding data storage is to retain the data for a period of 18 to 24 months. The WP advised Google that the company has not specified the legal grounds for the storage of data or the grounds for such a long period of data retention. Moreover, the WP expressed concerns about the use of "cookies" and requested that Google comply with the EU requirement to notify end users about the use of cookies and the purpose of the data processing that is performed. With regard to Google's announcement that it intends to make data more anonymous, the WP asked for clarification as to the extent to which the transformed data will still contain information about the users and whether the anonymization process can be reversed. ([Letter prepared by Article 29 Data Protection Working Party.](#))

On June 10, 2007, as a result of this letter, Google stated, "[a]fter considering the Working Party's concerns, we are announcing a new policy: to anonymize our search server logs after 18 months, rather than the previously established period of 18 to 24 months." ([Google Limits Data Retention in Compromise with EU](#), REUTERS, June 12, 2007.)  
(Theresa Papademetriou)

### MEXICO – Supreme Court of Justice Annuls Key Provisions of TV Law

On June 5, 2007, Mexico's Supreme Court of Justice declared several key provisions of the Federal Law on Radio and Television unconstitutional. The Court declared by a unanimous vote that articles 28 and 28-A, which allowed radio and television concession-holders to provide additional telecommunication services without a bid process and without any extra payment to the state, is unconstitutional. The Court also unanimously found unconstitutional a portion of article 17-G providing for the granting of radio and television concessions by auction. Finally, the Court declared by a vote of eight to one that the provisions of article 16 that allow renewal of a radio and television concession without any binding process and that establish a 20-year period of duration for media concessions are unconstitutional. (Verónica Gascón, *Complican Concesiones, & Eliminan Privilegios a la TV*, REFORMA, June 6, 2007.)  
(Norma C. Gutiérrez)

### PAKISTAN - Electronic Media Law Suspended

On June 4 President General Pervez Musharraf promulgated the Pakistan Electronic Media Regulatory Authority (PERMA) Amendment Ordinance of 2007. The ordinance empowered the Pakistan Electronic Media Regulatory Authority to take punitive actions against any broadcaster for violation of its rules. The PEMRA Amendment Ordinance made a number of



amendments to the regulations governing the electronic media, including private television channels.

The PEMRA Amendment Ordinance of 2007 was challenged under several articles of the Constitution in different courts. The amendment was also criticized by the U.S. Government. Finally, on June 7, Prime Minister Shaukat Aziz suspended implementation of the PEMRA Amendment of 2007. That decision was announced following discussions between Prime Minister Shaukat Aziz and media representatives on June 6 2007. (Pakistan Press Foundation/International Freedom of Expression Exchange, [Government To Withdraw Draconian Amendments to Electronic Media Law](#) (June 11, 2007).) (Shameema Rahman)

### **ZIMBABWE – Government to Intercept Communications**

The Interception of Communications Bill was passed by the Zimbabwean Senate without amendment on June 14, 2007; it had previously been approved by the House of Assembly. Once signed by President Robert Mugabe, the new law will authorize the interception of Internet and mobile and fixed telephone communications. The purpose is to find information on subversive activities and organized crime. One of the bill's provisions directs the establishment of an interception communications center. The responsibility for issuing warrants where there is a reasonable suspicion that a serious offense has been or will be committed or that there is a threat to national security will be given to the Minister of Transport and Communications. The Attorney General will review how the Minister exercises this power to issue warrants. Those subject to the warrants who wish to challenge them will be able to do so through appeals to the Administrative Court. (*Zimbabwe: Government to Begin Intercepting Communications 'Soon,'* ELECTRONIC CHRONICLE (Bulawavo), June 18, 2007, Open Source Center No. AFP20070618516004.) (Constance A. Johnson)



## Constitutional Law

### UNITED STATES – Student Suspension Held Not to Violate Free Speech Right

On June 25, the U.S. Supreme Court ruled that a high school student had no First Amendment free speech right to display a banner at a school event that appeared to promote illegal drug use.

On January 24, 2002, the Olympic Torch Relay was scheduled to pass in front of respondent Joseph Frederick's school in Juneau, Alaska, while school was in session. Petitioner Deborah Morse, the school's principal, decided to permit staff and students to participate in the Torch Relay as an approved social event. When the Torch Relay passed by, Frederick and others unfurled a 14-foot long banner displaying a phrase, "Bong Hits 4 Jesus," which Morse interpreted as an endorsement of illegal drug use. Morse ordered the students to put away the banner, but Frederick did not comply. Morse confiscated the banner and suspended Frederick from school for ten days. Frederick sued, alleging his First Amendment free speech rights had been violated. The trial court sided with the school, but the U.S. Court of Appeals for the Ninth Circuit reversed, stating that the school had punished Frederick without finding that the banner created a "risk of substantial disruption."

The Supreme Court reversed, finding that the banner appeared to promote illegal drug use, and was not political speech entitled to more constitutional protection. Looking to case precedent, the Court stated that schools may regulate categories of speech that in other contexts enjoy First Amendment protection. The Court found that the special characteristics of the school environment, and the governmental interest in stopping student drug abuse, allow schools to regulate speech that appears to encourage illegal drug use. ([\*Morse v. Frederick\*](#), No. 06-278 (June 25, 2007).)  
(Gary Robinson)

### ZAMBIA – Constitution Roadmap

The Zambia Centre for Inter-party Dialogue (ZCID) has proposed a roadmap for adoption of a new Constitution of Zambia by December 2008. At a symposium held on June 25, 2007, to discuss the constitution-making process, ZCID board spokesperson, Newton Ng'uni, stated that under ZCID's proposed time frame, all interest groups would submit their comments to the Constitutional Conference Working Committee (CWC) by the end of August 2007; consolidation of the CWC's position would be completed by September; a constitutional conference would take place in October; a full census report should be completed by April 2008; and the Parliament should pass the Constitution, if approved by referendum, by November 2008.

According to ZCID board chairperson, Dr. Katele Kalumba, "[t]his is the fourth effort that Zambians have attempted to have a Constitution that would stand the test of time. They want a Constitution that would need no change even after change of administration." Kalumba also announced that President Levy Mwanawasa was expected to officially launch the ZCID on June



26, 2007. ([Zambia: ZCID Submits Option Constitution Roadmap](#), THE TIMES OF ZAMBIA, June 26, 2007.)  
(Wendy Zeldin)



## Consumer Protection

### GERMANY – Insurance Agents

On May 22, 2007, the Act Reforming the Law of Insurance Mediation became effective in Germany (Gesetz, Dec. 19, 2006, BUNDESGESETZBLATT I at 3232). The Act implements the European Union Directive on Insurance Mediation of December 2002 (European Parliament and Council Directive on Insurance Mediation, Dec. 9, 2002, OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES 2003 (L9)). The German Act brings major changes in the status of insurance agents. Before the new law's enactment, insurance agents had no continuing responsibilities toward the customer; once the contract with the insurer was executed, the policy holder was limited to dealing directly with the insurer. Under the new law, insurance agents must be registered as members of a trade and qualify for licensing, and they have some actionable duties of care towards the policy holder. Insurance brokers, on the other hand, always have had an ongoing relationship of trust with the policy holder whom they recruited. Formerly, the nature of the relations was established by case law; under the new law, it is expressed in statutory language.

(Edith Palmer)



## Corporations

### ZIMBABWE – Majority Control of Companies for Indigenous Zimbabweans

On June 25, 2007, the Government of Zimbabwe tabled a bill that would transfer majority control of “public companies and any other business” to black Zimbabweans. Parliament is reportedly expected to approve the Indigenisation and Economic Empowerment Bill, which stipulates that no restructuring, merger, or acquisition of a company would be approved unless “indigenous Zimbabweans” – defined as “any person who was disadvantaged by unfair discrimination on the grounds of race before independence in 1980” – receive at least a 51% share of the company. ([Zimbabwe: Mugabe Wants 51 Percent Stakes in Companies](#), BUSINESS DAY (Johannesburg), June 26, 2007.)

