The Law Library of Congress

WORLD LAW BULLETIN

December 2005

12 W.L.B. 2005

HIGHLIGHTS:

Anti-Corruption Convention Approved	**UAE**	**Abdullah F. Ansary**
Avian Flu	**China**	**Wendy Zeldin**
Constitutional Reform Bill Approved	**Italy**	**Donald R. DeGlopper**
Court Orders End to Gas Flaring	**Nigeria**	**Constance A. Johnson**
Draft Anti-Terrorism Law	**France**	**Nicole Atwill**
Election for New Legislative Body	**Zimbabwe**	**Charles Mwalimu**
Electronic Health Card	**Germany**	**Edith Palmer**
E-Mail Privacy Protection	**Argentina**	**Graciela Rodriguez-Ferrand**
New Data Secrecy Laws to be Enacted	**India**	**Krishan Nehra**
Open Skies Agreement Expanded	**Canada/U.S.**	**Stephen Clarke**
Parties Call for a New Election Law	**Jordan**	**Issam Saliba**

SPECIAL ATTACHMENTS:

Recent Developments in the European Union	**Theresa Papademetriou**
South Korea: Copyright Infringement and Software Streaming Solutions	**Jung Hwa Lee**

AFRICA | **EAST ASIA & PACIFIC** | **EUROPE** | **NEAR EAST** | **SOUTH ASIA** | **WESTERN HEMISPHERE**
INTERNATIONAL LAW & ORGANIZATIONS | **SPECIAL ATTACHMENTS**

Directorate of Legal Research for International, Comparative, and Foreign Law
James Madison Memorial Building; 101 Independence Avenue, SE; Rm. LM 240; Washington, DC 20540
Reception: (202) 707-5065 – FAX: (202) 315-3654
http://www.loc.gov/law/congress

Message from the Director of Legal Research

The Directorate of Legal Research of the Law Library of Congress is a unique academy of expertise dedicated to providing world-class international, comparative, and foreign law research and reference services to the United States Congress. During fiscal year 2005, our faculty of 20 foreign law specialists and 5 research analysts consulted over 37,000 sources and conducted in excess of 48,000 electronic searches as they prepared 2,039 reports – over 5,900 pages of legal analysis and reference assistance that covered over 160 jurisdictions. *We are proud to serve as an extension of your staff.*

The WORLD LAW BULLETIN is the Directorate's monthly flagship publication that provides the U.S. Congress over 1,000 updates on foreign law developments annually. Updates are chosen for their special significance to the U.S. Congress as they relate to legislative interests or foreign policy and should not be interpreted as an indication of support or preference for any legal or political stance. Selections may contain hyperlinks to websites that are not part of the loc.gov domain provided to cite authority for our source of information and as a convenience for the reader. Some of these online references, however, may be to subscription services not generally available to others, and some of the hyperlinks in the electronic version of the WORLD LAW BULLETIN may not function, depending upon your browser version or the mechanics of the website. The Law Library does not endorse or guarantee the accuracy of those external websites or the material contained therein. Selections are edited by two of our research analysts, Constance Axinn Johnson and Wendy Zeldin. This and past issues are available online at: www.loc.gov/law/congress. This issue may be cited as: 12 W.L.B. 2005.

The Law Library of Congress maintains the world's largest collection of legal materials and provides international, comparative, and foreign law research for the U.S. Congress. We invite you to visit the Law Library website at www.loc.gov/law, which details all of our services and provides access to the Global Legal Information Network (GLIN), a cooperative international database of official texts of laws, regulations, and other complementary legal sources of many foreign jurisdictions.

If you would like to submit a request for our services or if you have any questions concerning the services available at the Law Library of Congress; the Global Legal Information Network; or international, comparative or foreign law, please feel free to contact me by phone at (202) 707-9148, by FAX at (202) 315-3654, or by email at WSharp@loc.gov.

Respectfully submitted,

Walter Gary Sharp, Sr.

WALTER GARY SHARP, SR.
Director of Legal Research

Directorate of Legal Research *for*
International, Comparative, and Foreign Law

THE LAW LIBRARY OF CONGRESS

WORLD LAW BULLETIN
Table of Contents

AFRICA
Benin ..... Gag Rule
Botswana ..... First Parliamentary Counsel
Burundi ..... Commission on Release of Political Prisoners
Chad ..... Independent Radio Association Chairman Ordered Released
Congo (DRC) ... Amnesty Act for All Acts of War
Guinea-Bissau ..... New Government Named
Kenya ..... Proposed Constitution Voted Down
Namibia ..... Anti-Corruption Commission
Namibia ..... Electronic Communications and Transactions Bill
Namibia .. Legislation to Outlaw Smoking in Public
Nigeria ..... Court Orders End to Gas Flaring
South Africa ..... Companies Amendment Bill
South Africa ..... Diamonds Amendment Bill
Swaziland ..... Bill to Impose Death Penalty for Child Rape, Intentional Transmission of AIDS
Swaziland ... Overhaul of Judicial System Proposed
Uganda ..... Constitution and Election Law
Uganda ..... Embezzlers to Lose Personal Wealth
Zimbabwe ..... Election for New Legislative Body

EAST ASIA & PACIFIC
Australia ... Bankers, Publishers Question Proposed Anti-Terror Law
Australia ..... High Court Raises Citizenship Issues
China ..... Avian Flu Counter-Measures
China ..... Ban on Selling Alcohol to Minors
China ..... Company Law Amended
China ..... Foreign Central Banks' Assets Protection
China ..... Labor Contract Law Enacted
China ..... Personal Income Tax Law Amended
China ..... Supreme Court Reform Plan
Japan ..... Compensation for Judges Reduced
Japan ..... More Chemicals in Food Regulated
Korea, S. ..... Bioethics
Korea, S. .. Justice Minister vs. Prosecutor General
Macao ..... Draft Bills Against Terrorism and Money Laundering
Mongolia .... Corruption Convention to Be Ratified
New Zealand ... Criminal Procedure Bill Reinstated
Taiwan ..... Election Campaign VCD Makers to Be Prosecuted
Taiwan ..... Constitutional Reform Hurried by President
Taiwan ..... Executive Yuan Reform
Taiwan ..... First National Security Report
Taiwan ..... National Communications Commission
Taiwan ... Proposed Amendments to Securities and Exchange Law
Taiwan ..... Rule on Plastic Food Containers
Vietnam ..... First Anti-Corruption Law Approved
Vietnam ..... Laws on Lawyers, Cinematography Discussed
Vietnam ..... Pharmaceutical Law

EUROPE
Austria ..... Immigration Law Reform
Bulgaria ..... New Law on Water Management
Cyprus ..... Constitution Supersedes EU Law
Czech Republic ..... New Penal Code Passes Lower House
Finland ..... Family Leave Under Review
France ..... Draft Anti-Terrorism Law
France ..... State of Emergency
Georgia ..... Law Against Criminal Leaders
Germany ..... Electronic Health Card
Greece ..... Major Reform of Criminal, Criminal Procedure Codes
Italy ..... Constitutional Reform Bill
Latvia ..... Ban on Use of Communist and Fascist Symbols
Portugal ..... End of Privileges for Politicians
Russian Fed. ..... Amnesty for Illegal Aliens
Russian Fed. ..... New Forms of Campaign Financing Allowed
Sweden ..... Church to Allow Blessings of Same-Sex Couples
Sweden ..... New Temporary Law on Residence Permits
Switzerland ..... Cultural Property
Ukraine ..... Campaigning Laws Expanded

NEAR EAST
Bahrain ..... Creation of a Judicial Study Institute
Bahrain ..... Disagreement Between Government and Parliament
Bahrain ..... Proposed Family Law Provokes Demonstrations
Iran ..... Regulations Governing Stoning as Punishment
Iraq ..... Activists Request Enactment of Five Laws on Women's Issues
Israel ..... Amendment to the Employment of Women Law
Jordan ..... Parties Call for a New Election Law
Saudi Arabia ..... King Calls on Consuming Nations to Reduce Taxes on Petroleum Products
Saudi Arabia ..... New Five-Year Development Plan Approved
Saudi Arabia .. Supreme Council for Family Affairs
United Arab Emirates ..... Anti-Corruption Convention Approved

SOUTH ASIA
Afghanistan ..... Employment of Foreign Nationals
Bangladesh ..... Judges Boycott Courts
Bangladesh ..... Public Procurement Act 2005
India ..... Outsourced Legal Work
India ..... Muslim Law Triple *Talaq* Held Invalid
India ..... New Data Secrecy Laws to be Enacted
India ..... State Ban on Cow Slaughter Upheld
Sri Lanka ..... State of Emergency Extended by Parliament

WESTERN HEMISPHERE
Argentina ..... E-Mail Privacy Protection
Canada ..... Government Announces Small Increase in Immigration Target
Chile ..... Law on Arms Control
Mexico ..... Senate Studies Strict Anti-Terrorist Bill
Mexico ..... Senate Working to Regulate Lobbying
Mexico ..... Shop Owner Beats Coca Cola, Prompts Mexico's Largest Antitrust Rulings

INTERNATIONAL LAW & ORGANIZATIONS
African Union ..... Extradition Case
Belgium/Palestinian Authority ..... Cooperation Agreement on Training of Magistrates
Canada/U.S. ..... Open Skies Agreement Expanded
Canon Law ..... Sexual Abuse of Minors by Priests
China/Nepal ..... Border Inspection
China/UNHCR .. Visit by U.N. Special Rapporteur on Torture
Colombia/Ecuador/Mexico ..... International Drug Ring Broken
European Court of Human Rights/Turkey ..... Judgment in Headscarf Case
France/Switzerland ..... Aerial Policing Agreement
Mexico/MERCOSUR ..... Membership Invitation
Nordic Council ..... Action Plan to Fight Obesity
Sri Lanka/U.S. ..... Memorandum of Intent for Assistance for Counter-Terrorism
U.N./Cambodia ..... Khmer Rouge Trial Plans Moving Forward
WIPO ..... Annual Assembly

SPECIAL ATTACHMENTS:

Recent Developments in the European Union

South Korea: Copyright Infringement and Software Streaming Solutions

AFRICA

BENIN – Gag Rule

The Benin Government High Audiovisual and Communication Authority (HAAC) has issued a decision reminding press organizations to limit their stories relating to the presidential elections to factual news only, avoiding any editorials or commentaries (Decision No. 05-156/HAAC). The ban applies to both positive and negative analyses of politicians, parties, and political movements. It is in effect from November 1, 2005, until the presidential elections in March 2006. The decision was criticized by an association of media professionals in the country, who argue that it is not within HAAC's competence to define the kind of journalism that should be published or broadcast. The group also asked the government to clarify parts of the decision by drawing up a list of potential candidates who would be covered by the ban. (*Media Professionals Accuse Watchdog of Placing "Real Gag" on Beninese Press*, COTONOU LA NATION, Oct. 28, 2005, FBIS No. AFP20051102600002.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

BOTSWANA – First Parliamentary Counsel

Mmegi (*The Reporter*) reported on November 11, 2005, that attorney Lizo Ngcongco has been appointed Botswana's first Parliamentary Counsel. In the view of Member of Parliament Botlogile Tshireletso, the appointment "is long overdue," and there were more disadvantages than advantages in having the Attorney General advise both the government and parliament because it "increased chances of certain things going unnoticed." (Tuduetso Setsiba, *Ngongco Fits the Bill as First Parliamentary Counsel*, MMEGI, Nov. 11, 2005, http://allafrica.com/stories/200511110345.html (last visited Nov. 13, 2005).).
(Wendy Zeldin, 7-9832, wzel@loc.gov)

BURUNDI – Commission on Release of Political Prisoners

First Vice President Martin Nduwimana of Burundi announced on November 10, 2005, that a special commission, with a three-month term, would be established in the country to consider the release of prisoners convicted of political crimes. The crimes range from forming Tutsi youth militias and fomenting a Tutsi rebellion to taking part in the 1993 massacre of Tutsis and the assassination of former President Melchior Ndadaye. The special body is to submit a report to the government once a month on its findings as to whether prisoners serving time for such crimes qualify for early release. The Commission will have twenty-one members, who will be appointed by ministerial decree. In the opinion of the prison director, "the facility was now so overcrowded that the government should release all prisoners who have served a quarter of their sentences with good behaviour." He stated that the Belgian colonial prison was designed to hold 800 prisoners, but it currently holds 2,266. (*New Commission to Consider Releasing Political Prisoners*, UN INTEGRATED REGIONAL INFORMATION NETWORKS, Nov. 11, 2005, http://allafrica.com/stories/200511110069.html (last visited Nov. 13, 2005).)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHAD – Independent Radio Association Chairman Ordered Released

On November 9, 2005, the administrative chamber of Chad's Supreme Court ordered the release of Tchanguiz Vatankha, the editor-in-chief of a radio station and head of the Chadian Association of Independent Radio Stations. At that time, he had been held for forty-five days at the police station in the capital city, Ndjamena. General Routuang Yoma Golom, Minister of Public Security, had ordered the arrest with no reason stated publicly. The order for the release came as a result of a lawsuit brought by Daniel Passalet Dezoumbe, the chairman of the organization Human Rights Without Borders. The speaker of the National Assembly had also called for his release. One member of the Assembly had criticized the arrest as a violation of the rule of law and stated

> I still do not know the reason why the minister of public security decided to confine Mr. Tchanguiz. Moreover the minister has refused to receive us in order to provide further details concerning this arrest. We want to know for what Tchanguiz is being blamed.