How the bill would be implemented and how private companies would be affected by it are unclear. However, analysts contend that its adoption “is likely to further damage investor confidence in Zimbabwe, which is suffering from the world's highest inflation rate and severe food, fuel and foreign currency shortages,” thereby worsening the economic crisis. The country is now in its eighth year of a recession, with four out of five Zimbabweans reportedly jobless. In the view of some political analysts, “[a]lthough the likely exemption of major mining companies from the programme would leave only a few big foreign firms in danger, [President Robert] Mugabe could still use the programme as a political weapon” in advance of general elections to be held in 2008. (*Id.*)

(Wendy Zeldin)



## Criminal Law

### JAPAN – Harsher Punishment for Unsafe Drivers

An amendment of the Criminal Code adopted in May 2007 increases the punishment for persons who fail to take the necessary precautions while driving an automobile, resulting in the death or bodily injury of another person. The amendment raises the maximum term of imprisonment for this offense from five years to seven. (Kei hō no ichibu o kaisei suru hōritsu an [Draft amendment of Penal Code], Ministry of Justice Web site.)  
(Sayuri Umeda)





## Criminal Procedure

### **TURKEY – New Police Law in Force**

Turkey's new law expanding the authority of the police is now in force. Law No. 5681 enables police to stop individuals and vehicles to search them when the officers believe there is a valid reason for such a search. In addition, fingerprints will be required for anyone applying for a gun permit, a driver's license, or a passport and for applications for private security jobs, Turkish citizenship, and asylum in the country. Anyone detained by the police will be fingerprinted, and in some cases foreigners can also be printed. The records of these prints and of photographs will remain in a computer database for 80 years. Under another provision of the law, police officers are authorized to use their weapons when someone resists their conduct of a legal procedure. (*Law Expanding Police Authority Goes into Effect*, ANATOLIA, June 14, 2007, Open Source Center No. 20070614017006.)  
(Constance A. Johnson)



## Discrimination

### COLOMBIA – Same-Sex Partners’ Rights Bill Derailed

Same-sex couples who have lived together for more than two years would have had rights similar to those given to partners in common law marriages under legislation approved by Colombia’s Congress on June 14, 2007. The measure faced a setback, however, due to differences in the texts of the versions passed by the Senate and the House of Representatives. If revised and enacted, it will guarantee equality in areas such as welfare benefits and property inheritance, but will not permit same-sex marriages or adoptions by same-sex couples. Although opposed by the Roman Catholic Church in Colombia, the new legislation has the support of the President, Alvaro Uribe. ([Colombia Congress Passes Bill Recognizing Rights of Same-Sex Partners](#), PAPER CHASE NEWSBURST, June 15, 2007; [Colombia Conservatives Derail Gay Rights](#), WASHINGTON POST, June 20, 2007.)

The legislative initiative follows a February 2007 eight-to-one decision of the Constitutional Court of Colombia to rule a related 1990 law invalid. The law had given unmarried “common law” heterosexual couples the presumption that property held by them was held in common. At that time, Judge Rodrigo Escobar Gil Escobar said that because the 1990 law excluded same-sex couples, it “goes against the constitutional principles of respect for human dignity, the state’s duty to protect all persons equally and the fundamental right to freely develop one’s personality.” ([Colombia Court Legalizes Same-Sex Inheritance Rights](#), PAPER CHASE NEWSBURST, Feb. 9, 2007.)  
(Constance A. Johnson)

### UNITED STATES - Supreme Court Finds School Integration Plans Unconstitutional

On June 28, the Supreme Court ruled that two voluntary school integration plans violated the Equal Protection Clause of the 14<sup>th</sup> Amendment of the United States Constitution. The opinion concerned school districts in Seattle, Washington and Louisville, Kentucky that had voluntarily adopted integration plans that assigned some students to schools based on their racial classification in order to foster diversity. A majority of five justices found the two plans’ use of binary racial classifications in assigning individual students to particular schools to be unconstitutional. A plurality of four justices maintained that any use of racial classification solely to achieve racial integration is unconstitutional. However, the controlling opinion of Justice Kennedy, which concurred in the judgment, stated that it is permissible to consider schools’ racial makeup and adopt general policies to encourage a diverse student body, as long as individual students are not treated differently based solely on race. Justice Kennedy stated it was permissible to seek integration by race-conscious measures such as strategic site selection of new schools, attendance policies that recognize neighborhood demographics, allocating resources for special programs, and targeted recruiting of students and faculty. ([Parents Involved in Community Schools v. Seattle School District No. 1](#), No. 05-908 (June 28, 2007).)  
(Luis Acosta)



## Education

### ISRAEL – Student Rights Guaranteed by Law

On May 29, 2007, the Knesset (Israel's Parliament) passed the Students' Rights Law, 5767-2007. The Law states as its objective the determination of principles that will govern the rights of Israeli citizens and residents to access to higher education based on recognition of the commitment of Israeli society to these rights and to equal opportunity in higher education. The Law guarantees students' freedom of speech and organization. It prohibits discrimination in admission except for affirmative action to promote candidates of specific groups, including affirmative action based on socio-economic grounds. The Law further establishes that scholarships will be distributed according to criteria known to all students and candidates for admission and based on preference for socio-economic reasons and for academic excellence. The Law recognizes the right of a student to be tested on two separate dates for each class. This right is especially important for students who are subject to the reservist military draft.

The Law authorizes institutions of higher education to determine and publish rules of behavior and penalties for their violation. It provides that such institutions must establish disciplinary committees as well as committees of appeal. The Law requires such committees to be composed of representatives of faculty and student associations. The Law further doubles the special tax exemption currently enjoyed by graduates of bachelor degrees during the first three years following graduation. (Students' Rights Law, 5767-2007 and bill, the Knesset Web site; Shahar Ilan, *Students' Rights Law Was Approved: Will Require Two Exam Dates, Will Void the Need to Declare Parents' Origin*, HAARETZ NEWSPAPER ONLINE.)  
(Ruth Levush)



## Elections and Politics

### ECOWAS – Elections Assessment Missions

The Economic Community of West African States (ECOWAS) has formed assessment missions on credible elections and conflict prevention, in order to foster a favorable environment for cross-border business and foreign direct investment (FDI). The move is part of the organization's efforts to accelerate the process of integration and cooperation in the region. According to a statement issued on June 25, 2007, ECOWAS has already sent a four-member mission to Sierra Leone to evaluate the preparations for elections scheduled to be held in August 2007. The delegation was to consult with government officials as well as representatives of political parties, the civil society, the media, and officials of the National Electoral Commission to formulate strategies for credible elections. On the basis of its Protocol on Democracy and Good Governance, ECOWAS contends that it sends the fact-finding missions not only to gauge the level of readiness of countries preparing for elections, but also to determine whether a country needs assistance to facilitate the holding of "free, fair and credible elections."

In another step aimed at creating a peaceful, borderless West Africa, 50 peace, conflict, and development experts, ECOWAS representatives, and others convened on June 25 for a week-long workshop of in Banjul, Gambia, to consider the draft ECOWAS strategic framework for conflict prevention. The framework is "[a]imed at facilitating implementation of ECOWAS protocols on sustainable peace and security" and "is intended as a comprehensive operational conflict prevention and peace building strategy that will enable ECOWAS and its member states to avail themselves of regional, civil society, private sector and international resources in conflict prevention." (Gboyega Akinsanmi, [West Africa: ECOWAS Okays Missions on Credible Elections](#), THIS DAY (Lagos), June 26, 2007.)  
(Wendy Zeldin)

### NEPAL – Date of Constituent Assembly Elections Set

Nepal's Council of Ministers, after a long delay, announced on June 24, 2007, that November 22, 2007, has been set as the date of the election of the Constituent Assembly. That body is drafting a new constitution for Nepal. The elections had been slated for June 20, but were postponed after the Election Commission sought more time to make preparations for the event. (*Xinhua 'Roundup': Nepal Sets Constituent Assembly Poll Date*, XINHUA, June 24, 2007, Open Source Center No. CPP20070624968105.)  
(Wendy Zeldin)



## Employment

### **BRAZIL – No Financing for Companies Utilizing Child Workers**

On June 12, 2007, the Federal Senate Committee on Economic Matters approved a proposed law aimed at discouraging the employment of persons under 18 years of age in dangerous, unhealthy, or nocturnal activities and completely prohibiting the employment, except as an apprentice, of persons who are under sixteen and over 14 years of age. According to the proposed law, companies that utilize child workers will not qualify to apply for loans, tax exemptions, or any other financial benefit offered by public institutions. (*Aprovada Restrição de Financiamento a Empresa que Utiliza Trabalho Infantil*, JURID, June 12, 2007.)  
(Eduardo Soares)

### **CHINA – Contract Labor Law Passed**

On June 29 2007, China passed the Contract Labor Law in a bid to protect workers' rights amid widespread complaints of unpaid wages, forced labor, and other worker abuses. The Law is to take effect on January 1, 2008. (*Shouquan Fabu: Zhonghua Renmin Gongheguo Laodong Hetong Fa* [[Authorized Publication: The People's Republic of China Contract Labor Law](#)], XINHUANET; English-language report.)