This was not the first time the government had taken action against the news media. A ban on broadcasting by Radio FM Liberté was declared illegal after court review. In that case, the court required the government to pay compensation to the radio station. (*Supreme Court Orders Release of Independent Radio Association Chairman,* NDJAMENA RADIO FM LIBERTE, Nov. 9, 2005, FBIS No. AFP20051114621001.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

CONGO (Democratic Republic of) – Amnesty Law for All Acts of War

The National Assembly of the Democratic Republic of Congo passed a highly controversial Amnesty Law in November 2005. The Law, which was passed by an overwhelming majority of the Congolese legislators, grants amnesty to all persons for acts of war, political offenses, and opinions expressed on war committed between August 1996, the fall of former dictator Mobutu Sese Seko, and June 2003, when the country's transitional government was installed.

In the course of debate in the National Assembly, deputies belonging to President Joseph Kabila's People for Reconstruction and Democracy Party and their allies walked out of the assembly to protest the vote. The lawmakers removed a clause excluding the attack on the life of the head of state from the proposed draft. The Law thus may now include in the amnesty thirty prisoners found guilty by a military tribunal in January 2003 of complicity in the assassination of the father of the present President. The justice minister will decide who will benefit from the Law. Supporters of the legislation believe that it is a step toward national reconciliation, a move that leaves behind a long period of civil war and bloodshed and opens the way for a general election by June 2006. (*National Assembly Passes Amnesty Law Despite Pro-Kabila MPs' Opposition,* AFP WORLD SERVICE, Nov. 29, 2005, FBIS, No. AFP20051130631002.)
(G.H. Vafai, 7-9845, gvaf@loc.gov)

GUINEA-BISSAU – New Government Named

On November 9, 2005, Guinea-Bissau established a new government after nearly two weeks of institutional paralysis. The West African nation had been without a government since late October, when President Joao Bernardo Vieira sacked Prime Minister Carlos Gomes Junior, with whom he had been feuding for months. The President's decision to replace Gomes Junior with a close ally and

former campaign director enraged the sacked Prime Minister and his African Party for the Independence of Guinea-Bissau and Cape Verde (PAIGC), which, as the largest contingent in parliament, claimed the constitutional right to nominate a new prime minister.

The appointment left the way open for a government that would be much more cooperative with Vieira, a controversial figure who first came to power in a 1980 coup, was deposed in the 1998-1999 civil war, and whose victory in July's presidential elections is still contested by the PAIGC. Speaking after his inauguration last week, new Prime Minister Aristides Gomes promised to form a government of consensus that would include all the country's political forces. (*New Government Named but National Unity Still a Long Way Off*, IRIN NEWS (a U.N. news service covering sub-Saharan Africa), Nov. 10, 2005, http://www.irinnews.org/report.asp?ReportID=50040&SelectRegion=West_Africa&SelectCountry =GUINEA-BISSAU (last visited Nov. 21, 2005).)
(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

KENYA – Proposed Constitution Voted Down

In a recent referendum, Kenyans voted to reject the new proposed constitution, originally slated to take effect in 2006. Therefore, the current Constitution of 1979, as amended, will remain in force. According to figures released by electoral officials, six of Kenya's eight provinces rejected the proposed constitution; many Kenyans celebrated the outcome on the streets of the capital city, Nairobi. Even though the ruling party of President Mwai Kibaki campaigned for the new charter, saying that it was designed to curb decades of abuse of power, opponents voted it down, fearing that its passage would further entrench the powers of the President. Opponents further argued that some of the provisions of the new document favored the Kikuyu ethnic group, the dominant tribe of President Mwai Kibaki. Jomo Kenyatta, the first Kenyan President, was also Kikuyu, and tribalism is always a threat to democratic rule in Kenya. (*Q&A: Kenya Referendum,* BBCNEWS, Nov. 22, 2005, http://news.bbc.co.uk/1/hi/world/ africa/4438976.stm; *Kenya Voters Rebuff Leaders on Revamping Constitution,* THE NEW YORK TIMES, Nov. 23, 2005, http://select.nytimes.com/gst/abstract.html?res=F20F14FE3D550C708EDDA80994 DD404482.)
(Charles Mwalimu, 7-0637, cmwa@loc.gov)

NAMIBIA – Anti-Corruption Commission

On November 10, 2005, the Namibian National Assembly (NA, one of two houses of the Namibian Parliament) unanimously endorsed the appointment of the director and deputy director of the country's first Anti-Corruption Commission. Petrus Noa, a regional magistrate, and Lorraine van der Merwe, a legal drafter in the Ministry of Justice, will head the Commission for the next five years. According to Prime Minister Nahas Angula, who tabled the names of the nominees to the NA, some applicants had "chickened out" during a second round of advertisements for the positions. "We tried to make sure to nominate and appoint the right people without ourselves being accused of offering jobs for pals," he said. "If they do not perform to our expectations, there are mechanisms in place in the law to have them replaced." However, a member of the opposition criticized the relative lack of experience of the appointees, characterizing the appointments as seeming "to be a classical case of 'in the land of the blind is a one-eyed king'," and insisting that the government provide assurances that properly qualified staff be put in place to carry out the work of the Commission. (Frederick Philander, *House Endorses Graft Fighters*, NEW ERA, Nov. 11, 2005, http://allafrica.com/stories11110326.html.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

NAMIBIA – Electronic Communications and Transaction Bill

The Use of Electronic Transactions and Communications Bill will soon be completed and presented to the Namibian Cabinet. The bill's objective is to increase the public's confidence and trust in modern technologies in conducting business. The bill is designed to recognize electronic writing, signatures, and records, as well as their evidential weight, in legal proceedings, subject to certain conditions. If promulgated, the law would create new crimes in Namibian criminal law, such as unauthorized access to, interception of, interference in, and misuse of data systems, programs, and information systems. Additionally, the crimes of fraud and extortion would be extended to electronic versions. (Tonderai Katswara, *Namibia's Electronic Bill on Track*, THE MARKETPLACE, Nov. 14, 2005, http://www.namibian.com.na/2005/November/marketplace/05E9B5FBCC.html.)
(Ruth Levush, 7-9847, rlev@loc.gov)

NAMIBIA – Legislation to Outlaw Smoking in Public

Namibia's Minister of Health and Social Services announced on October 26, 2005, that draft legislation implementing the WHO Framework Convention on Tobacco Control was to be submitted to the Cabinet for its approval. As a preliminary, on October 26, 2005, Parliament unanimously agreed that exposure to second-hand smoke had to be stopped. Namibia ratified the WHO Convention last year and has two years to implement its own legislation for tobacco control. The new legislation will ban smoking in public places, along with the advertisement, promotion, and sponsorship of tobacco products. (*Namibia to Clamp Down on Public Smoking*, ALLAFRICA.COM, Oct 27, 2005, http://allafrica.com/stories/ printable/200510270173.html.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

NIGERIA – Court Orders End to Gas Flaring

The Federal High Court in Benin City, Nigeria, has placed a ban on gas flaring by oil companies in the Niger River Delta and referred the law that had permitted the flaring to the Attorney General for a review of its constitutionality. The decision stated that gas flaring is a violation of the fundamental rights to life and dignity. Jonah Gbemre, representing the Iwherekan community in the delta region, had filed the case on July 20, 2005; it was supported by the organization Environmental Rights Action/Friends of the Earth Nigeria (ERA/FoEN) and the Climate Justice Programme of the United Kingdom. The environmental groups argued that gas flaring is harmful to good health and to the environment and thus is a violation of the rights guaranteed by the Constitution of the Federal Republic of Nigeria. Both Shell Petroleum Development Company and the Attorney General of Nigeria were listed as defendants. Shell has filed a notice of appeal against the court action. The Executive Director of ERA/FoEN, Nnimmo Bassey, said of the ruling:

> For the first time, a court of competent jurisdiction has boldly declared that the oil corporations have been engaged in illegal activities here for decades. … The victory marks a dawn in the struggle of the communities of the Niger Delta to have these flares of hell switched off. … [C]hildren here can hope to have a dark, quiet night, enjoy the chirps of birds and rest their ear drums from the awful noise of these gas flares.

Shell's Corporate/External Affairs Manager, Don Sotoibi Hoham, criticized the decision on procedural grounds, stating that the company is committed to ending routing gas flaring in Nigeria. He stressed Shell's investment in avoiding wasteful practices, stating:

> It is a big undertaking for which the company has over the last five years made significant investment of some $2 billion with its partners to develop major associated gas gathering projects to collect gas … and supply it … for power generation.… By the end of 2004, five projects had been completed and commissioned and were collecting 33 per cent of the associated gas that was previously flared.… We expect to spend another $1.85 billion to capture the remaining gas that is flared.

(*Court Asks Firms in Niger Delta to Stop Gas Flaring; Shell Appeals Ruling*, THE GUARDIAN, Nov. 15, 2005, FBIS, No. AFP20051115638002.)

In another development related to oil companies' operations in Nigeria, labor leaders have urged the government to put policies in place to make sure that multinational companies accurately declare their income from oil and gas operations in the country. (*Labor Urges Government to Devise Law to Ensure Oil Firms Render Proper Accounts*, MINAJ BROADCAST INTERNATIONAL TELEVISION, Nov. 14, 2005, FBIS No. AFP20051115606008.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

SOUTH AFRICA – Companies Amendment Bill

The Companies Amendment Bill was published in July 2005. It introduces new rules regarding financial and accounting reports. In lieu of the previous distinction between public and private companies, the bill proposes a uniform incorporation structure with additional requirements for those companies that offer shares and/or other securities to the public.

> The distinction comes down to simply whether the company offers its shares to the public, or takes deposits or loans from the public. … It is believed that these accounting requirements are the first of many that will apply to public interest companies, with issues such as corporate governance and remuneration committees to follow.

(Emma Kingdon, *South Africa: Companies Amendment Bill: Steps Towards Complete Overhaul*, MONDAQ.COM, *at* http://www.mondaq.com/i_article.asp_Q_articleid_E_35618 (last visited Nov. 7, 2005).)
(Ruth Levush, 7-9847, rlev@loc.gov)

SOUTH AFRICA – Diamonds Amendment Bill

The National Assembly approved an amendment to the Diamonds Act. The amendment is expected to allow South Africa to get a larger part of the overall diamond business. The new law will compel miners to first offer their diamonds to a state trader that will make stones available to local cutters and polishers, thus generally compelling producers to route their exports through a state-controlled export center. Under the system operating in South Africa prior to the coming into effect of the amendment, mining companies, led by De Beers, send the rough stones from Africa to London, where they can be mixed with stones from other countries and then processed, often in India, where the costs are lowest. De Beers's biggest shareholder, Anglo American, has warned that the proposed law

would lead to the demise of the Diamond Trading Company and to massive job losses. The bill will be referred to the parliament's lower house and be implemented once the finance portion of the law is approved. (*Lawmakers Approve South African Mining Bill*, JCK MAGAZINE.COM, *at* http://www.jckgroup.com (last visited Nov. 7, 2005); Clare Nullis, *S. Africa Pushes Diamonds Amendment Bill*, BUSINESSWEEK ONLINE, http://www.business week.com (last visited Oct. 17, 2005).)
(Ruth Levush, 7-9847, rlev@loc.gov)

SWAZILAND – Bill to Impose Death Penalty for Child Rape, Intentional Transmission of AIDS

On November 9, 2005, the Swaziland Government released the draft of the Sexual Offences and Domestic Violence Bill 2005. This provides the death penalty for anyone convicted of rape if the victim is below the age of fourteen, or if the perpetrator has parental power over the child, or if HIV and AIDS are an aggravating factor. Swaziland has the world's highest HIV infection rate, with an estimated forty percent of adults afflicted. Attempts by social workers to disabuse infected men of the belief that having intercourse with a virgin will cure the disease have not been successful. There have been widely reported incidents in which HIV-positive men have raped children under their guardianship. The bill was drawn up by the Ministry of Justice and Constitutional Affairs, after consultation with health and welfare groups and with the general public. (*Swaziland: New Law Says Death to Child Rapists in Fight Against AIDS*, IRINNEWS.ORG, Nov. 9, 2005, http://www.irinnews.org/report.asp?ReportID=50011&SelectRegion=Southern_Africa&SelectCountry=SWA.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

SWAZILAND – Overhaul of Judicial System Proposed

The Minister of Justice and Constitutional Affairs of Swaziland has proposed a reform of the entire judicial system. Speaking to the House of Assembly, he stated that he had developed plans to improve working conditions at the national court. The remarks came just one week after the President of the Industrial Court, Nderi Nduma, had complained that working conditions were inadequate for judges. The proposal involves the use of more staff to assist judges and increased fines for offenses. (*Justice Minister Sees Need to Overhaul Judiciary*, THE SWAZI OBSERVER, Nov. 14, 2005, FBIS No. AFP20051115531001.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

UGANDA – Constitution and Election Law

Uganda has general and presidential elections upcoming on February 12, 2006. Yoweri Museveni, President of Uganda, has been the head of state for nineteen years, following many years of instability in the country and the dictatorships of Idi Amin and Milton Obote. Museveni has pushed for an amendment to the Constitution, which imposes a two-term limit on the presidency. The Ugandan Parliament recently voted 232 to 50 to lift the two-term limit on the presidency and allow Museveni to run for another six years. Museveni would then serve a total of twenty-five years in this office.