The proposal for the Contract Labor Law was hotly debated. Although the Law is applicable to all companies in China, foreign-owned companies and the suppliers of those companies foresee a negative impact from it. Some large transnational corporations investing in China have expressed their concern that the new rules would revive some aspects of socialism and borrow too heavily from labor laws in union-friendly countries. Representatives of some American companies reportedly waged an intense lobbying campaign to persuade the Chinese government to revise or abandon the proposed law. (David Barboza, [China Draft Law to Boost Unions and End Abuse](#), THE NEW YORK TIMES, Oct. 13, 2006.)

Among other provisions, the Law protects part-time workers by providing that their wages should not be lower than statutory minimum wages set by local governments and their pay period should be no longer than 15 days (art. 72). Wages paid to part-time workers drew headlines in April of this year, when several international fast-food chains in China were exposed for underpaying part-time employees, mostly students, according to XINHUANET. It was reported that McDonald's, KFC, and Pizza Hut in the southern Chinese city of Guangzhou paid their part-time Chinese employees four yuan (about US\$ 0.52) per hour, more than 40 percent less than the local minimum wage of 7.5 yuan (about US\$0.97). (*Draft Labor Contract Law Improves Protection of Part-Time Workers*, XINHUANET.)  
(Laney Zhang)



## Energy

### **BANGLADESH – IAEA Approves Nuclear Power Plant Proposal**

The International Atomic Energy Agency (IAEA) has approved Bangladesh's proposal to build a nuclear power plant. Energy Minister Tapan Chowdhury said that Bangladesh was on the top of the list of eight developing countries that were approved to set up nuclear power plants. He said an IAEA delegation would visit Bangladesh to examine the proposed nuclear power plant.

Bangladesh has experienced power shortfalls caused by mechanical problems in most of the sixty power plants in the country, which are decades old. Because of the power shortages, irrigation in Bangladesh has suffered noticeably. According to a World Bank estimate in July 2006, Bangladesh needs ten billion dollars in investment for its electricity supply. According to the energy minister, South Korea has offered to finance sixty percent of the nuclear power plant project. ([Bangladesh to Build Nuclear Power Plant](#), Energy Daily (June 24, 2007).) (Shameema Rahman)



## Environment

### BELGIUM – Constitutional Amendment

The Belgian Parliament recently enshrined sustainable development as one of the country's national objectives with the introduction of a new article 7 bis in the Constitution. The article states, “[t]he federal state, the communities and the regions within their respective competence are to be guided by the objectives of sustainable development in its social, economic and ecological aspects, taking into account the solidarity between generations.” (MONITEUR BELGE [Belgium's official gazette], Item No. 200720113450, Apr. 26, 2007.) (Nicole Atwill)

### CHINA – National Plan to Address Climate Change

On June 3, 2007, China's State Council released a National Climate Change Program prepared by the State Council, the National Development and Reform Commission (NDRC), and 17 other departments. According to NDRC director Ma Kai, “[t]he plan is China's first comprehensive policy documentation on climate change, as well as the first plan of its kind made by a developing country.” It was developed in accord with the mandate of the United Nations Framework Convention on Climate Change. (Ling Li, [China Releases Plan on Climate Change](#), WORLDWATCH INSTITUTE, June 7, 2007.)

The five-part plan includes chapters on the current situation of climate change in China and efforts to cope with it; the impact of climate change on the country and the challenges presented by it; guidelines, principles, and objectives for addressing climate change; related policies and measures; and China's position on key climate change issues and the need for international cooperation. The objectives include, for example controlling greenhouse gas emissions (GHG) by, among other means, reducing energy consumption per unit of gross domestic product by 20 percent by 2010 (rather than setting a specific target for GHG reduction or avoidance); by optimizing energy consumption through raising the proportion of renewable energy (including large-scale hydropower) in the supply of primary energy to ten percent by 2010, actively promoting nuclear power plant construction, and speeding up utilization of coal bed methane; by strengthening emission controls over nitrous oxide; and by increasing the forest coverage rate to 20 percent and the level of carbon sink by 50 million tons above the 2005 level by 2010.

The plan calls for strengthening the development and dissemination of advanced and suitable technologies. In regard to the clean and efficient development and utilization of coal, it mentions that, among other means, carbon dioxide capture, utilization, and storage technologies should be vigorously developed. Various sections of the plan mention the need to adopt, amend, or implement energy-related laws and regulations. The plan also emphasizes the key role of technology transfer and international cooperation in the achievement of the country's climate-change-related goals. (*Id.*; *Guowuyuan guanyu yin fa Zhongguo yingdui qihou bianhua guojia fangan de tongzhi* [State Council Circular on Printing and Distributing China's National



*Program on Dealing with Climate Change*], [www.GOV.CN](http://www.GOV.CN) [Web site of the Central People's Government of the People's Republic of China], June 8, 2007; National Development and Reform Commission, [China's National Climate Change Program](#) (June 2007), CHINA CLIMATE CHANGE INFO-NET.)  
(Wendy Zeldin)

### **NAMIBIA –Genetic Resources**

Prior to adopting “access and benefit sharing” (ABS) legislation now in the form of a draft “Access to Genetic Resources and the Associated Traditional Knowledge Bill,” Namibia plans to establish an Interim Bioprospecting Committee [IBC]. The IBC, which is scheduled to be operative within the next two months, will begin to negotiate with applicants seeking to conduct bioprospecting on Namibia's genetic resources. Among other participants, the IBC will comprise the Ministries of Environment and Tourism, Fisheries and Marine Resources, and Health and Social Services, as well as the Namibian Chamber of Commerce and Industry and members of academia.

The first meeting of a bio-trade working group was reportedly held in 1998, but the ABS legislation has still not been finalized. African countries that have adopted relevant laws include Malawi and Uganda; South Africa has provisions that entered into force in 2006; and Ethiopia, Kenya, and Seychelles apparently have draft ABS legislation. Namibia has been described as “one of the few arid countries in the world with internationally recognized biodiversity hotspots, which are areas with high endemism especially found in the dry western and north-western areas.” (Wezi Tjaronda, [Namibia: ABS Legislation Still in Infancy](#), NEW ERA (Windhoek), June 26, 2007.)  
(Wendy Zeldin)





## Family

### IRAN – Court Orders 80-Year Wait to Receive Dower

By order of a family court in Tehran, a young woman just divorced must wait 80 years to receive the last payment of her dower (*mahr*). Under the marriage law of Iran, which is based on Islamic law, it is incumbent on a man at the time of marriage to offer some property or something of value as a gift to his future wife. The closest equivalent of the term is an ancient kind of dower in England, known as “dower at the church door”: after a man and woman were affianced, the man endowed his prospective wife “with the whole of his lands or such quantity as he pleased.” (BLACK’S LAW DICTIONARY (4<sup>th</sup> ed. 1968).)

Under the marriage law of Iran, dower is not the exchange of property or a consideration given by the man to the woman for entering into the contract; rather, the effect of the contract is as a token of respect for its subject, the woman. Marriage, in its original Islamic sense, means conjunction, and requires only the union of the parties. The amount of dower is considered to be an indication of the social status of the woman, and therefore there is usually a serious process of negotiation prior to marriage. When it is agreed upon by the parties, the *mahr* becomes the absolute property of the woman, who may demand that it be delivered to her any time during the marriage.

In the case at hand, the divorced wife, who had not received her *mahr* of 350 gold coins during the marriage, sued her former husband and asked the court to enforce the dower promise made under the marriage contract. The former husband, however, declared bankruptcy, leaving the court with no option but to order the husband to pay one gold coin tri-monthly, for a total period of 1,056 months. The 30-year-old divorced woman, left with a baby daughter under her guardianship and maintenance, will receive the last gold coin when she is 118 years old, if she is alive. (*Eighty Years Waiting to Receive Her Dower*, IRAN TIMES INTERNATIONAL, May 25, 2007, at 9.)

(G. Vafai)



## Government Ethics

### CHINA – New Measures to Combat Graft

On May 29, 2007, the Chinese Communist Party's (CCP) Central Discipline Inspection Commission (CDIC) issued a circular on several provisions of the CDIC on strictly prohibiting taking advantage of an official post to seek illegal benefits. According to CDIC official He Yong, "[t]he Regulations are meant to educate party-member leading cadres at all levels to strictly exercise self-discipline and to more severely deal with those involved in trading power for money activities." (*Nanfang Zhoumo on 'Ultimatum' for Corrupt Officials*, NANFANG ZHOUMO, June 14, 2007, Open Source Center No. CPP20070615050009.) The Circular states that lenient treatment will be considered for officials who confess to their problems within 30 days of the Provisions' promulgation (i.e., a deadline of June 29); those who refuse to take corrective action or who violate the provisions after their promulgation will be "sternly dealt with" upon discovery of the infraction. (Zhongyang ji wei yin fa <Zhong Gong Zhongyang Ji Wei guanyu yange jinzhi liyong zhiwushang de bianli mouqu buzhengdang liyi de ruogan guiding> de tongzhi [Circular of the Central Discipline Inspection Commission on Issuing <Several Provisions of the Central Discipline Inspection Commission of the Chinese Communist Party Central Committee on Strictly Prohibiting Taking Advantage of One's Post to Seek Illegal Benefits>], XINHUANET, June 8, 2007; 'Full Text' of Central Circular on Provisions on Abusing Power to Seek Gains, XINHUA, June 8, 2007, Open Source Center No. CPP20070608072002.) The Provisions have been referred to as "the eight prohibitions" in the press, because eight of the ten articles impose restrictions on various corrupt practices by officials. (Zhong Ji Wei jinzhi liyong zhiwu zhi bian mouqu buzhengdang liyi guiding yin fa [Central Discipline Inspection Commission Provisions Prohibiting Taking Advantage of One's Post to Seek Illegal Benefits Are Issued] [contains the text of the Provisions in Chinese], XINHUANET, June 8, 2007.)