Political parties have been suspended in Uganda. Elections to Parliament are based on "merit," the candidates not belonging to any political party. The law regulating elections requires that political campaigns by a candidate be chaired by an official of the Electoral Commission. No candidate may address the public individually. Candidates are prohibited by law from holding a meeting of more than ten people in a public place. A candidate may, however, have consultative meetings with agents.

Should he decide to run as indicated in his pre-election maneuvers, Museveni is the favorite to win the elections. (*The Institutional and Legal Context of the Elections in Uganda,* UGANDA-THE 2006 ELECTIONS, Nov. 30, 2005, http://makerere.ac.ug/socialsciences/Uganda%202006%20elections/Index.htm; *Uganda Leader Predicts Poll Win,* BBC NEWS, Nov. 29, 2005, http://news.bbc.co.uk/2/hi/africa/4483230.stm; *By Fits and Starts, Africa's Brand of Democracy Emerges,* THE NEW YORK TIMES, Nov. 23, 2005, http://www.nytimes.com/2005/11/23/international/ africa/23uganda.html.)
(Charles Mwalimu, 7-0637, cmwa@loc.gov)

UGANDA – Embezzlers to Lose Personal Wealth

Uganda's *The Monitor* reported on November 12, 2005, that the Government of Uganda announced that it would seize the property of officials found to have embezzled money from the Global Fund (GF) and use it to pay back the millions of dollars taken from the Fund's grant. (Solomon Muyita, *GF Culprits to Lose Personal Wealth – Govt*, THE MONITOR (Kampala), Nov. 12, 2005, http://allafrica. com/stories/200511110438.html (last visited Nov. 13, 2005).) The GF, headquartered in Geneva, "was created to finance a dramatic turn-around in the fight against AIDS, tuberculosis, and malaria. … To date, [it] has committed US$3 billion in 128 countries to support aggressive interventions against all three," through funding new and existing programs. (The Global Fund to Fight AIDS, Tuberculosis and Malaria, http://www.theglobalfund.org/en/ (last visited Nov. 16, 2005).)

On November 10, 2005, the GF Secretariat announced the lifting of the ban it had imposed on grants to Uganda on August 23. The Secretariat now is convinced that Uganda is taking appropriate steps to address the misuse of funds. GF grants had been suspended on the basis of a July 2005 audit report, prepared by PricewaterhouseCoopers, citing serious mismanagement of the initial US$45 million grant to Uganda. The total amount of grants approved is US$360 million. The Secretariat apparently has a system in place to determine the amounts embezzled and will await the result of Uganda's investigation, which is being conducted by a Commission of Inquiry. The Ugandan Government's Auditor General's Office is also conducting an audit of the accounts of the HIV program rounds. In addition, the country's Project Management Unit was replaced with an international professional management firm that will act as a caretaker for the next year. The Minister of Health stated that the government would follow the recommendations of the investigation and audit reports in determining whether any taxpayer funds would be used to restore the embezzled money. However, he stated, "if anybody was found to have embezzled any money, we have the capacity to ask them [to] pay it and if they cannot, we take their property or even send them to jail." The country must refund all the monies found to have been embezzled by Ugandan officials at the time of the GF's suspension of the grants. (Muyita, *id*.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

ZIMBABWE – Election for New Legislative Body

The governing party of Robert Mugabe, President of Zimbabwe, on November 26, 2005, won an overwhelming victory in the election for the newly created upper house of Parliament. Political analysts indicated that the most striking feature of the vote was the record low turnout, perhaps fifteen percent. The previous record for a low turnout, in Zimbabwe's 1996 presidential elections was about thirty percent.

The governing Zimbabwe African Union - Patriotic Front won all but a handful of the races for the sixty-six seats in the new national Senate. Observers do not anticipate that the Senate will be a truly democratic institution, but rather a rubber stamp for Mugabe's policies. It will also exercise veto powers over legislative measures of the lower house. The main opposition group, the Movement for Democratic Change, which had called for a boycott of the vote, is itself involved in internal disputes, threatening to discipline its president. (*Mugabe's Party Wins Zimbabwe Poll,* BBC NEWS, Nov. 28, 2005, http://news.bbc.co.uk/1/hi/world/africa/4475640.stm; *Zimbabwe's Governing Party to Run New Senate,* THE NEW YORK TIMES, Nov. 28, 2005, http://www.nytimes.com/2005/11/28/international/africa/28zimbabwe.html; Liisa Laakso, *Opposition Politics in Independent Zimbabwe*, 7:2&3 AFRICAN STUDIES QUARTERLY, http://web.africa.ufl.edu/asq/v7/v7i2a6.htm (last visited Dec. 1, 2005).)
(Charles Mwalimu, 7-0637, cmwa@loc.gov)

EAST ASIA & PACIFIC

AUSTRALIA – Bankers, Publishers Question Proposed Anti-Terror Law

New anti-terrorism legislation is being considered by Australia's Parliament. The Anti-Terrorism Bill (No. 2) was introduced on November 3, 2005, and referred to the Senate Legal and Constitutional Legislation Committee, which is to report on November 28, after holding an inquiry and inviting submissions. A final vote in the Senate was expected on December 6, 2005. The draft bill would amend existing federal laws to allow for: close monitoring of suspected terrorists; detention without charge to prevent a terrorist act or preserve evidence; new questioning, search, and seizure powers at airports; expanded sedition offenses; and amendments to information gathering powers granted to law enforcement and security agencies. It would also amend the Financial Transaction Reports Act 1988 to implement special recommendations on terrorist financing.

The proposed legislation is controversial and has attracted a great deal of comment and criticism. The sedition provisions in particular have attracted much attention, with government Members of Parliament joining opposition spokesmen and civil liberties organizations to express reservations about the possible threat to free speech posed by such provisions as a seven-year prison term for promoting overthrow of the government by force. Among the 276 submissions to the Senate Committee from such bodies as the Australian Council for Civil Liberties, the Law Council of Australia, and the Australian Muslim Civil Rights Advocacy Network are statements of opposition from the Australian Bankers Association and the Press Council, which represents the leading publishers. The bankers are concerned with the "width and vagueness" of the new offense of financing a terrorist, which could apparently result in bank workers being sentenced to life imprisonment. A representative of the Fairfax Group, a major publisher of newspapers, characterizes the expansion of the sedition laws as "the gravest threat to publication imposed by the government in our history." (Parliament of Australia, Parliamentary Library, *Anti-Terrorism Bill 2005*, Nov. 3, 2005, Bills Digest No. 62, 2005-06, http://www.aph.gov. au/library/pubs/bd/2005-06/06bd062.pdf; Parliament of Australia, Senate Legal and Constitutional Committee, *Inquiry into the Provisions of the Anti-Terrorism Bill (No. 2) 2005*, http://www.aph.gov.au/ Senate/committee/legcon_ctte/terrorism/info.htm; *Bankers Worried about Terror Laws*, THE AUSTRALIAN, Nov. 11, 2005, http://www.theaustralian.news.com.au/; *Putting a Muzzle on the Media*, THE AGE, Nov. 15, 2005, http://theage.com.au/.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

AUSTRALIA – High Court Raises Citizenship Issues

An August 2005 High Court of Australia decision on a citizenship case indicates that more than a century after a federation established the country's current constitutional structure (1901), some fundamental issues such as the meaning of citizenship and the geographical extent of "Australia" remain unresolved. The case, *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex Parte Ame* (2005), concerned a man born in Papua in 1967 who contested deportation by arguing that he was a citizen of Australia by birth and so could not be removed (to Papua New Guinea) without his consent. The Court declared that although the former possession of British New Guinea had been transferred to the Commonwealth of Australia in 1906 and was treated as an "external territory" of Australia, people born there were never "full" or "real" Australian citizens. When Papua and New Guinea became independent in 1975, those born there became citizens of the new country and lost any claim to any form of Australian citizenship.

The Court's decision, which was one of a series of recent judgments on the status of citizens and aliens, appears to indicate that some Australian citizens are more equal than others, that citizenship can be revoked by executive action, and that those citizens holding dual nationality might, in some circumstances, be regarded as aliens. A basic issue is that Australia's Constitution does not define citizenship and does not explicitly grant the Commonwealth (the federal government) the power to make laws on citizenship. This was a deliberate decision made at the 1898 Constitutional Convention to meet the objections of some delegates who were very reluctant to grant the proposed federal government any but the most limited powers and who envisioned a structure more in the nature of a customs union of quasi-autonomous governments than a centralized state

In Ame's case, the Court interpreted the constitutional provisions on the federal government's power to make laws for territories (as distinct from states) to mean that the federal Parliament had the power to make the inhabitants of territories citizens, or second-class citizens, or holders of whatever status it decided. Furthermore, Parliament could, by a majority vote, alter the citizenship status of such persons at any time. The case, in conjunction with a 2004 case involving the "alien" status of children born in Australia to parents who were not citizens, also raised further questions about the status of dual nationals in Australia. The possibility that naturalized Australian citizens, most of whom could be considered to retain their original citizenship as well, might have their Australian citizenship revoked if convicted of criminal offenses was explicitly raised by Prime Minister John Howard in a September 8, 2005, news release on proposed new counter-terrorist laws. (*Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex Parte Ame* [2005] HCA 36 (Aug. 4, 2005), http://www.austlii. edu.au/cases/cth/HCA/2005/36.html; Parliament of Australia, Parliamentary Library, *Mate! Citizens, Aliens and 'Real Australians' the High Court and the Case of Amos Ame*, Research Brief No. 4, 2005-06 (Oct. 27, 2005), http://www.aph.gov.au/library/pubs/rb/2005-06/06rb04.pdf; Media Releases, John Howard, Prime Minister of Australia, *Counter-Terrorism Laws Strengthened* (Sept. 8, 2005), http://www.pm.gov.au/news/media releases/media Release1551.htm (last visited on Nov. 7, 2005).)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

CHINA – Avian Flu Counter-Measures

In November 2005, the Chinese Government ratcheted up its response to the spread of highly pathogenic avian influenza, or bird flu, in the People's Republic of China (PRC). On November 16, 2005, the first three confirmed human cases of the disease were reported in Hunan Province; two of the cases were fatalities. On the day before, the Ministry of Agriculture had announced that it would vaccinate all of the country's poultry against the virus, which would be the largest single immunization effort in history for any species, according to the U.N. Food and Agriculture Organization (FAO). However an FAO official stated, "at this point we can not say if such a massive program is either possible or advisable." (*China Reports Three Human Bird-Flu Cases*, XINHUA, Nov. 16, 2005, http://www.chinadaily.com.cn/english/doc/2005-11/16/content_495289.htm; *China Aims to Vaccinate All Poultry*, Nov. 15, 2005, *Avian Flu Reported in China, Thailand, Vietnam*, Nov. 4, 2005, & *Indonesia Has Two HFN1 Cases: China Seeks WHO Help*, Nov. 7, 2005, Center for Infectious Disease Research & Policy website, http://www.cidrap.umn.edu/cidrap/content/influenza/avianflu/news/nov1505china.html, http://www.cidrap.umn.edu/cidrap/content/influenza/avianflu/news/nov0405outbreaks.html, & http://www.cidrap.umn.edu/cidrap/content/influenza/avianflu/news/nov0705avflu.html, respectively.) At the end of October, in the aftermath of consecutive outbreaks of avian flu in several provinces within one week, an article in the PRC financial magazine *Caijing* had criticized the government announcements about the outbreaks to the public as being "still obviously delayed and incomplete," even though government actions were an improvement over the handling of the 2003 Severe Acute Respiratory Syndrome (SARS) outbreaks, which had been treated as classified information. (*PRC: Caijing Article Says Local Officials Not Open About Avian Influenza*, CAIJING, Oct. 31, 2005, FBIS No. CPP20051114335001.)

Among the most notable recent legal measures instituted to combat the disease in the PRC are the Contingency Regulations for Major Animal Epidemics, adopted by the State Council on November 16, 2005, and effective as of November 18. The Regulations require provincial governments to report major cases of an animal epidemic disease to the State Council within four hours of discovery. For county or city governments, the reporting requirement (to be made to the provincial authorities) is two hours. The Regulations stipulate that government officials in charge who neglect their duties in regard to various aspects of animal epidemic control and prevention may face administrative punishment such as removal from their posts and even criminal prosecution. Those who embezzle emergency funds or reserve supplies will be punished under the provisions of the Regulations on Punishments and Sanctions for Illegal Acts Involving Public Finance (available at LAW-LIB.COM, http://www.lawlib.com/law/law_view.asp?id=87712); those who obstruct animal epidemic prevention investigative agencies or fail in their reporting duties may be subject to a warning, a fine, or, where applicable, criminal liability; and those who embezzle emergency funds or reserve supplies or drive up the prices of goods and defraud consumers may be subject to administrative or criminal punishment. (*Zhong Da Dongwu Yiqing Yingji Tiaoli* (Contingency Regulations for Major Animal Epidemics), LAW-LIB.COM, http://www.lawbook.com.cn/law/law_view.asp?id=112325; *Text of Contingency Regulations for Major Animal Epidemics*, XINHUA, Nov. 20, 2005, FBIS No. CPP20051120063029.)