In addition, in a related move, on July 8, 2007, the Supreme People's Court and the Supreme People's Procuratorate jointly issued the "Opinions of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Laws in Hearing Cases of Accepting Bribes." The Opinions are "issued in accordance with relevant provisions of the Criminal Law" and in that context elaborate on the corrupt activities addressed in the CDIC Provisions. (*China Imposes 'Eight Prohibitions' Against Corrupt Officials*, TA KUNG PAO (Hong Kong), July 4, 2007, Open Source Center No. CPP20070704704008; Opinions of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Laws in Hearing Cases of Accepting Bribes, July 8, 2007, iSinolaw online subscription database, Reference ID No. 10025410.)  
(Wendy Zeldin)



## Health

### **BRAZIL – Prevention of Alcohol Consumption**

On May 22, 2007, Brazilian President Luiz Inácio Lula da Silva signed Decree No. 6,117, which approves a national policy on alcohol containing measures designed to reduce alcohol consumption and its association with violence and criminality. It took the government three years to develop a national policy on alcohol that includes steps to prevent the excessive consumption of alcoholic beverages and to extend the access to treatment of persons dependent on alcohol. The decree, however, did not include any time restriction regarding propaganda about all alcoholic beverages. According to the current legislation, time restrictions only apply to beverages containing high proportions of alcohol. (Lígia Formenti, *Governo Conclui Decreto Contra Consumo de Alcool*, O ESTADO DE SÃO PAULO, Apr. 25, 2007.) (Eduardo Soares)

### **CANADA – Supreme Court Upholds Ban on Tobacco Advertising**

The Supreme Court of Canada has unanimously upheld the ban on tobacco advertising in Canada, which is subject to only a few very limited exceptions. Two issues of particular interest were whether, in addition to prohibiting lifestyle advertising and advertising aimed at young persons, Parliament could prohibit sponsorship promotions and compel manufacturers to display prescribed health warnings on 50 percent of the viewable space on their packages. The Court agreed that some of these prohibitions clearly infringed the manufacturers' rights respecting freedom of expression guaranteed by the Canadian Charter of Rights and Freedoms (Part I of the Constitution Act, 1982, being Sched. B. to the Canada Act, c. 11, s. 2 (U.K.)). The Charter is the equivalent of the American Bill of Rights. However the Court also found that the impugned Tobacco Act (1997 S.C. c. 13) and the Tobacco Products Information Regulations (S.O.R. 2002-272) were saved by section 1 of the Charter, which provides that the Charter's guarantees are subject to "such reasonable limits as are demonstrably justifiable in a free and democratic society." In this case, the Court unanimously found that the laws in question were justified because they aim to protect public health. ([Canada Attorney-General v. JTI-Macdonald Corporation, 2007 S.C.C. 30](#), June 28, 2007.) The practical result is that tobacco advertising in Canada is limited to placement in age-restricted spaces, certain adult publications, and direct mailing to adults. (Stephen Clarke)

### **WORLD HEALTH ORGANIZATION – Revised International Health Regulations**

On June 15, 2007, revised International Health Regulations (IHR), agreed upon by the World Health Assembly in 2005, entered into force. According to a World Health Organization (WHO) news release, the IHR establish a "framework of commitments and responsibilities for States and for WHO to invest in limiting the international spread of epidemics and other public health emergencies while minimizing disruption to travel, trade and economies." The IHR now require States to report within 24 hours of assessment any event that could result in public health emergencies of international concern. The underlying principle is that the shared vulnerability of



the world to pandemics such as Severe Acute Respiratory Syndrome (SARS) has “created a need for collective defences and for shared responsibility in making these defences work.” ([Press Release, WHO, International Health Regulations Enter into Force: New Opportunity to Respond to International Public Health Threats](#) (June 14, 2007).)

Other highlights of the revised IHR are: a requirement for designation of national IHR focal points by every country, to provide to and receive information from WHO on a 24-hour basis, seven days a week; a requirement for the establishment, within five years of the revised IHR’s entry into force, of “core public health capacities” – including capacity to handle outbreaks of chemical, radiological, and food origin – to maximize surveillance and response; the inclusion of express recognition of the rights of international travelers, such as respect for their human rights, when health measures are applied; recognition of the key role of cross-sectoral international collaboration in the IHR’s implementation; and provision for the strengthening of threat-specific international programs to improve international health security. (*Id.*; WHO, *International Health Regulations (2005)* [WHA58.3 *Revision of the International Health Regulations*, FIFTY-EIGHTH WORLD HEALTH ASSEMBLY RESOLUTIONS AND DECISIONS 8-66 (July 10, 2006)].)  
(Wendy Zeldin)



# Human Rights

## MAURITANIA – Slavery Outlawed

On June 27, 2007, Mauritania's Council of Ministers approved a draft law criminalizing enslavement. It identifies crimes related to enslavement and delineates punishments. The legislation has been described as an effort to eliminate practices inherited from the past and to promote equality of all citizens. The Council, chaired by President of the Republic Sidi Mohamed Ouid Chiekh Abdellahi, also approved decrees on licensing for prospecting for metals and zirconium in different regions of the country. (*Mauritania Government Criminalizes Slavery*, AMI [in Arabic], June 27, 2007, Open Source Center No. AFP20070629950023.)

Slavery in the form of trafficking in persons remains a problem in Mauritania. According to the 2007 U.S. Department of State report on trafficking in persons, "Mauritania is a source and destination country for children trafficked for the purposes of forced labor and sexual exploitation. ... Slavery-related practices, rooted in ancestral master-slave relationships, exist in isolated parts of the country." ([Country Narratives](#), TRAFFICKING IN PERSONS REPORT, June 12, 2007.)

(Constance A. Johnson)

## UNITED KINGDOM – Human Rights Convention Applies to British Troops in Iraq

In a landmark judgment, the House of Lords has ruled that the European Convention on Human Rights applies to the conduct of British troops in Iraq, notably when they detain Iraqi civilians. A Law Lord stated, "[t]he United Kingdom now accepts that it would be answerable in Strasbourg for the conduct of the British Army while [an Iraqi civilian] was detained in a British detention unit in Basra. It would be consistent with the purpose of the Act to give his father a remedy against the Army in the courts of this country." The immediate consequence of this ruling is that the relatives of the Iraqi civilian who died in British custody can pursue an independent inquiry into his death. ([Al-Skeini and others v. Secretary of State for Defence](#), [2007] UKHL 26; Robert Verkaik & Kim Sengupta, [Captured Iraqi Civilians Protected by Human Rights Act in Landmark Ruling](#), THE INDEPENDENT (London), June 14, 2007.)

(Clare Feikert)

## UNITED STATES – Lawsuit Challenging Domestic Surveillance Program Dismissed

On July 6, the U.S. Court of Appeals for the Sixth Circuit reversed a lower court ruling that the U.S. National Security Agency's "Terrorist Surveillance Program" (TSP) – involving the U.S. Government's warrantless electronic surveillance of Americans' international telephone calls and Internet communications -- violated federal law and the U.S. Constitution (see *Global Legal Monitor*, August 2006, at 39). The appellate court reversed the lower court's decision without reaching the merits, ruling that the plaintiffs, including attorneys who believed their ability to zealously represent their clients had been compromised by the Government's surveillance of their clients' communications, lacked standing to bring the lawsuit. The court ruled that under the "state secrets privilege," the court could not require that the Government



disclose information relating to the plaintiffs' claims, and as a result the plaintiffs could not obtain facts needed to demonstrate standing.

The three-judge panel issued three opinions, with two judges concurring to dismiss the case and one judge dissenting. The controlling opinion, by Judge Julia Smith Gibbons, stated that to show standing, the plaintiffs had to show that they were directly targeted by the surveillance, and because the state secrets privilege bars the judiciary from ordering the executive branch to produce evidence of who was individually targeted by the surveillance, the plaintiffs could not meet that requirement. In dissent, Judge Ronald Lee Gilman argued that the standing requirement was satisfied by the attorneys' reasonable fear that the government was conducting surveillance of their clients, which harmed them by compromising their attorney-client relationship. Judge Gilman would have reached the merits and found the TSP unlawful.

Meanwhile, the Judiciary Committee of the United States Senate has issued subpoenas to the Department of Justice, the White House, the Office of the Vice President, and the National Security Agency for documents relating to the authorization and legal justification for the TSP. ([American Civil Liberties Union v. National Security Agency](#), Nos. 06-2095/2140 (6<sup>th</sup> Cir. July 6, 2007); Senate Judiciary Committee, [Press Release: Senate Judiciary Committee Issues Subpoenas For Legal Basis Of Bush Administration's Domestic Surveillance Program](#) (June 27, 2007).)  
(Luis Acosta)



## Immigration and Nationality

### BANGLADESH – U.S. Government Deports Fugitive Convict

On June 16, A.K.M. Mohiuddin Ahmed, convicted in absentia for participating in the assassination of Bangladesh's first Prime Minister, Sheikh Mujibur Rahman, was deported to Bangladesh from the United States.

Ahmed, a former military officer and eleven others were convicted in 1998 for participating in the assassination of Prime Minister Mujibur Rahman on August 15, 1975, during a military coup. Sheikh Mujibur Rahman was assassinated at his Dhaka residence by military personnel who also killed most of his family and a number of aides. Rahman's killers were not brought to trial until his daughter, Sheikh Hasina, became prime minister in 1996. On November 8, 1998, a Dhaka District and Sessions Judge sentenced to death fifteen out of the nineteen accused in the assassination. On April 30, 2001, Justice Mohammad Fazlul Karim of the High Court Division pronounced the final verdict confirming the death sentence for twelve convicts, including Ahmed

Ahmed entered the United States in 1996 on a visitor's visa and applied for permanent residence through an asylum petition, but an immigration judge ordered his deportation in 2002, and in February 2007 a U.S. district court judge denied his review petition. On May 3, 2007, a private bill for the relief of Ahmed was introduced in the House of Representatives. The bill was referred to the Committee on the Judiciary where it died without any further legislative action.

After Ahmed failed to obtain permanent residence, the United States government deported Ahmed on June 16, 2007. According to the legal advisor to the Bangladesh government, Ahmed would get the chance to appeal his conviction to the Supreme Court of Bangladesh. (Nazrul Islam, [Mujib's Assassinator Extradited From US; Sent To Dhaka Jail](#), DailyIndia.Com (June 18, 2007).)  
(Shameema Rahman)

### BELGIUM – Dual Citizenship

A Royal Decree of April 25, 2007, implementing various provisions of the Law of December 27, 2006, on Nationality states that as of June 9, 2007, Belgian citizens who voluntarily acquire the nationality of a country that is not a signatory to the 1963 Council of Europe Convention on the Reduction of Cases of Multiple Nationalities will not lose their Belgian nationality.

Belgian citizens who voluntarily acquire the nationality of a state that is a signatory to the above Convention will automatically lose their Belgian citizenship. Signatories include Austria, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Spain, and the United-Kingdom. (MONITEUR BELGE (Belgium's official gazette), Item No. 2007009414, May 10, 2007.)  
(Nicole Atwill)



## EUROPEAN UNION – Measures Against Employment of Illegal Aliens

The European Commission has been working on a number of documents that address illegal immigration issues. A key part of the Commission's efforts is a draft Directive that provides for sanctions against employers who hire illegal immigrants, i.e., immigrants who stay in a country illegally or work in violation of their residence status. The Commission also prepared a working paper that examines the issues pertinent to the draft Directive, such as undeclared work, improvement of the gathering and exchange of information, and improvement of enforcement. With regard to undeclared work, the Joint Employment Report of 2006/2007 emphasizes the need for a comprehensive approach to the issue that includes flexible contractual arrangements and life-long education and skills classes, along with modernized social protection systems. Another issue identified by the Commission that needs to be examined is the posting of third-country nationals to a different Member State from the one where the employer is established. In such a case, the Court of Justice has ruled, the workers may not be subject to additional administrative formalities or additional conditions if they are legally employed by an employer established in another Member State.

The Commission also addressed the issue of ways to eliminate the incentives for employers to hire illegal immigrants. The Commission intends to propose that legal immigrants be given a single joint work/residence permit equipped with biometric identifiers. The rationale is that this type of document would be less susceptible to forgery and would simplify the procedure for employers and immigrants. The Commission also suggests that there must be better coordination and cooperation at all levels, national, regional, and local, among all the authorities involved. This includes not only immigration authorities, but also labor inspectorates, social security and tax offices, and the police. ([\*Commission Staff Working Paper, Accompanying Document to a Proposal for a Directive Providing for Sanctions Against Employers of Illegally Staying Third-Country Nationals\*](#), SEC(2007) (May 16, 2007).)  
(Theresa Papademetriou)

## SRI LANKA – Citizenship for Indian Tamils to Be Considered

During the first week of June 2007, a number of members of Sri Lanka's Parliament from different political parties jointly proposed establishing a Parliamentary Select Committee to consider whether to extend citizenship to 28,500 residents of the island nation who are Tamils of Indian origin. The move would include amendments of the existing law on citizenship.

According to an act passed in 2003, those Tamils who have been in the country continuously since October 30, 1964, should already be qualified for citizenship. However, a large number of the Tamil group had been forced to leave Sri Lanka following rioting and ethnic conflict in 1983, thus breaking the continuity of their residence. The proposal now is to amend the act to allow those individuals to obtain citizenship. India also has an interest in the process, as it is currently host to about 80,000 Sri Lankan Tamils who took refuge in the Indian state of Tamil Nadu. The Sri Lankan parliamentarians are proposing coordination with authorities in Chennai, the capital of Tamil Nadu, to resolve the issue. (*PSC to Solve Citizenship Issue*, SOUTH ASIAN MEDIA NET, June 11, 2007.)  
(Constance A. Johnson)





**SRI LANKA – Crackdown on Illegal Immigrants**

In the first part of June 2007, the Investigations Unit of Sri Lanka's Immigration and Emigration Department launched raids throughout the country to apprehend foreigners who had overstayed their visas. Within one week, 11 people from South Asian nations whose visas had lapsed were arrested, prior to probable deportation. They will be "blacklisted" and not allowed to enter Sri Lanka again. Most of the arrested had been employed in stores and hotels in and near the capital city, Colombo, although they had come into the country on tourist visas. The Department estimates that there are over 4,000 illegal immigrants working in the country, mostly from South or East Asia. The crackdown was needed, according to officials, because some of the aliens are involved in drug trafficking, human smuggling, prostitution, and other crimes. In addition, it is argued, they take jobs that Sri Lankan nations might otherwise hold. (*Crackdown on Overstaying Foreigners*, DAILY NEWS, June 11, 2007.)

(Constance A. Johnson)



## International Relations

### ANGOLA/MOZAMBIQUE – Cooperation Memorandum

On May 18, 2007, the Angolan Minister of Public Administration, Employment, and Social Security, Pitra Neto, and the Mozambican Minister of Employment, Maria Helena Taipo, signed a cooperation memorandum in the areas of employment, social security, and labor inspection. Neto highlighted the fact that both Angola and Mozambique will have to be diligent to ensure that workers will have better working conditions. Taipo was quoted as saying that Mozambique is devoted to the task of converting the memorandum programs into noticeable gains to the population. ([Govt Signs Accord with Mozambique on Employment, Social Security](#), ALLAFRICA.COM, May 19, 2007.)

(Eduardo Soares)

### EUROPEAN UNION – Cross-Border Deployment of Undercover Agents

Based on mutual assistance provisions between the Member States of the European Union, a great deal of cooperation exists among law enforcement authorities. Currently, under the German presidency, discussions are being held concerning improvement of cooperation and facilitation of cross-border deployment of undercover agents, in order to combat organized crime and terrorism more effectively. For this purpose, a Council Working Party has been established with the task of exploring whether there is a need for EU legal action to regulate this activity, while at the same time ensuring respect for the different legal systems and traditions of the EU Members.

Several issues have been identified that need further exploration. These include a definition of undercover agents, measures for protection of an undercover agent's identity, provision of equal legal status for national and foreign undercover agents, the possibility of seconding undercover agents abroad, and other matters. ([Council Resolution on Simplifying the Cross-Border Deployment of Undercover Officers in Order to Step Up Member States' Cooperation in the Fight Against Serious Cross-Border Crime](#), May 27, 2007.)