On November 29, 2005, the State Intellectual Property Office (SIPO), based on the PRC Patent Law (last amended effective July 1, 2001) and in accordance with relevant World Trade Organization (WTO) provisions on trade-related aspects of intellectual property rights (TRIPS), promulgated the Measures on Compulsory Licenses for Exploitation of Patents Concerning Public Health Problems

(effective Jan. 1, 2006). Article 49 of the Patent Law states that in emergency situations, the patent officials may grant a compulsory license for the exploitation of invention or utility model patents. Under the new Measures, infectious diseases are defined as AIDS, pulmonary tuberculosis, malaria, and "other infectious diseases that cause public health problems" as prescribed in the Law of the PRC on the Prevention and Cure of Infectious Diseases (last amended effective Dec. 1, 2004). If the PRC has the capacity to produce a drug to cure a certain infectious disease, for which patent rights have been granted, the competent department under the State Council may request the SIPO to grant a compulsory license to exploit the patent. If the PRC lacks sufficient capacity to produce the drug, that relevant department may request the SIPO to grant a compulsory license to import the drug manufactured by any WTO member, using a system determined by the WTO General Council's relevant Decision. When such a compulsory license to import the drug is granted, exportation of that drug to other countries or regions is prohibited. Furthermore, the licensee will pay "a reasonable remuneration" to the patent right owner. (44 ISINOLAW WEEKLY (Nov. 28-Dec. 4, 2005), from webmaster@isinolaw.com; text of Measures in Chinese & in English, *at* Isinolaw 75175-10010452 & 76837;286-10010452[sic], respectively.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – Ban on Selling Alcohol to Minors

The Alcohol Circulation Management Regulations were enacted by China's Ministry of Commerce on November 10, 2005, and will be effective on January 1, 2006. This first nationwide regulation on managing alcohol sales includes a ban on selling alcohol to minors. The regulations set up various systems to supervise alcohol vendors, including a registration and tracing system. The new rules also stipulate that trade administration departments at all government levels cannot block or undermine the legal circulation of alcohol products. This is being widely viewed as an effort by the central government to curb protectionism in regional trade. (*China Banning Alcohol Sale to Minors,* XINHUA NET, Nov. 10, 2005, *at* http://news.xinhuanet.com/english/2005-11/10/content_3760872.htm.)
(Rui Wei, 7-9864, rwei@loc.gov)

CHINA – Company Law Amended

On October 27, 2005, the Standing Committee of China's National People's Congress adopted a major amendment of the Company Law, which was originally promulgated on December 29, 1993, and previously amended in 1999 and 2004. Some highlights of the amended provisions are as follows:

1) Provisions on share transfer and listed companies, which had overlapped and even conflicted with like provisions in the Securities Law, were rationalized and made to apply only to the "organization and activities of companies." Content on conditions for stock listings, suspension of trading, and the like was removed (and inserted, with changes, in the newly amended Securities Law).

2) The establishment of one-person (natural or legal) companies is now permitted.

3) There is a lowered minimum registered capital requirement of RMB30,000 (about US$3,700) for limited liability companies, payable in installments; for companies limited by shares, the minimum amount of registered capital required has been lowered from RMB10 million to RMB5 million (about US$1.2 million to $619,000).

4) The Law eliminates the restriction that a company's overseas investment be a fixed percentage of corporate assets.

5) Provisions have been added on shareholder lawsuits.

6) Listed companies must now establish the post of independent director (the State Council will stipulate specific measures in this regard).

7) There is a separate chapter on the qualifications and obligations of corporate directors, supervisors, and senior executives. In particular, there is an article specifying that stipulated methods be to be followed within a stipulated time period in the case of suits by shareholders against directors, supervisors, or senior executives who cause damage to the company and who are to assume liability for compensation.

(40 ISINOLAW WEEKLY (Oct. 31-Nov. 6, 2005), at 1-2, from webmaster@isinolaw.com; Wu Kun, *Explanatory Reading of the Revision of the Company Law by Contrasting the Provisions of the New and Old Law*, LEGAL DAILY, Nov. 1, 2005, http://www.legaldaily.com.cn/misc/2005-11/01/content_213874.htm.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – Foreign Central Banks' Assets Protection

On October 25, 2005, China's National People's Congress Standing Committee adopted a Law on Exemption of Foreign Central Bank Assets from Compulsory Judicial Enforcement. Although in practice Chinese courts have not exercised jurisdiction over or enforced compulsory measures in regard to foreign central banks, heretofore there was no specific legislation on the subject. The impetus behind adoption of the Law may have been to address the concerns of foreign central banks in Hong Kong, in particular about the lack of laws protecting their assets after Hong Kong reverted to Chinese rule. (*China to Exempt Foreign Central Bank's [sic] Assets from Judicial Enforcement*, BBC MONITORING INTERNATIONAL REPORTS, Oct. 25, 2005, LEXIS/NEXIS, News Library, 90days File.)

Under the four-article Law, China exempts foreign central bank assets from compulsory judicial measures of asset preservation and enforcement, with the exception of assets in regard to which the foreign central bank or its home government gives written notice waiving the exemption and assets designated for use in asset preservation and enforcement. "Foreign central banks" refer to central banks of foreign countries or regional economic integration organizations or financial supervision organs that exercise the functions of a central bank. "Foreign central bank assets" refer to a foreign central bank's cash, bills, bank deposits, securities, foreign exchange reserves, gold reserves, and real estate and other assets.

Where a foreign country does not grant the same kind of exemption to the assets of China's central bank or the assets of its Special Administrative Regions' (Hong Kong and Macao) financial supervision organs, China will observe the reciprocity principle. The Law entered into effect on the date of its promulgation, which was also October 25. (*Law of the People's Republic of China on Exemption of Foreign Central Bank Assets from Compulsory Judicial Enforcement*, Oct. 25, 2005, WWW.LAW-LIB.COM, http://www.law-lib.com/law/law_view.asp?id=102453; *NPC Adopts Law to Exempt Foreign Central Bank Assets from Judicial Enforcement,* XINHUA, Oct. 25, 2005, FBIS No.

CPP20051025079047; *Bill on Exempting Foreign Central Banks Properties' from Compulsory Judicial Enforcement*, XINHUA ECONOMIC NEWS SERVICE, Nov. 1, 2005, LEXIS/NEXIS, News Library, 90days File.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – Labor Contract Law Enacted

On October 28, 2005, a draft law on labor contracts was passed during an executive meeting of China's State Council in Beijing. The meeting said that the labor contract system was set up in July 1994 and has been playing an important role in promoting the harmonious relationship between employees and employers. The draft law is to be sent to the Standing Committee of the National People's Congress for deliberation. (*China to Enact Labor Contract Law,* PEOPLE'S DAILY, Oct. 31, 2005, *at* http://english. people.com.cn/200510/31/eng20051031_217877.html.)
(Rui Wei, 7-9864, rwei@loc.gov)

CHINA – Personal Income Tax Law Amended

The Standing Committee of the National People's Congress (NPC) of the People's Republic of China amended the Law on Personal Income Tax on October 27, 2005. The Law was adopted by the NPC on September 10, 1980, and last amended by an NPC Standing Committee decision adopted on August 30, 1999. The new Decision on amending the Law specifies two major changes. First, the amount of deductible expenses from income was increased from the former 800 *yuan* to 1,600 *yuan* (about US$198) (article 6, paragraph 1, item 1 and Rate Table One). (The first version of the proposed amendment had called for the level to be raised to 1,500 *yuan*. *See* 2005 W.L.B. 09.) The other change has to do with withholding. The Decision adds a new last sentence to the effect that withholding agents will file returns on withholding for all employees in the full amount according to state provisions (article 8). The amended Law enters into effect on January 1, 2006. (*Decision of the Standing Committee of the National People's Congress on Amending the Law on Personal Income Tax of the People's Republic of China* (in Chinese), National People's Congress website, http://law.npc.gov.cn:87/home/begin1.cbs (search page) (last visited Nov. 16, 2005); *Individual Income Tax Law Amended After the Legislative Hearing*, 39 ISINOLAW WEEKLY (Oct. 24-30, 2005), webmaster@isinolaw.com.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – Supreme Court Reform Plan

China's Supreme People's Court (SPC) issued a new five-year reform plan (2004-2008) on October 26, 2005. The plan, whose drafting commenced in 2002, carries on the changes of the first reform plan of 1999. Among the fifty new measures and decisions is one that removes provincial courts' authority to approve the death penalty and restores that power to the SPC (*see* 2005 W.L.B. 11). Some of the key issues addressed by the measures include:

- trial procedures: e.g., reform and perfect adjudication procedures and procedures of review for death penalty cases and reform the criminal evidence system;
- adjudicative guidance and uniform application of law: e.g., in regard to death penalty and other criminal cases, formulate sentencing guidelines and standards for uniform application of the law;

- procedures for implementation of verdicts;
- adjudicative organization and adjudicative mechanisms: e.g., direct organization by adjudication committees of collegial benches to hear major, difficult, and complicated cases or those of universal significance in application of the law; establishment of a system of responsibility for independent adjudication of cases. (Adjudication committees, composed of Chinese Communist Party officials that include at least one judge, examine a case file without hearing statements or meeting defendants or counsel. The committee's decision on a case is binding on the collegial bench. The committee members are appointed by the legislature at the corresponding administrative level, upon the recommendation of the court president.) (Amnesty International, *People's Republic of China: 'Executed According to Law'? – The Death Penalty in China,* Mar. 22, 2004, ASA 17/003/2004, http://web.amnesty.org/library/index/engasa170032004);
- management of judicial adjudication and administration: e.g., improve the quality and efficiency of the adjudicative process and of court work-related technology;
- management of judicial personnel; and
- internal and external supervision of the courts.

(Chen Yonghui, *The People's Courts Start a New Round of Comprehensive Reform, 50 Measures Will Push Judicial Reform Towards a New Stage: The Supreme People's Court Issues the Second Five-Year Reform Plan,* RENMIN FAYUAN BAO, Oct. 27, 2005, China Courts Net, http://www.chinacourt.org/public/detail.php?id=182741; *SCMP: Supreme Court Reform Plan could Result in Fewer Executions,* SOUTH CHINA MORNING POST, Oct. 27, 2005, FBIS No. CPP20051027517016.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

JAPAN – Compensation for Judges Reduced

The Japanese Constitution guarantees the independence of judges and prescribes that compensation for a judge will not be reduced. However, the Supreme Court in Japan voluntarily decided to follow a recommendation to decrease government employees' salaries that was issued by the National Personnel Authority (NPA). The NPA recommended the 4.8 percent decrease in national government employee salaries, as well as a change in the locality pay adjustments, I August 2005. After the Supreme Court's resolution was issued, the Diet amended the law concerning judges' compensation to decrease their salaries. (*Saibankan hōshū, chiiki kakusa no kakudai mitomeru* [Judges' Salaries: Enlarge Locality Adjustments], YOMIURI ON-LINE, Sept. 28, 2005, at 14:17, http://www.yomiuri.co.jp/national/news/ 20050928i306.htm.)
(Sayuri Umeda, 7-0075, sume@loc.gov)

JAPAN – More Chemicals in Food Regulated

Based on the current Food Sanitation Law (Law No. 233 of 1947, as amended), Japan's Health Ministry had set maximum levels of residues in food of 283 chemicals, including agricultural chemicals and animal drugs. A 2003 amendment of the Law enabled the Ministry to regulate more chemicals. Based on that amendment of the Law, the Pharmaceutical and Food Council, under the Health Ministry, has deliberated on which chemicals are to be newly regulated. The Council submitted its recommendation in October 2005, and on the basis of that recommendation, the Ministry has now decided to regulate 799 chemicals. The new standards will be enforced from May 29, 2006. (*Zanryū*

nōyaku no kisei kakudai [Extend Regulation of Residue of Agricultural Chemicals], YOMIURI-ONLINE, Nov. 10, 2005, at 21:19, http://www.yomiuri.co.jp/science/news/20051110it12.htm.)
(Sayuri Umeda, 7-0075, sume@loc.gov)

KOREA, SOUTH – Bioethics

Under the Act on Bioethics and Safety (Act No. 07150, Jan. 19 2004) of the Republic of Korea, supplying sperm or eggs for commercial purposes is prohibited. On November 6, 2005, the Korean police arrested several Koreans who, it is alleged, sold the egg cells of Korean women to infertile Japanese.