(Theresa Papademetriou)



## Investment

### CHINA – Massive Bond Issue Approved

China's legislature, the Standing Committee of the National People's Congress, authorized the Ministry of Finance (MOF) to issue 1.55 trillion yuan (about US\$204.3 billion) of special treasury bonds to fund a planned foreign exchange investment company, said the government-affiliated news Web site Xinhuanet. The legislature also approved raising the ceiling on treasury bond issues for 2007 to 5.34 trillion yuan (about US\$704 billion). The bonds will be used to purchase US\$200 billion in operating capital for the national foreign exchange investment company. By the end of March 2007, China's forex reserves had reached US\$1.2 trillion, up US\$135.7 billion from the end of 2006. ([\*China's Legislature Approves Massive Bond Issue to Fund Forex Company\*](#), June 30, 2007.)

(Laney Zhang)



## Justice

### **GERMANY – New Mutual Assistance Office**

On January 1, 2007, a Federal Office of Justice (Bundesamt für Justiz) commenced operations. It acts as the central authority for several agreements on mutual assistance in civil matters and also coordinates various procedural matters with the courts and agencies of the other member states of the European Union (Gesetz, Dec. 17, 2006, BUNDESGESETZBLATT I at 3171). The functions of this office were formerly discharged by the Federal Attorney General (Generalbundesanwalt), who is primarily in charge of federal prosecutions. Over the years, so many functions relating to civil matters had been added to the Federal Attorney General's responsibilities that the creation of a separate agency was deemed expedient. (R. Wagner, *Bisherige Aufgaben*, 27 IPRACTICE 87 (2007).) Among the agreements for which the new office is responsible is the Hague Convention on the Civil Aspects of International Child Abduction (The Hague, Oct. 25, 1980, TIAS 11670). The new Federal Office of Justice is located in Bonn and it is subordinated to the Ministry of Justice. Its mailing address is: Bundesamt für Justiz, 53094 Bonn, Germany.  
(Edith Palmer)

### **LEBANON – Supreme Judicial Council Proposes Judges for International Tribunal**

In a meeting held on June 18, 2007, the Lebanese Supreme Judicial Council approved a list of 12 Lebanese judges as candidates to participate in the special tribunal established by the United Nations Security Council for the prosecution of persons allegedly involved in the assassination of former Lebanese Prime Minister Rafiq Hariri. This list will be sent by the Lebanese government to the U. N. Secretariat, which will choose four judges from among the candidates. (*Supreme Judicial Council Proposes Judges for International Tribunal*, ASSAFIR, June 19, 2007.)  
(Issam Saliba)

### **PAKISTAN – Musharraf's Continuing as Army Chief Legally Challenged**

On May 14, 2007, Qazi Hussain Ahmad, the chief of Jamaat-i-Islami (an Islamic organization in Pakistan), filed a petition in the Supreme Court of Pakistan challenging President Pervez Musharraf's tenure as army chief. Another petition, filed by Abdul Rahman Siddiqui on the same day, called for a judicial probe into May 12, 2007, incidents of killings and violence in Karachi.

The petition against General Musharraf's tenure as army chief alleges that he could not continue in that position after crossing the age of superannuation in August 2003, when he became 60 years old. The petition also sought a court order against Musharraf's tenure as chief of the army staff. The petition further alleged that the general has continuously violated the Constitution, the law, and service rules by addressing public rallies, because government service rules do not allow public servants to participate in or address public rallies. Petitioner Hussain was quoted as saying,



General Musharraf had rendered himself disqualified to hold the office of the president by acting against the Constitution, law of the land, ideology of Pakistan, betraying the nation, defying the oath, failing to represent the unity of the republic, siding with and campaigning for political parties of his personal liking, dragging the army into politics for his own benefits, and by ridiculing the judiciary.

The second petition contended that the Sindh government failed to protect the rights of the people of that province. ([Musharraf's Tenure as Army Chief Challenged](#), THE DAWN, May 15, 2007.)

(Krishan Nehra)

### **PAKISTAN – Supreme Court Questions Government Authority to Suspend a Judge**

During the continuance of a hearing on the removal of and presidential reference against the Chief Justice of Pakistan, the Supreme Court of Pakistan questioned the government's authority to compel a judge to proceed on leave. Justice Khalilur Rehman Ramday, heading the 13-member bench, asked, “[w]here is the security of tenure of a judge if he is to be sent home just on a two liner notification by misusing Presidential Order No. 27 of 1970?”

The above observation was made when the defense counsel insisted that there was no concept of suspension of a judge even if a reference on misconduct had been moved against the judge in the Supreme Judicial Council. According to the counsel, there is no constitutional provision permitting such a course of action. Furthermore, he pointed out, according to President Pervez Musharraf's own admission, “the chief justice was studying the reference till 5 pm [sic] on March 9 [in the President's office, and so], how could the reference be filed” before such time. Apparently, according to the defense, the reference was made by the President without any advice from the prime minister.

The Court recognized the difficulty of trying one's peers, stating that the petitioner was still the Chief Justice and “yet we are expected to do justice.” “It is not the CJ who is on trial, rather each one of us (all 13 judges) are on trial.” ([Ramday Questions Sending of Judge on Forced Leave](#), The Dawn, Mar. 13, 2007.)

(Krishan Nehra)

### **PHILIPPINES – Chief Justice Announces High Court Will Use Power to Protect Political, Civil Rights**

For the first time in Filipino history, the Supreme Court will use its power to protect political and civil rights in order to hasten the resolution of cases involving extrajudicial killings and disappearances. On June 20, 2007, Chief Justice Reynato Puno indicated that within three months the Court will devise rules that would, among other things, compel authorities to take action in this regard. During the weekly Quijano de Manila Symposium held in Malate, Manila, Puno said:



This is about the new rule making power of the court, its powers to promulgate rules that will govern the conduct of cases. Before, the Constitution does not provide that the Supreme Court can promulgate rules to strengthen the constitutional rights of the people. Now we have that new provision under the 1987 Constitution, we are examining the provisions. We have not yet used thus power. [sic]

Under article 8, section 5, of the Constitution, the Supreme Court is given the power to promulgate rules concerning the protection and enforcement of constitutional rights; pleadings, practices, and procedures in all courts; admission to the practice of law; the integrated bar; and legal assistance to the underprivileged. Puno said the Court intends to use its power to promulgate rules that would not usurp the legislative power of Congress but that would be particularly relevant in resolving the problem of extrajudicial killings and disappearances. Puno expressed alarm over the increasing incidents of unsolved extrajudicial killings and disappearances in the country. He added that current legal remedies, such as the petition for a writ of habeas corpus, are not enough to speed up the resolution of such cases.

In March 2007, the Supreme Court designated 99 regional trial courts nationwide to handle cases of extrajudicial killings. In so doing, the Court also issued guidelines to help the lower courts determine whether or not the crime is a “political killing.” To be considered are the political affiliation of the victim, the method of attack, and reports that state agents were involved in the commission of the crime. By means of the special courts, the Supreme Court hopes to resolve cases within 90 days – 60 days for trial and 30 days for the decision – unless a shorter period is mandated by law or otherwise directed by the Court. (*Filipino Chief Justice: Court to Use Power to Protect Political, Civil Rights*, MANILA BUSINESSWORLD ONLINE, June 21, 2007, Open Source Center No. SEP20070621001002.)  
(Gustavo Guerra)

### **RWANDA – UN Tribunal Issues Indictment for False Testimony**

The International Criminal Tribunal for Rwanda (ICTR), the U.N. tribunal handling cases from the 1994 Rwandan genocide, has issued an indictment against a witness accused of giving false testimony. Judge Jai Ram Reddy of the ICTR handed down a warrant for the arrest of the witness, who was given only a code name in the document and who had testified in the case of the former Minister for Higher Education. In September 2005, the ICTR upheld a conviction of the Minister, Jean de Dieu Kamuhanda; he is now serving concurrent life sentences for genocide and extermination for his role in the 1994 mass killings. Specifically, he was convicted of distributing firearms, grenades, and machetes to the Hutu militant men who attacked several thousand Tutsi civilians in the Gikomero commune, Kamuhanda’s home region, in Kigali-Rural Prefecture. The current indictment is the first that has been issued by the ICTR for falsifying testimony. (*UN Tribunal for Rwandan Genocide Issues First Indictment for False Testimony*, UNNEWS, June 12, 2007.)  
(Constance A. Johnson)



## Legislative Power

### TAIWAN – Legislature Holds Extra Session

Taiwan's Legislative Yuan will convene an extraordinary session July 10-20, 2007, in order to deal with a number of significant bills. One of the bills concerns a controversial Organic Law of the Central Election Commission. Others are on the budget for state-owned enterprises, the formulation of a lobbying act, a national pension fund, subsidies for senior citizens and elderly farmers, and relations with mainland China. Amendments to the Public Officials Election and Recall Law and to the Referendum Law are also to be considered by the legislators. (CNA: *Legislative Yuan Decides to Hold Extra Session July 10-20*, CENTRAL NEWS AGENCY, July 9, 2007, Open Source Center No. CPP20070709968066.) (Wendy Zeldin)



# Privacy

## EUROPEAN UNION – Personal Data Protection Within the Framework of Police and Judicial Cooperation in Criminal Matters

In 2005, the European Commission prepared a proposal for a Framework Decision on the protection of personal data processed during police and judicial investigations and on cooperation in criminal matters. The proposal has been forwarded to the Council and the Parliament. The latter issued its opinion in September 2006. As of May 2007, there are still two outstanding matters that must be decided by the Member States: a) the scope of application of the Decision and b) the provisions governing transfer of data to third countries. ([\*Council Framework Decision on the Protection of Personal Data Processed in the Framework of Police and Judicial Cooperation in Criminal Matters\*](#), Apr. 30, 2007.)