The head of a fertility clinic, Sung-il Roh, was investigated in connection with the case. No charge was brought against him. However, because Roh was involved in Professor Hwang Woo-suk's effort to clone human embryos, which required a massive number of human eggs, the Democratic Labor Party (a non-ruling party) and private groups are demanding a public study on the background of the eggs that were used for human embryo research. (*Fertility Doctor Denies Illegal Ova in Stem Cell Research*, DIGITAL CHOSUNILBO, Nov. 8, 2005, *at* http://english.chosun.com/w21data/html/news/200511/200511080021.html.)
(Beom Chul Shin & Sayuri Umeda, 7-0075, sume@loc.gov)

KOREA, SOUTH – Justice Minister vs. Prosecutor General

Article 8 of the Public Prosecutor's Office Law of the Republic of Korea stipulates that the Justice Minister may direct and supervise the Prosecutor General in specific cases. For the first time, the Justice Minister exercised this ministerial power in a case involving the National Security Law.

Justice Minister Jung-bae Chun issued directives to the Prosecutor General that disallowed the arrest of Dongguk University sociologist Jeong-koo Kang. Kang's posting of his own pro-North Korea writings on an Internet news media site were regarded as a violation of the National Security Law, which in article 7 prohibits praising and propagating the activities of an antigovernment organization with certain knowledge. The Minister said that the arrest and the detention were not necessary and suggested the Prosecutor's Office was affected by public opinion.

The Prosecutor General resigned from his position to protest the Minister's intervention. President Roh has been trying to repeal the National Security Law. (*Minister Vetoes Academic's Detention*, JOONGANG DAILY, Oct. 13, 2005, *at* http://joongangdaily.joins.com/200510/12/2005101222544359799000090309031.html.)
(Seung Eun Lee & Sayuri Umeda, 7-0075, sume@loc.gov)

MACAO – Draft Bills Against Terrorism and Money Laundering

On October 28, 2005, the Legislative Council of the Macao Special Administrative Region (MSAR) of the People's Republic of China approved in principle bills to combat terrorism and money laundering. Under the new legislation, the maximum penalty is twenty years' imprisonment. Secretary for Administration and Justice Florinda Chan told legislators that Macao's current anti-terrorism legislation provides safeguards for internal public security only and that a separate law was needed to define terrorist acts as crimes. The new bill classifies terrorist offenses as internal and international

crimes, in order to expand the scope of applicability of the Criminal Code by clearly establishing that the MSAR has the obligation to protect China and its citizens from damage caused by acts of terrorism. (*Legislature Approves Anti-Terrorism and Money-Laundering Bill*, BLOGMACAU.INFO, Oct. 29, 2005, http://macau.blogharbor.com/blog/Government/_archives/2005/10/29/1328642.html.)

Secretary Chan stated that the anti-money laundering bill, whose drafting began in 2003, is in part designed to bring Macao's legal framework in line with the relevant international agreements the MSAR has signed. The bill provides for imprisonment of three years or more for conviction on charges of money-laundering activities. It regulates a range of institutions: casinos, currency exchanges, cash transfer companies, banks, insurance companies, property developers and agents, jewelry shops, labor services companies, the business registry's government officials, auditors, and accountants. Institutions and individual employees have the obligation to find out their clients' identity; to know the nature of a client's business dealings; to refuse to do business with clients who are unable to provide such information; and, should they see their clients engage in money-laundering activities, to report it and cooperate with the relevant government departments. Secretary Chan denied that the government had been pressured to push through enactment of the bill due to U.S. allegations in September 2005 that Macao banks were involved in North Korean money-laundering activities. (*SCMP: Macau Acts to Rein in Money Laundering*, SOUTH CHINA MORNING POST, Oct. 29, 2005, FBIS No. CPP20051029506020.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

MONGOLIA – Corruption Convention to Be Ratified

On October 27, 2005, Mongolia's Parliament agreed to ratify the United Nations Anti-Corruption Convention. The possibility of acceding to the Convention had been discussed by the Cabinet and a parliamentary committee in April, and Mongolia's representative at the U.N. signed the document on April 29, 2005. Some of the nation's laws and regulations will need to be amended to be consistent with the Convention. The United Nations Development Program, the Zorig Foundation, and the National Council to Fight Corruption have created a website devoted to the fight against corruption that includes information about relevant laws (http://www.anticorruption.mn, in Mongolian).

Corruption is a growing problem in Mongolia, according to a study produced for the U.S. Agency for International Development's office in Ulaanbaatar, in August 2005. (*Assessment of Corruption in Mongolia,* Aug. 31, 2005, http://www.usaid.gov/mn/library/documents/MongoliaCorruptionAssessment_FinalReport.pdf.) The Convention has previously been signed by more than thirty nations. (*Mongolia to Ratify UN Graft Convention,* THE MONGOL MESSENGER, Nov. 2, 2005, via LEXIS/NEXIS, Asiapc Library, Curnws file.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

NEW ZEALAND – Criminal Procedure Bill Reinstated

The new Government headed by Prime Minister Helen Clark has reinstated the Criminal Procedure Bill that had died when Parliament was dissolved and a general election was called in September 2005. (New Zealand House of Representatives, EXTRACT FROM THE JOURNALS OF THE HOUSE OF REPRESENTATIVES OF THE FIRST SESSION OF THE FORTY-EIGHTH PARLIAMENT OF NEW ZEALAND, Nov. 8, 2005, http://www.clerk.parliament.govt.nz/NR/rdonlyres/4EFB3AB8-813E-47DD-8C61-73980FB189BC/16506/ExtractReinstatementmotion.pdf; *see New Zealand: Proposal for Jury*

Reform, 2004 WLB 8.) The election result was very close and following lengthy negotiations, a coalition was put together that allowed the Prime Minister to remain in power and reinstate a number of bills introduced in the 47th Parliament. The Criminal Procedure Bill had already been reported out of the appropriate committee on July 29, 2005.

The Committee report recommended minor changes to the bill, but basically approved its major provisions respecting trials by jury alone in exceptional circumstances, two exceptions to the rule against double jeopardy, majority verdicts, the codification of criminal disclosure, and the partial abolition of preliminary hearings. One particular aspect of the Government's Bill that the committee endorsed is the recognition that trial by judge alone may be appropriate where there is jury intimidation. The committee also agreed that a person whose acquittal has been tainted may be tried again for the same offense. This occurred in a case in which the accused procured a witness to give false testimony. (Law and Order Committee, Criminal Procedure Bill, 158-2, 47th Parl. 1st Sess. (2005).)
(Stephen Clarke, 7-7121, scla@loc.gov)

TAIWAN – Budgets For Weapons Procurement Canceled

On November 9, 2005, the legislative national defense committee ruled to cancel two budgets set aside for weapons procurement – NT$10.9 billion (about US$327,000) earmarked for three PAC-III Patriot anti-missile systems and NT$40 million (about US$1.2 million) of preparatory funds for the purchase of twelve P-3C anti-submarine patrol aircraft. The committee cited, in support of its decision, the results of a referendum held in tandem with the 2004 presidential elections that failed to garner the necessary majority required to validate the proposals. (*Legislature Torpedoes Patriot Missiles,* TAIPEI HEADLINES, Nov. 10, 2005, *at* http://english.www.gov.tw/TaiwanHeadlines/index.jsp?categid=8&recordid=88241.)
(Rui Wei, 7-9864, rwei@loc.gov)

TAIWAN – Constitutional Reform Hurried by President

On October 28, 2005, at an international conference on constitutional reform held by a Presidential Office panel, Taiwanese President Chen Shui-bian pledged that the second phase of the planned constitutional reforms would be carried out according to the "deliberative democracy" concept, concerning facilitating extensive citizen participation in the process. Chen said that Taiwan achieved the first phase of its constitutional reforms on June 7, 2005, by abolishing the National Assembly to allow for public referenda on future constitutional amendments. (*President Talks of the Need for Constitutional Reform,* TAIPEI TIMES, Oct. 28, 2005, *at* http://www.taipeitimes.com/News/taiwan/archives/2005/ 10/28/2003277680/print.)
(Rui Wei, 7-9864, rwei@loc.gov)

TAIWAN – Election Campaign VCD Makers to Be Prosecuted

On November 14, 2005, a top law enforcement official said that individuals who made VCDs that defamed candidates in the December 3, 2005, local government elections, would be prosecuted. State Public Prosecutor General Wu Ying-chao said "producing such VCDs during the campaign would violate the Election and Recall Law," and could lead to a maximum five-year prison sentence. Wu's statement came after Taoyuan police arrested Lin Yi-fang, Peng Jin-wen, and three of their aides on November 11, 2005, on suspicion of producing a VCD to defame Taoyuan County Commissioner Chu

Li-lun, a member of the Kuomintang (Nationalist Party) who is standing for re-election next month. (*Illegal VCD Makers May Be Jailed,* TAIWAN HEADLINES, Nov. 15, 2005, *at* http://english.www.gov.tw/TaiwanHeadlines/index.jsp?categid=8&recordid=88393.)
(Rui Wei, 7-9864, rwei@loc.gov)

TAIWAN – Executive Yuan Reform

On November 17, 2005, the Legislative Yuan's legal system, interior and ethnic nationalities, and budget and final accounts committees completed the first reading of a package of amendments to the Organic Law of the Executive Yuan. However, additional cross-party consultations were to be conducted on certain provisions. The Law was promulgated on November 17, 1932, and last amended on May 23, 2001. Under the bill, the number of units under the Executive Yuan (Cabinet) would be reduced from the current thirty-six to twenty or twenty-one, and there would only be ministries and commissions in the future, not ministries, commissions, or councils. (*Politics Reform Bill Passes Reading*, TAIPEI TIMES, Nov. 19, 2005, *at* 3, http://www.taipeitimes.com/News/taiwan/archives/2005/11/19/2003280784; Legislative Yuan website, "Latest Meeting Reports" section (go to page 5, 94/11/17 legal system committee listing), http://www.ly.gov.tw/ly/02_information/0201_lyinfo/meeting_sche/meeting_sche_02. jsp?ItemNO=08070000 (last visited Dec. 2, 2005).)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

TAIWAN – First National Security Report

The Chairman of Taiwan's Mainland Affairs Council, Joseph Wu, announced on November 20, 2005, that Taiwan's first National Security Report would be issued after Taiwan local government elections are held on December 3. The report will analyze problems that affect the island's national security, in terms of both military and non-military factors. Five main themes are likely to be covered: finance and the economy (including an analysis of Taiwan's economic environment and the growing markets of the People's Republic of China), national defense, cross-Taiwan Strait affairs, diplomatic issues, and land conservation. President Chen Shui-bian will announce the report's release in mid-December, according to Mr. Wu. Critics contend that the Chen government is issuing the report in order to justify its bills on arms procurement. (*Chiu Yu-Tzu, National Security Report to Surface After Elections*, TAIPEI TIMES, Nov. 21, 2005, at 1, http://www.taipeitimes.com/News/front/archives/2005/11/ 21/2003281045.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

TAIWAN – National Communications Commission

On November 9, 2005, Taiwan promulgated the Organic Act for the National Communications Commission (THE GAZETTE OF THE OFFICE OF THE PRESIDENT, issue 6658, Nov. 9, 2005, summarized in English in Global Legal Information Network, http://www.glin.gov, ID No. 172322). The Act contains seventeen articles and creates a Commission designed to uphold freedom of speech. The stated purpose is to keep political parties, politicians, and the military out of the media and facilitate the healthy development of professional, autonomous communications media.

The Commission is to be the competent authority administering all communications-related laws and regulations, including the Telecommunications Law, the Radio Broadcasting and Television Law, the Cable Broadcasting and Television Law, and the Satellite Broadcasting and Television Law. The Act specifies that the Commission will be headed by a Secretary-General and that members will

exercise their authority independently. It contains provisions regarding conflicts of interest on the part of the members. Some current employees of the government departments related to communications, including the Department of Postal and Telecommunications, the Department of Radio and Television Affairs, the Ministry of Transportation and Communications, and the Government Information Office, will be assigned to the new Commission. The Commission may consult with the police to form a dedicated police force for combating communications-related violations.
(Constance A. Johnson, 7-9829, cojo@loc.gov)

TAIWAN – Proposed Amendments to Securities and Exchange Law

The finance committee of Taiwan's Legislative Yuan has recently been considering amendments to the Securities and Exchange Law, which was originally formulated and issued on April 30, 1968. (Legislative Yuan website, "Latest Committee Meeting News" section, finance committee listing (for meeting held on Nov. 7, 2005), http://www.ly.gov.tw/ly/02_information/0201_lyinfo/meeting_sche/meeting_sche_01.jsp?ItemNO=08070000 (last visited Dec. 5, 2005).) The aim of the revisions is to strengthen corporate governance in Taiwan through the introduction of independent boards of directors, in the aftermath of a series of "high-profile corporate scandals and accounting abuses" among a number of listed companies that began in 2004. Thus, the draft amendments provide that the Financial Supervisory Commission may compel listed companies (on the Taiwan Stock Exchange or the over-the-counter GreTai Securities Market) to reserve a minimum of two seats or no less than one-fifth of the total board for independent directors, and these directors must sit on the company's audit committee. This minimum requirement of independent directors constituting one-fifth of the board is fewer than the minimums of one-half under U.S. law and one-third under Japanese law.

Aside from corporate governance, the changes are designed to address perceived flaws in the financial reporting and auditing provisions of existing laws and regulations. The proposed amendments reportedly stipulate that certified public accountants must be held legally accountable for the accuracy of companies' financial reports that they certify, unless they can prove, in cases of fraud, that they fulfilled their obligations and had no prior knowledge of the illegal activities. If approved, the proposed legislation will enter into effect on January 1, 2007, and be implemented gradually across different business sectors. (*Promoting Corporate Accountability*, TAIPEI TIMES, Nov. 14, 2005, at 8, http://www.taipeitimes.com/News/editorials/archives/2005/11/14/2003280141.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

TAIWAN – Rules on Plastic Food Containers

Taiwan's Environmental Protection Administration announced on November 14, 2005, that restrictions on the use of plastic containers for edible goods in supermarkets and bakeries might be in force by February 2006. Under the proposed measures, supermarkets, department stores, shopping malls, convenience stores, restaurants, and bakeries with storefronts would not be allowed to use plastic containers for their goods. At the end of November 2005, the EPA's Department of Waste Management is expected to hold a public hearing to which raw material manufacturers, packaging companies, and environmental organizations will be invited to discuss the new rules; if there are no major objections on the part of manufacturers or consumers, the restrictions would take effect at the earliest as of next February.

If the rules are approved, manufacturers of the new type of containers – recylable organic packaging – will be requested to register with the government and then mark their product with a statement indicating the main ingredient from which the containers are made, so that they will be recycled after use. Businesses found to be non-compliant with the new rules would be subject to a fine of NT$1200 - 6,000 (US$26-$179). The EPA made the decision to impose the restrictions after conducting a trial in Carrefour and Sinon supermarkets in August 2005, in which certain plastic containers were replaced with recyclable organic material. The alternative containers reportedly proved to be comparable to plastic ones in terms of strength, temperature needs, and hydro preservation. (*Taiwan News: EPA Outlines New Rule on Use of Plastic Food Containers*, TAIWAN NEWS, Nov. 15, 2005, FBIS No. CPP20051115392011.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

VIETNAM – First Anti-Corruption Law Approved

On November 28, 2005, Vietnam's legislators approved the nation's first anti-corruption law. It is designed to make leaders more accountable and the state apparatus more transparent. The law states that leaders of state agencies and organizations will be held responsible for corruption in their areas and may even face prosecution. The law also requires public officials to publicly declare their assets. The text explicitly applies the transparency rules to state finance, the use of foreign aid, and the restructuring of state-owned enterprises. In addition, there will be a central steering committee on corruption, headed by the Premier. (*Further on Vietnam Approves First Ever Anti-Graft Law*, HONG KONG AFP, Nov. 28, 2005, FBIS No. JPP20051128062010.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

VIETNAM – Laws on Lawyers, Cinematography Discussed

In November 2005, Vietnam's National Assembly began discussing the text of a proposed law on lawyers. The new law, if adopted, would replace the existing Ordinance on Lawyers. According to the Assembly's Legal Committee, the Ordinance is inadequate for the development of the country. The new law would assist the administrative and legal reforms envisioned for Vietnam's future. The Committee also stated that the new law would be "helpful for the country's economic integration, especially at the time when it is working hard for entry into the World Trade Organization."

Members also debated a bill on cinematography, the first legislation on the subject in Vietnam. It is designed to provide for the development of a modern film industry in the country. Deputies have been quoted suggesting that the government should offer incentives to encourage the movie business. One possibility being considered is offering financial assistance for training workers in cinematography and for showing films in remote parts of the nation. (*Vietnamese Legislators Discuss Bills on Lawyers, Cinematography*, VNA (Internet version), Nov. 14, 2005, FBIS No. SEP20051115003003.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

VIETNAM – Pharmaceutical Law

Vietnam's new Pharmaceutical Law entered into effect on October 1, 2005; the Vietnamese National Assembly approved it in May 2005. The Law covers the development of the domestic pharmaceutical industry and state drug pricing controls, as well as advertising and testing of drugs. It gives priority to the transformation of the pharmaceutical industry into a key industry and aims in general to develop the domestic industry's competitiveness. According to former Minister of Public

Health, Deputy Do Nguyen Phuong, local production supplies only forty percent of domestic demand; sixty percent must be met by imports. The new Law is applicable to all pharmaceutical companies in Vietnam, domestic and foreign.

The Pharmaceutical Law increases regulation of drug prices by prescribing that pharmaceutical importers and distributors submit price lists to the Drug Administration and first obtain approval from that agency for any plans to increase prices. If a price increase exceeds prices in "comparable neighboring states," the Drug Administration will deny approval. The Law stipulates that unauthorized price increases will be "severely punished." The Ministries of Health and Finance will be primarily responsible for joint oversight of drug pricing policy. Drug pricing has reportedly been a highly contentious issue between the Vietnamese Government and pharmaceutical companies. Drug prices increased by almost ten percent between 2003 and 2004, and in 2005, from five to fifty percent, despite price stabilization measures undertaken by the government. (*Vietnam's New Pharmaceutical Law Takes Effect in October 2005,* 5:7 PACIFIC BRIDGE MEDICAL – ASIAN MEDICAL NEWSLETTER (Oct. 2005), http://www.pacificbridge medical.com/newsletter_index.html.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

EUROPE

AUSTRIA – Immigration Law Reform

On August 16, 2005, Austria enacted the Immigration Reform Package 2005 (BUNDESGESETZBLATT No. 100/2005) that amends more than a dozen laws dealing with matters relating to aliens, and included among these is also a constitutional amendment. Among the newly introduced measures are additional civil service and judicial positions to speed up the processing of asylum seekers. In addition, asylum proceedings have been streamlined and now allow for the deportation of asylum seekers whose petitions were denied while permitting them to continue to pursue appeals in Austrian courts from abroad. Moreover, allowing the detention and subsequent deportation of aliens who endanger Austrian security interests is strengthening law enforcement against criminal aliens. Aliens who are suspected of being terrorists or who have been convicted and sentenced to an unconditional prison term of at least two years may be deported, even if they were born in Austria and grew up there. The new Act will become effective on January 1, 2006.
(Edith Palmer, 7-9860, epal@loc.gov)

BULGARIA – New Law on Water Management

On November 10, 2005, the Bulgarian legislature unanimously approved the Water Management Act proposed by the government. This law, which repeals the Waters Act of 2000, is an entirely new law adopted in order to align national legislation with European Union standards. The Act provides for the creation of a national monitoring system allowing comprehensive reviews of water resources as a basis for effective river management. It introduces charges for using and polluting water bodies. With the purpose of preserving the current quantity of water in water bodies, the Act freezes the existing usage regimes for the next ten years and also introduces a ten-year moratorium on the use of land, water, and forests if a fire occurs in a protected zone. (*Water Management Act Passed*, BULGARIAN TELEGRAPH AGENCY DAILY NEWS, Nov. 10, 2005, http://www.securities.com/.)
(Peter Roudik, 7-9861, prou@loc.gov)

CYPRUS – Constitution Supersedes EU Law

In a recent decision, the Supreme Court of Cyprus held that the Cyprus Constitution overrides the *acquis communataire* (the European Union body of law). The issue involved a request for extradition of a Cypriot national to the United Kingdom on the grounds of tax fraud. The British authorities had issued a European Arrest Warrant (EAW) to request the surrender of the Cypriot national. The national district court refused to grant permission for the extradition on the grounds that the Cyprus Constitution contains a clause prohibiting the extradition of Cypriot nationals. The Supreme Court upheld the decision of the lower court, strictly following the letter of the constitutional provision. However, such a decision is in conflict with EU legislation and with decisions of the European Court of Justice, which have explicitly upheld the superiority of EU law over domestic law, including national constitutions. At this stage, the Cyprus government has stated its intention to amend the Constitution. As the former Attorney-General stated, "this matter should have been fixed well before we joined EU." (*UK Extradition Case Forces Cyprus to Amend Constitution,* Nov. 8, 2005, FBIS No. GMP20051108018003.)
(Theresa Papademetriou, 7-9857, tpap@loc.gov)

CZECH REPUBLIC – New Penal Code Passes Lower House

The Chamber of Deputies of the Parliament of the Czech Republic passed a new Penal Code on November 30, 2005. Among other changes, the Code lowers the age limit of criminal responsibility from fifteen years to fourteen, increases the penalties for murder and certain other crimes, and defines new criminal acts, including the killing of an ill person at his/her request. Members of the Christian Democratic Party deem the latter provision unacceptable; they argue that it is a first step towards legalization of euthanasia because the definition does not incorporate a minimum penalty.

The new Code stipulates that murder may incur a sentence of up to thirty years' imprisonment (five years longer than under the current Code) or life. Newly punishable acts include human cloning, sexual harassment, and denial of aid to victims of traffic accidents. Publication of secretly made recordings is also subject to punishment under the new Code, but critics contend that this would seriously hamper investigative reporting by the media.

The Communist Party rejected the new Penal Code because it contains a clause criminalizing the denial of Communist crimes. The Code also includes among crimes that cannot be condoned the Communist and Nazi genocides. If the Senate passes the new Code and President Vaclav Klaus signs it, it will enter into effect at the beginning of 2007. (*Czechs to Lower Criminal Age Limit to 14 Years*, PRAGUE CTK, Nov. 30, 2005, FBIS No. EUP20051130950024.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

FINLAND – Family Leave Under Review

A working group presented a report on family leave to the Finnish Minister of Labor on November 8, 2005. The report proposes improved family leave for parents who do not live with their children, adoptive parents, and parents of disabled children. The proposal suggests amending the right to a "paternity month" to make it more flexible and enable fathers to stay home for the last two weeks of parental leave and to retain twelve other parental leave days that they can use when the mother, after

maternity leave, has used her vacation and care leave. The proposal also gives fathers who do not live together with their children the right to care for children who become suddenly ill, if the child is under the age of ten. The current legislation gives this right only to parents and guardians who live with the child.

Parents of disabled children and children who are sick for a long time would, according to the proposal, have a right to partial leave to care for their children until the end of the calendar year in which the child turns eighteen. The working group also proposes the investigation of the possibility of increasing parental leave for adoptive parents, so that it more resembles that of biological parents. (Ministry of Labor, *Förbättringar föreslås för familjeledigheten*, Nov. 8, 2005, *available at* http://www.mol.fi/mol/se/06_arbetsministeriet/04_nyheter/2005-11-08-01/index.jsp.)
(Linda Forslund, 7-9856, lifo@loc.gov)

FRANCE – Draft Anti-Terrorism Law

On October 26, 2005, Nicolas Sarkozy, the current Minister of the Interior, presented a new draft anti-terrorism law to the French Cabinet for approval. The new measures have been sent to Parliament, which is expected to start debating them on November 22, 2005, with the aim of adopting them by the end of this year. The main measures are as follows:

Video surveillance:

1. Legal entities would be authorized to install cameras to film the immediate surroundings of their buildings and facilities, if such areas are susceptible to terrorist acts.
2. Video cameras would be installed in establishments and areas open to the public when such places are particularly exposed to the risk of aggression, theft, or terrorist acts.
3. In case of emergency, *préfets* (representatives of the state in each *département*) could order installation of cameras for four months without obtaining the prior authorization of the competent commission.
4. *Préfets* could order specific sites to install video surveillance equipment (industrial or nuclear sites, railroad stations, and the like). Refusal to do so would be punishable by a €150,000 fine (about US$175,800).

Travel monitoring:

1. Airline, maritime, and railway companies could be required to disclose personal data concerning their customers (name, address, telephone, date of birth, and profession) for international travel outside the European Union. Refusal to do so would be punishable by a €50,000 fine (about US$58,600).
2. Surveillance of vehicles (photography of license plates and passengers) by the police services where appropriate would be authorized, in particular at borders, ports, airports, and main national and international roads.
3. Identity controls aboard international trains would be facilitated.

Telephone and Internet:

1. Cyber cafes would be required to keep connecting data for one year.
2. Authorized investigators would have access to these data.

Databases:

The police would have access to numerous databases, including those for license plates, driving licenses, identity cards, passports, visa requests, residency permits, and denial of entry into French territory.

Tougher prison sentences:

1. The maximum sentence for leadership of a terrorist group would be increased from twenty years to thirty, and the maximum sentence for membership in such a group would be increased from ten years to twenty.
2. Supervision of implementation of prison sentences for terrorist acts would be centralized in Paris.

Nationality:

Naturalized citizens could lose their French citizenship if found guilty on terrorist charges for terrorist acts occurring within fifteen years of obtaining French citizenship.

Freezing of Assets:

Without prejudice to EU measures or measures taken by the courts, the Minister of Economy would be authorized to freeze assets belonging to terrorists or terrorist groups for a six-month renewable period.