(Theresa Papademetriou)

## EUROPEAN UNION/UNITED STATES – Passenger Data

On June 26, 2007, the European Union and the United States reached a tentative agreement on exchange of passenger data. An interim agreement had been reached in September 2006, after the original pact was annulled on procedural grounds by the European Court of Justice in May of that year. An earlier agreement reached in the aftermath of the September 11, 2001, terrorist attacks against the United States, and due to expire on July 31, 2007, had granted U.S. authorities access to some 34 categories of information on EU aircraft passengers.

According to EU diplomats, the new agreement “is expected to sharply reduce the amount of information about trans-Atlantic air travelers that can be shared with the U.S. authorities but will lengthen the time such information can be retained.” (Nicola Clark, [\*EU and U.S. Reach Tentative Deal on Passenger Data\*](#), INTERNATIONAL HERALD TRIBUNE, June 27, 2007; 7 W.L.B. 2006, under “Recent Developments in the European Union.”) To that end, EU negotiators are seeking to cut the maximum number of shared recorded data items to about 20. It was also unofficially indicated that the permitted U.S. database retention time would be extended from the current three and a half-year limit to 15 years. Members of the European Parliament have criticized the EU for apparently bowing to U.S. pressure on the terms of the agreement, and Peter Hustinx, the European Data Protection Supervisor, wrote a letter in June to the Ministers of Interior and Justice of Portugal (which took over the rotating EU presidency from Germany on July 1, 2007) expressing concern that the Europeans “were in danger of sacrificing too much of their citizens’ privacy in the fight against terrorism.” (Clark, *id.*)

(Wendy Zeldin)





## Property

### **CANADA – Government to Create Commission to Settle Native Land Claims**

Prime Minister Stephen Harper has announced that his government has decided to introduce legislation to create a Specific Claims Tribunal to resolve the backlog of treaty claims that have been made by Canada's First Nations. The Tribunal would be staffed by impartial judges, who would study individual cases and make decisions as to how they will be resolved. The federal government hopes to secure the support of affected provincial governments. In recent years, tensions over historical land claims have led to confrontations, occupations, standoffs, and other incidents that have sometimes divided communities. The plan to create an independent tribunal is part of a larger Specific Claims Action Plan that contains three additional initiatives. The first is to create a compensation fund that would receive Can\$250 million (roughly US\$236 million) every year for ten years; the second is to speed up the processing of claims; and the third is to refocus the existing Indian Specific Claims Commission to focus on dispute resolution. Representatives of the First Nations have been pushing for an independent tribunal for decades and are generally supportive of the government's plan. (Press Release, Office of the Prime Minister, [Prime Minister Harper Announces Major Reforms to Address the Backlog of Aboriginal Treaty Claims](#) (June 12, 2007).)  
(Stephen Clarke)



## Public Welfare

### **ISRAEL – Ineligibility for Social Security Benefits Stemming from Terrorist Offenses**

On May 21, 2007, the Knesset (Israel's Parliament) passed an amendment to the Social Security Law. The provisions of the amendment became effective on June 1, 2007. According to the law in force prior to that date, no monetary benefits were paid to a person if the event establishing a right to such benefits occurred in the process of the person's commission or attempt to commit a crime or as a result of or in connection with such actions. The amendment further disqualifies single parents whose spouses died in the process of perpetrating a crime of terrorism from receiving single-parent education grants for their children. The amendment also nullifies the eligibility of persons convicted of murder for nationalistic motives (i.e. terrorism) for financial benefits based on old age after release from prison. (Social Security Law (Amendment No. 95) and related 2004 bill, 5767-2007, the Knesset Web site.)  
(Ruth Levush)



# Taxation

## CHINA –Tax on Interest Income Cut

On June 29, 2007, China's legislature, the Standing Committee of the National People's Congress (SCNPC), passed amendments to the Personal Income Tax Law, authorizing the State Council to adjust the tax on interest accrued from bank deposits. The amendment states, "[t]he imposition, suspension or reduction of interest tax on bank savings, as well as specific methods thereon, are subject to the decision of the State Council." (*Shouquan Fabu: Renda Changweihui guanyu Xiugai Geren Suodeshui Fa de Guiding* [Authorized Publication: SPNPC Decision on Amending the Personal Income Tax Law], XINHUANET.)

China started to collect tax on interest income in November 1999 in the wake of the 1997 Asian financial crisis, in a bid to boost domestic consumption, but that effort has largely failed due to the lack of a social security network in the country, said the government-affiliated news agency Xinhuanet. Analysts expect the State Council to initially halve the current interest tax rate to 10 percent. Should inflation continue to grow, the Cabinet could cancel the tax completely. However there are also calls for abolition of the tax altogether. Currently, benchmark one-year deposits carry an interest rate of 3.06 percent. Given the 20-percent tax on interest income, however, the actual yield is just 2.45 percent. That return is well below the inflation rate as measured by the consumer price index, which hit a two-year high of 3.4 percent after rising 3.0 percent in April 2007 and 3.3 percent in March 2007. If the real interest rate remains negative for a long time, it will not do the economy any good, said Assistant Governor of the Central Bank Yi Gang in late June. ([Interest Tax May Be Cut in China](#), XINHUANET.) (Laney Zhang)

## INDIA - Ruling on Tax Liability on Foreign Subsidiaries

On July 9, the Supreme Court of India held that no portion of the global income of the U.S. investment banking firm, Morgan Stanley Advantage Services (MSAS), is subject to taxation under the Indian income tax law.

MSAS operates in India as a subsidiary of United States Morgan Stanley Investment Bank. MSAS is incorporated in India and is set up to provide support services, such as income-tax support, account reconciliation, and research, to the Morgan Stanley Group's internal operations.

The Court ruled on the contention of the Income Tax Department of the Government of India that the MSAS operations in India constituted a "permanent establishment" of a foreign investment firm, and as such, a portion of the global income should be taxed as Indian income.

The Supreme Court found that MSAS is a subsidiary unit of Morgan Stanley to provide only auxiliary services and has no authority to conclude contracts for the parent foreign enterprise. Under these circumstances, the Court ruled, the foreign establishment will not be



regarded as having a “permanent establishment” in India and will be exempt from taxation. The Court held that MSAS did not carry out any ‘agency’ function for the U.S. principal to warrant the consideration of any portion of its global income as liable to tax under Indian laws. This ruling is based on the interpretation of provisions of double tax avoidance agreements regarding the concept of a “permanent establishment,” which governs when business profits can be taxed in a contracting state.

The Supreme Court ruling is likely to benefit business process outsourcing operations of foreign companies that create internal business subsidiaries to provide support services for their Indian units. ([Morgan Stanley BPO Not Liable To Pay Tax: Apex Court](#), The Hindu Business Line (July 10, 2007).)  
(Shameema Rahman)



# Terrorism

## ALGERIA – Death Sentences for 24 Extremists

A judicial source reported that the criminal court in Boumirdas, Algeria (50 kilometers east of the capital), has issued death sentences in absentia against 24 Islamist gunmen convicted of participation in armed terrorist groups, premeditated murder attempts, and planting explosive devices. (*Death Sentences for 24 Extremists*, AL-SHARQ AL-AWSAT, June 20, 2007.) (Issam Saliba)

## ARGENTINA – New Anti-Terrorism Legislation

On June 13, 2007, in a 102-35 vote, the Lower House of Argentina's Congress approved a bill amending the Penal Code that criminalizes terrorist actions and their financing. Explicit new penalties are set forth for "illicit association" with the intent to commit terrorist acts motivated by any political, ethnic, racial, or religious reason.