If these measures were adopted, some of the most "sensitive" of them would be reviewed again by Parliament in 2008. (French Government legal website, *Draft Law on Fight against Terrorism*, *at* http://www.legifrance.gouv.fr/html/actualite/actualite_legislative/terrorisme.htm, and *Les principaux points du projet de loi antiterroriste*, LE MONDE, Oct. 26, 2005, *at* http://www.lemonde.fr (archives).)
(Nicole Atwill, 7-2832, natw@loc.gov)

FRANCE – State of Emergency

On November 8, 2005, French President Jacques Chirac signed a decree declaring a state of emergency, effective at midnight, to quell the riots and other forms of violence that began on October 27, 2005. There were conflicts between thousands of youths (predominantly from Muslim backgrounds), from poor suburbs of Paris and other cities, and the police. The legal framework for this state of emergency is Law 55-385 of April 3, 1955. It authorizes the President to issue a decree in the Council of Ministers declaring a state of emergency of up to twelve days. Any extension needs to be authorized by Parliament.

As authorized by the 1955 law, the 2005 decree gave public authorities the power to regulate or forbid circulation and gathering in certain areas, close gathering places, order house arrests, confiscate weapons, and order day and night searches. The 1966 Law also gives the military authority the power to act in place of civilian authorities, if the implementing decree specifies it explicitly, which was not done in the present situation. Law 2005-1425 of November 18, 2005, extended the state of emergency for an additional three months, starting November 21, 2005. (*Loi prorogeant l'application de la loi n° 55-385 du 3 avril 1955,* LEGIFRANCE, http://www.legifrance.gouv.fr/html/actualite/actualite_legislative/2005 1425/etat_urgence. htm (last visited Dec. 6, 2005).)
(Nicole Atwill, 7-2832, natw@loc.gov)

GEORGIA – Law Against Criminal Leaders

On November 9, 2005, the Parliament of Georgia adopted a unique law aimed at fighting against so called "thieves-in-law." This term is usually used by criminal world bosses to rank those who are the highest criminal authorities and coordinate criminal activities in a particular territory, including places of incarceration. This is the first law adopted in a Soviet or post-Soviet state that uses this expression as a legal term. Under the new law, "thieves-in-law" can be arrested, prosecuted, and imprisoned for a term of up to ten years just by virtue of belonging to this hierarchical group, without having committed any specific crime. In addition, the law stipulates a five-year term of imprisonment for all persons who communicate or associate with the "thieves-in-law." Parliamentarians supported the law despite the fact that some members of the opposition tried to explain to their peers that an individual must be held responsible for specific acts punishable under criminal law and not for membership in a particular group. (*Georgian Parliament Passed the Law to Combat "Thieves-in-Law*," RADIO FREE EUROPE/RADIO LIBERTY NEWSLINE, Nov. 10, 2005, http://www.svoboda.org/.)
(Peter Roudik, 7-9861, prou@loc.gov)

GERMANY – Electronic Health Card

On June 22, 2005, Germany enacted the Act on the Organizational Structure of Digitalized Health Care (BUNDESGESETZBLATT I at 1720). It creates the legal and financial framework for the electronic health card that will be introduced on January 1, 2006, and that will be carried by the sixty million Germans who participate in the social health insurance scheme. The card will be provided by a newly created Telematics Company that consists of representatives of all the stakeholders in German health care, including insurers, physicians, pharmacists, hospitals, and other service providers. Ultimately, the chips-driven card will not only identify the bearer but also carry his medical record. In addition, prescriptions will be made and filled with the card. It is expected that the card will reduce health care costs by leading to the avoidance of duplicate services and that it will improve health care by avoiding the prescription of contra-indicated medications.
(Edith Palmer, 7-9860, epal@loc.gov)

GREECE – Major Reform of the Criminal, Criminal Procedure Codes

On November 4, 2005, the Greek Minister of Justice announced a major reform of the Criminal Code and the Code of Criminal Procedure, in order to bring the two outdated provisions adopted fifty-five years ago in line with contemporary forms of crime and with European Union legislation. Both codes had been previously amended several times, but the amendments were fragmentary. The final bills will be completed within a year. The draft Criminal Code will deal with new forms of crime, such as electronic crime, pornography via the Internet, and money laundering. It will also eliminate archaic crimes, such as dueling. (*Comprehensive Amendment of the Criminal Code*, KATHIMERINI, Nov. 4, 2005, *available at* http://news.Kathimerini.gr/4dcgi/_w_articles_politics_100017_04/11/2005_162387.)
(Theresa Papademetriou, 7-9857, tpap@loc.gov)

ITALY – Constitutional Reform Bill Approved

On November 16, 2005, Italy's Parliament passed a constitutional reform bill. It provides for a significant devolution of power from the central government to the regions, a reduction in the number of Members of Parliament, and enhanced powers for the prime minister. However, the transfer of power to the regional governments is not to take place until 2012, and other changes would not be

implemented until 2015. The new law will be subject to a referendum in six months and the opposition parties have expressed their determination to defeat the measure. A commentary in a leading newspaper suggests that the reform "could well turn out to be the shortest-lived and most ephemeral such reform in Italy's constitutional history." (*Italy Senate Passes Reform Bill*, BBC NEWS, Nov. 16, 2005, http://news.bbc.co. uk/go/pr/fr/-/2/hi/europe/4441436.stm; *Fifteen Wasted Years?*, CORRIERE DELLA SERA (Milan), Nov. 17, 2005, FBIS No. EUP20051117058018.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

LATVIA – Ban on Use of Communist and Fascist Symbols

On November 2, 2005, the Seimas (parliament) of the Latvian Republic rejected a resolution proposed by the Seimas' Human Rights Committee to allow the usage of symbols used in the former U.S.S.R. and Nazi Germany. The prohibition includes Latvian national symbols used by local governments that collaborated with the Hitler regime during German occupation, 1941-1944. This decision was based on the conclusion of the Latvia State Bureau for Human Rights that evaluated the proposal.

Meanwhile, the Seimas adopted amendments to the Law on Rallies, Pickets, and Demonstrations, which specifies the responsibilities of individuals who organize public events. Under the amendments, persons accused of violating rules of organization and conduct of meetings and demonstrations, engaging in disorderly behavior, and being insubordinate to police are prohibited from organizing such events. The new amendments also simplify the procedure for receiving permits to conduct rallies. The period in which a request must be submitted is shortened from five to three days in advance of an event, and pickets can be organized without requesting preliminary permits if they do not affect public transportation. (*Parliament of Latvia Bans Use of Swastics and Communist Symbols in Public Events*, NEWSRU.COM, Nov. 2, 2005, http://www.newsru.com/.)
(Peter Roudik, 7-9861, prou@loc.gov)

PORTUGAL – End of Privileges for Politicians

On October 6, 2005, the president of Portugal, Mr. Jorge Sampaio, promulgated Law No. 52-A/2005, altering the regime of pensions and subventions of politicians and the payment regime of executive officers in local autarchies.

In the old regime, deputies (members of the House of Representatives) and members of the executive branch of government had the right to receive a subvention for life after twelve years of service and after reaching the age of fifty-five, with a reintegration subsidy granted to the ones that did not complete eight years of service. The new law puts an end to the subvention benefit and suspends the reintegration subsidy, creating a transition period until the members of the current legislature can fully benefit from the old regime. The new law also imposes limitations on the accruing of wages. The politicians and members of the executive will have to opt for either a reform or a reduction by one-third in their salaries. (*Sampaio Promulga Lei que Dita Fim dos Privilégios dos Políticos*, NOTÍCIAS LUSOFONAS, Nov. 2, 2005, *at* http://www.noticiaslusofonas.com/view.php?load=arcview&article=12045&catogory=Portugal.)
(Eduardo Soares, 7-3525, esoa@loc.gov)

RUSSIAN FEDERATION – Amnesty for Illegal Aliens

On November 11, 2005, the Government of the Russian Federation issued a decree charging the Federal Migration Service, a government agency dealing with residency and citizenship issues, with the obligation to arrange the legalization of the status of foreign workers who are illegal migrants from the former Soviet republics – members of the Commonwealth of Independent States. As of January 1, 2006, the deportation of illegal labor migrants, which is ineffective and very costly for the Russian economy, will be stopped in the regions selected by the Government for the amnesty experiment. The Government decree established an annual quota of one million laborers who will be eligible to obtain the necessary documents and to legalize their presence and work in Russia if they can prove their employment and place to live. The implementation of the amnesty will be conducted in association with employers who are willing to use the foreigners. Until the adoption of necessary amendments in Russian immigration legislation, the amnesty will be limited to the eight constituent components of the Russian Federation where the shortage of labor resources is the most severe. Simultaneously, the decree provides for measures aimed at shortening the time required to issue work permits and other documents that are needed for legal continuation of labor activity and recognizes that the introduction of a visa regime with the CIS countries is unrealistic, because the border areas between Russia and post-Soviet republics are not equipped to handle such a process. The laborers and immediate members of their families are eligible for the amnesty. Authors of the reform suggest that this will lead to the integration of migrants into Russian society, because these people are close to the Russian population in terms of culture, history, and religious beliefs. (I. Sas, *Illegal Gastarbeiter Will Be Amnestied*, NEZAVISIMAYA GAZETA, Nov. 15, 2005, http://www.fbis.gov/.)
(Peter Roudik, 7-9861, prou@loc.gov)

RUSSIAN FEDERATION – New Forms of Campaign Financing Allowed

On November 14, 2005, the Constitutional Court of Russia issued a ruling that upholds the citizen's right to vote against all candidates on the ballot at all levels of elections and to campaign against all poll candidates. The case dates back to 2003, when a Russian citizen found that he did not like any of the candidates on the list for election to the nation's legislature and printed, at his own expense, 500 leaflets calling on people to vote against all candidates. He was fined on the grounds that only official election funds can be used to finance campaigning. The petitioner stated that his right to express his opinion freely during the election campaign was violated because there is no election fund for a campaign against all candidates. The Constitutional Court agreed with this position; however, the judges stressed that this right must not be abused. For this purpose, the Court limited financing of this type of campaigning to private funds of the campaigning individual and ruled that local judges will in the future rule in specific cases concerning such matters. (*Russian Court Upholds Right to Campaign Against All Poll Candidates*, BBC MONITORING, Nov. 14, 2005, http://www.securities.com/.)
(Peter Roudik, 7-9861, prou@loc.gov)

SWEDEN – Church to Allow Blessings of Same-Sex Couples

The Swedish Church voted on October 27, 2005, to allow couples of the same sex to be blessed. The Church Assembly voted 160-81 for the proposal to allow the blessing ceremony. In 1979, the Swedish National Board of Health and Welfare stopped referring to homosexuality as a disease, but the debate over homosexuals' standing within the Swedish Church has been going on since 1972. In January 2005, the Swedish Government appointed a special investigator to examine whether

couples of the same sex should be allowed to marry. Today, same-sex couples can enter into civil unions in accordance with the Registered Partnership Act of 1994 (see WLB March 2005). Many are happy with the Church's decision to be at the forefront in this debate, but many others are disappointed by the outcome of the vote. (Marcus Ålsnäs, Pernilla Ahlsén, *Stor majoritet för" homovigslar",* DAGENS NYHETER, Oct. 27, 2005, *available at* http://www.dn.se/DNet/road/Classic/article/0/jsp/print.jsp?&a= 479920.)
(Linda Forslund, 7-9856, lifo@loc.gov)

SWEDEN – New Temporary Law on Residence Permits

On November 15, 2005, a temporary law was enacted in Sweden that allows people who have been denied residency another review by the Swedish Migration Board. The new act will remain in force until March 31, 2006. The law gives the Swedish Migration Board the opportunity to render a new decision for people who have remained in Sweden for a long time and whose expulsion orders have not been enforced. The act aims to give families with children and those whose expulsion orders have not been enforced due to adverse circumstances in the country to which they would return another chance to receive a Swedish residence permit. A new review can be initiated by the Swedish Migration Board or through an application by the individual submitted before March 31, 2006. When making a decision, the Swedish Migration Board will consider whether it is important for humanitarian reasons to grant a residence permit due to a child's social situation, connections to Sweden, or risks to development and health. The Swedish Migration Board will also consider whether the individual has committed a crime, and it can deny residence permits because of security concerns. (Press Release, *Tillfällig lag gör det möjligt med ny prövning av uppehållstillstånd*, RIKSDAGEN, Oct. 28, 2005, *available at* http://www. riksdagen.se/Webbnav/index.aspx?nid=45&sq=1&ID=davfaw7D5_A_1C.)
(Linda Forslund, 7-9856, lifo@loc.gov)

SWITZERLAND – Cultural Property

A Swiss Act on the International Transfer of Cultural Property (RECUEIL OFICIEL DES LOIS FÉDÉRALES (RO) 1869 (2005)) became effective on July 1, 2005. The Act implements the United Nations Educational, Scientific, and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (signed Nov. 14, 1970, 10 INTERNATIONAL LEGAL MATERIALS 289 (1971)) that Switzerland ratified on June 12, 2003, and that became effective for Switzerland on January 3, 2004 (RO 2879 (2004)).