Thus, illicit association with a terrorist group can incur a sentence of ten years to life in prison. Prison terms are also stipulated for persons convicted of possession of military arms, explosives, bacterial agents, or chemical weapons. Persons convicted of giving funds or material support to terrorist groups will be subject to imprisonment for five to 15 years.

Argentina has been seeking the arrest of five Iranians and a Lebanese militant in the 1994 bombing of a Jewish community center in Buenos Aires, in which 85 people were killed and 200 wounded. Critics of the legislation, however, fear that it may be used to curb civil liberties in Argentina, which endured seven years of abuses under a dictatorship that ended in 1983, including the abduction by security forces and disappearance of reportedly thousands of dissidents. (*Argentina: Anti-Terror Law Approved*, CLARIN (Buenos Aires), June 14, 2007, Open Source Center No. LAP20070614012002; [Argentine Congress OKs Anti-Terror Bill with Sentences for Conspiracy, Financing, Laundering](#), ASSOCIATED PRESS, June 14, 2007; *Congreso argentino aprueba Ley Antiterrorista a pedido de EEUU*, PÚLSAR, June 14, 2007.) (Wendy Zeldin)

## FRANCE – Human Rights Watch Denounces Counter-Terrorism Expulsions

A report prepared by Human Rights Watch and published on June 6, 2007, denounces France's policy on expulsion in the name of counter-terrorism as lacking adequate safeguards against human rights violations, including torture or risk of torture. The report, entitled "In the Name of Prevention," states that over the last five years, France forcibly removed more than 70 individuals described by the French government as "Islamic fundamentalists," including 15 imams.

According to the report, "the greatest danger is that in its haste to forcibly remove, France may send individuals back to countries where they risk being tortured or subjected to cruel, inhuman or degrading treatments." Human Rights Watch contends that the expulsion of imams



whose preaching was viewed as a security risk by the French government raises additional concerns over freedom of expression.

The report contains recommendations to the French government to bring its procedures in line with its obligations under international human rights laws, in particular to ensure that all appeals against expulsions automatically suspend the measures and that no one is ever returned where there is a risk of torture in the country of origin. (*In the Name of Prevention* (June 2007).) (Nicole Atwill)

### **JAPAN – Nuclear Terrorism Suppression Treaty**

It was recently reported that Japan's Diet (Parliament) enacted the Law Concerning Punishment of Acts That Endanger Persons' Lives by Releasing Radioactive Materials. Japan will also ratify the International Convention for the Suppression of Acts of Nuclear Terrorism in the current Diet session. The Convention obliges state parties to establish certain criminal offenses under their national law. (Hōshasen o hassan sase te hito no seimei tō ni kiken o shōji saseru kōi tō no shobatsu ni kansuru hōritsu no gaiyō [Summary of Law Concerning Punishment of Acts That Endanger Persons' Lives by Releasing Radioactive Materials], Ministry of Education, Culture, Sports, Science and Technology Web site.) (Sayuri Umeda)

### **KUWAIT – Death Penalty for al-Qaeda Members Commuted**

On June 19, 2007, al-Jazeera Network reported that the Cassation Court in Kuwait had commuted to life imprisonment the death penalty given to four persons accused of membership in the al-Qaeda organization of Osama bin Laden. The accused are two Kuwaiti citizens and two stateless persons (known as *Bidoun*). (*Death Penalty for al-Qaeda Members Commuted*, AL-JAZEERA, June 19, 2007.) (Issam Saliba)

### **SAUDI ARABIA – Confiscation of Assets for Terrorism Financing**

On June 7, 2007, 11 Saudis were arrested in Saudi Arabia and accused of helping finance activities of the al-Qaeda organization. The Ministry of the Interior has confiscated the assets of those involved until the investigation is completed. A spokesman for the Ministry said that the confiscation was carried out in accordance with the Anti-Money Laundering Law. (*Confiscation of Assets for Terrorism Financing*, AL-SHARQ AL-AWSAT, June 8, 2007.) (Issam Saliba)

### **SCOTLAND – Lockerbie Bomber Granted Leave to Appeal**

The Libyan intelligence agent Abdelbaset Ali Mohmed Al Megrahi, who was convicted of the murder of the 259 passengers and crew on board Pan Am Flight 103 and of 11 residents in Lockerbie, Scotland, in December 1988, has been granted a right to appeal against his conviction by the Scottish Criminal Cases Review Commission. The Commission undertook a substantial



three-year investigation into his conviction and, based upon the results, new evidence, and evidence that was not presented before the courts, expressed concerns that there may have been a miscarriage of justice and announced that Al Megrahi could appeal his conviction. (News Release, Scottish Criminal Cases Review Commission, [Abdelbaset Ali Mohamed Al Megrahi](#) (June 28, 2007); [Libyan Convicted over Lockerbie Bombing Given Leave to Appeal](#), THE INDEPENDENT (London), June 29, 2007.)  
(Clare Feikert)

### **SWITZERLAND – Tunisian Sentenced for Web Site Contents**

On June 21, 2007, a court in the Swiss city of Bellinzona sentenced a Tunisian to a two-year prison term, with all but six months suspended, for his Web sites that supported radical Islamist groups. The prosecution stated that he had “actively supported a trail of jihadi terrorism by furnishing criminals with a modern and effective means of communication.” The defendant, a resident of Switzerland arrested in February 2005, admitted establishing the sites but disclaimed responsibility for some of the contents, which included instructions on how to make explosives. In addition, the court gave his wife, a Belgian citizen of Afghan origin, a six-month suspended sentence for assistance to a terrorist organization and participation in depicting violence on the Web sites. The prosecution had requested longer sentences for both defendants. (*Swiss Court Jails Tunisian over Websites Supporting Extremist Islamist Groups*, AFP, June 21, 2007, Open Source Center No. EUP20070621085013.)  
(Constance A. Johnson)

### **TAIWAN – Anti-Terrorist Financing Measures**

On June 4, 2007, the Judiciary Committee of Taiwan’s Legislative Yuan agreed on a number of draft amendments to the Money Laundering Act that would add anti-terror provisions. The move is aimed at maintaining Taiwan’s membership in the Egmont Group of Financial Intelligence Units of the World, an international anti-money laundering organization. The Bureau of Investigation of Taiwan’s Ministry of Justice joined the Egmont Group in 1998.

Highlights of the proposed changes include: criminalizing the financing of terrorism; requiring banks and a wide range of non-bank financial institutions to record and report to designated Cabinet agencies the identities of clients engaged in suspicious transactions; and permitting prosecutors to extend (for one time only) the time period in which they monitor suspicious bank accounts and money remittances to up to six months. In addition, in a separate bill, the Judiciary Committee reportedly agreed on a proposed amendment lowering the threshold for definition of aggravated economic criminals from the current NT\$20 million (about US\$610,700) to NT\$5 million (about US\$153,700) of proceeds made from illegal activities per capita. (*Taiwan News: Panel Approves Anti-Terror Clauses*, TAIWAN NEWS, June 5, 2007, Open Source Center No. CPP20070605968017.)  
(Wendy Zeldin)



## Trade and Commerce

### UNITED STATES – Prohibition on Vertical Price Fixing Overturned

On June 28, the U.S. Supreme Court overturned a 96-year-old precedent in antitrust law, holding that vertical price fixing agreements between manufacturers and retailers are not per se violations of the Sherman Antitrust Act, but shall be judged on a case-by-case basis to determine if they are anticompetitive or not.

Petitioner Leegin Creative Leather Products, Inc., a manufacturer of leather goods, instituted a policy of refusing to sell to retailers that discounted its goods below suggested prices. Respondent PSKS Inc., a retailer, continued to discount the goods, and Leegin refused to continue selling its products to PSKS. PSKS sued, alleging the Leegin had violated the antitrust laws by entering into a vertical price fixing scheme with its retailers. PSKS won at the trial court level without having to demonstrate that the price fixing agreement was anticompetitive, and the verdict was affirmed by the U.S. Court of Appeals for the Fifth Circuit.

The U.S. Supreme Court reversed the judgment of the Fifth Circuit, and overturned a 1911 Supreme Court ruling that vertical price fixing was a per se violation of the antitrust laws. The Court stated that the per se rule on vertical price fixing was not statutory in nature, but was created under common law principles, and therefore could be overturned by the Court. The Court ruled that the per se rule should be overturned in light of new business and legal realities, and that vertical price restraints should now be judged according to the “rule of reason,” in which the plaintiff must prove that a given price fixing agreement is in fact anticompetitive. ([Leegin Creative Leather Products, Inc. v. PSKS, Inc.](#), No. 06-480 (June 28, 2007).) (Gary Robinson)





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