Switzerland is an important art market and the new Act fills a gap in Swiss legislation. It is the first comprehensive federal treatment of art transfers. The Act's regime of export and import provisions replaces scattered cantonal provisions. Its definition of "good faith" raises the standard of due diligence that is expected from a buyer of a work of art, and dealers are subject to extensive record keeping duties. The Act also enables the Swiss Government to enter into bilateral agreements with other members of the UNESCO Convention.
(Edith Palmer, 7-9860, epal@loc.gov)

UKRAINE – Campaigning Laws Expanded

On November 17, 2005, the Verkhovna Rada (legislature) of Ukraine adopted amendments to a number of election-related laws, expanding the rights of mass media in providing informational coverage of election campaigns. Even though the Election Law of Ukraine prohibits amending electoral legislation within the 240-day period before the elections, these amendments were passed in

order to liberalize work conditions for mass media. The new law repeals provisions that prevented journalists from commenting on election campaigns and on candidates' campaign materials. Mass media will also be exempt from auditing and inspections conducted by public officials during the entire campaign period. The new law excludes analytical broadcasts from being considered as campaigning and states that discussions on the programs of political parties participating in elections cannot be considered as political advertising. The rules for determining the duration and distribution of free airtime on public TV and radio channels are provided by this law. (*Parliament Allows Ukrainian Media to Comment on Election Campaign*, BBC MONITORING, Nov. 17, 2005, http://www.securities.com/.)
(Peter Roudik, 7-9861, prou@loc.gov)

NEAR EAST

BAHRAIN – Creation of a Judicial Study Institute

On November 13, 2005, Bahrain announced the creation of a judicial study institute specialized in the training of judges and public prosecutors, which is the first of its kind in the country. The King of Bahrain, Hamad Bin Issa Al Khalifa, issued a royal decree for the creation of this institute, to be named "The Institute of Judicial and Legal Studies." The Institute will be headed by a Board of Trustees consisting of the Minister of Justice, the President of the Court of Cassation, the Public Prosecutor, the Director of Legal Affairs, the undersecretary of the Ministry of Justice, and two members appointed by the Minister of Justice with the approval of the Supreme Judicial Council. (ASHARQ ALAWSAT, Nov. 14, 2005, *at* http://www.asharqalawsat.com/english/.)
(Issam Saliba, 7-9840, isal@loc.gov)

BAHRAIN – Disagreement Between Government and Parliament

A proposed amendment to the law on the judiciary, aimed at ensuring total independence of the public prosecutor from the authority of the Minister of Justice, has led to disagreement between the Committee of Legal Affairs of the Bahrain Parliament and the Directorate of Legal Affairs of the government. The government sees no reason to enact this amendment, stating that the relationship between the public prosecutor and the Minister of Justice is only administrative and does not impinge on the independence of the judiciary. This disagreement is expected to sharpen when the Committee of Legal Affairs presents its report to the Parliament in the next few weeks. (AKBAR AL KHALEEJ, Nov. 8, 2005, *at* http://www.akhbar-alkhaleej.com/.)
(Issam Saliba, 7-9840, isal@loc.gov)

BAHRAIN – Proposed Family Law Provokes Demonstrations

Shiite leaders in Bahrain are attempting to block a proposed family law (also known as the personal status law) from being passed by the legislature. On November 9, 2005, demonstrators took to the streets opposing the new law, which they view as un-Islamic, and calling for it to be rejected. A counter-demonstration was held on the same day, at the same location, in support of the proposal. Women's rights activists such as the Supreme Council for Women (SCW) and the Women's Petition Committee endorsed the proposed law and denied accusations that it went against Islamic principles, asserting that the law would guarantee women's rights and the fair treatment given to them under Islamic

law and would ease court proceedings for all family members in matters such as child custody, inheritance, and divorce. (*Family Law Is Derived from Islamic Law,* GULF NEWS, Nov. 12, 2005, *at* http://www.akhbar-alkhaleej.com/; Tariq Khonji, *Law Rivals in Show of Strength*, GULF DAILY NEWS, Nov. 10, 2005, *at* http://www.gulf-daily-news.com; Mazen Mahdi, *Protesters Face Off in Bahrain over Family Law*, ARAB NEWS, Nov. 10, 2005, *at* http://www.arabnews.com.)
(Dr. Abdullah F. Ansary, 7-6303, aans@loc.gov)

IRAN – Regulations Governing Stoning as a Punishment

Regulations governing the punishment of stoning to death are discussed in a recent issue of the OFFICIAL GAZETTE of Iran. The crime of adultery, for example, carries the punishment of stoning to death (art. 83, Islamic Criminal Law of the Islamic Republic of Iran, approved Feb. 1997) under either of the following conditions:

1) Adultery by a married man, i.e., a man who is married to a permanent wife and has performed a sexual act with her while of sound mind and who can perform a sexual act any time he wishes. (Note that under the *Shi'i* Sect of Islam, temporary marriages are allowed . There must be a permanent relationship in existence for adultery to be punished by stoning to death.)

2) Adultery of a married woman with a mature man. A married woman is one who has a permanent husband and the husband has performed the sexual act with her and who can perform the sexual act with her husband.

When a person is sentenced for the crime of adultery, the following procedure must be followed in execution of the punishment:

1) The judge who issued the sentence notifies the public of the time of the execution of the punishment. It is necessary to have at least three devoted Muslims present at the procedure.

2) The law enforcement officers have to dig the ground as provided for in article 102 of the Islamic Criminal Code and prepare a number of pieces of gravel as specified in article 104 of the Code.

3) If the conviction is based on the confession of the person, the first piece of gravel is thrown by the judge. However, the absence of the judge will not delay the execution of the sentence. Stoning to death may be abandoned if the witnesses who have testified about the commission of the crime flee the scene, if the crime has been established on the basis of a confession by the convict, and the convict flees the pit in which he/she is to be stoned to death, or if the convict retracts his/her confession.

(OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN, No 17124, Nov. 23, 2005, *at* 1 & 3.)
(G.H. Vafai, 7-9845.gvaf@loc.gov)

IRAQ – Activists Request Enactment of Five Laws on Women's Issues

Iraqi women working together in a coalition under the name of "Ahd Al-Iraq" (the Pledge of Iraq), which includes human rights activists, members of the National Assembly, and others in ministerial and administrative positions in various government institutions, sought the enactment of five laws addressing women's concerns. Safia Taleb Al Sahil, the candidate for ambassador to Egypt,

stated that the proposed laws aim at ensuring equality in rights and obligations between men and women. Dr. Rand Al Rahim, former ambassador of Iraq in Washington, indicated that the law of 1959 (the family law) is applicable to all Iraqis, without reference to their religious affiliation, and should be preserved even if the new laws are adopted. (ASHARQ ALAWSAT, Nov. 2, 2005, *at* http://www.asharqalawsat.com/english/.)
(Issam Saliba, 7-9840, isal@loc.gov)

ISRAEL – Amendment to the Employment of Women Law

The ministerial committee for legislative affairs approved an amendment to the Employment of Women Law, 5414-1954, as amended. Among the additional protections provided by the proposed amendment are the enabling of a female worker who breastfeeds her child and whose work exposes her to dangerous materials, in the event her employer cannot find her alternative work, to take leave without pay as long as she breastfeeds, up to six months from the birth of her child. The amendment also improves the legal protection for female employees from being fired or otherwise suffering discrimination because of pregnancy and motherhood. The amendment further raises the penalties for various offenses prescribed by the Law and recognizes the standing of labor organizations and those specializing in promoting women's rights before labor courts.

In addition to specific rights for female workers, the Law also strengthens men's rights to parental leave. Female employees are entitled to paid leave for a period of twelve weeks for the birth of a child. Instead of the currently available option for men to take parental leave in lieu of the mother, and with her consent, for the second half of her allotted leave, the amendment will enable men to start parental leave immediately following the birth of a child. This option will be available in cases where the newborn is in the exclusive custody of the father or is under his care due to the mother's illness or disability. (Employment of Women Law, 5414-1954, as amended, Nevo legal database, http://www.nevo.co.il; Tani Goldstein, *Bill: Improvement of Birth Leave to Men*, YNET ONLINE, Nov. 8, 2005, http://www.ynet. co.il/articles/0,7340,L-3165814,00.html.)
(Ruth Levush, 7-9847, rlev@loc.gov)

JORDAN – Parties Call for a New Election Law

Most of the Jordanian political parties called for a new election law that allows for a mixed voting system, based on a single winner method at the district level and a proportional one at the national level. Nineteen opposition parties issued a statement emphasizing that the harbinger of a truly democratic system that respects political diversity, has greater popular participation, and ensures peaceful transfer of power is a democratic electoral law that guarantees participation in decisionmaking and relies on full equality in rights and obligations among Jordanian citizens. (ASHARQ ALAWSAT, Nov. 4, 2005, *at* http://www.asharqalawsat.com/english/.)
(Issam Saliba, 7-9840, isal@loc.gov)

SAUDI ARABIA – King Calls on Consuming Nations to Reduce Taxes on Petroleum Products

On November 19, 2005, the Custodian of the Two Holy Mosques King Abdullah Ibn Abdulaziz of Saudi Arabia called upon oil-consuming nations to reduce or cut taxes imposed on petroleum products, especially when the price of oil is up, in order to ease the burden on their citizens. King Abullah's statement was delivered after he met with General Rodrigo de Rato, International Monetary Fund Director, in Jeddah, Saudi Arabia. King Abdullah's advice was in the interest and the economic well

being of oil-consuming nations. High taxes on petroleum products affect the daily lives of citizens and the industrial growth of any country. (*King Abdullah Calls on Nations to Reduce Taxes on Petroleum Products,* AL-RIYADH, Nov. 20, 2005, *at* http://www.alriyadh.com/2005/11/ 20/section.main.html; Abdullah Al-Shihri, *Saudi King: Oil Importers Should Cut Taxes*, COMCAST, Nov 19, 2005, *at* http://comcast.net.)
(Dr. Abdullah F. Ansary, 7-6303, aans@loc.gov)

SAUDI ARABIA – New Five-Year Development Plan Approved

On November 21, 2005, Saudi Arabia's Council of Ministers, chaired by King Abdullah Ibn Abdulaziz, approved the eighth five-year development plan. It focuses primarily on greater participation of women in the development and economic activities of the kingdom. The new development plan also is intended to focus on improving the general educational system, including the provision of the training and skills needed to cope with national economic and industrial developments. The plan will also focus on expanding the kingdom's economic base by expanding the oil and natural gas industry, encouraging private sector participation in the economic and social development of the kingdom, and easing restrictions on domestic and foreign investment. (*The Council of Ministers Approves the Eighth Development Plan*, AL-RIYADH5, Nov. 22, 2005, *at* http://www.alriyadh.com/; P.K. Abdul Ghafour, *Focus on Empowerment of Women*, ARAB NEWS, Nov. 22, 2005, *at* http://www.arabnews.com/.)
(Dr. Abdullah F. Ansary, 7-6303, aans@loc.gov)

SAUDI ARABIA – Supreme Council for Family Affairs

On November 14, 2005, the Saudi Consultative Council (Ash-Shura Council) discussed the Social, Family, and Manpower Affairs Committee proposal to form a Supreme Council for Family Affairs (National Family Committee) in Saudi Arabia. The objectives of this proposal are to enhance the role of the family in society, strengthen the ties of the family, study the challenges facing families, and suggest appropriate solutions to problems in coordination with other government institutions that have ties to families and their role in the society.

The Supreme Council for Family Affairs will be located in the Ministry of Social Affairs and will be headed by its minister. On November 20, 2005, the Saudi Consultative Council postponed the vote on the proposed council for further deliberation. (*Ash-Shura Council Recommends the Establishment of Supreme Council for Family Affairs*, AL-WANT NEWSPAPER, Nov. 14, 2005, *at* http://www.alwatan.com.sa/ daily/2005-11-14/local/local21.htm; *Ash-Shura Council Completed Its Discussion over the Formation of a Supreme Council for Family Affairs*, AL JAZIRAH, Nov. 21, 2005, *at* http://www.al-jazirah.com/119698/ln49d.htm.)
(Dr. Abdullah F. Ansary, 7-6303, aans@loc.gov)

UNITED ARAB EMIRATES – ANTI-CORRUPTION CONVENTION APPROVED

On November 14, 2005, the federal Cabinet of the United Arab Emirates approved the endorsement of the United Nations Anti-Corruption Convention, originally approved by the U.N. General Assembly on October 31, 2003. The Convention contains a variety of prevention measures directed at both the public and private sectors and requires member countries to establish criminal and other offenses to criminalize specific acts of corruption and to adopt measures that support the tracking, freezing, seizure, and confiscation of profits generated from corruption. The Convention also includes measures

for international cooperation, asset recovery, and implementation mechanisms. On August 10, 2005, Mr. Abdul Aziz Bin Nasser Al Shamsi, the UAE's Permanent Representative to the United Nations, signed the Convention on behalf of his government, making the UAE the 125th signatory. Transparency International, a leading non-governmental organization devoted to combating corruption, put the UAE among the least corrupt countries in the world, ranking the UAE in the same position as Austria, France, and Germany. (*The Federal Cabinet Endorsed the UN Anti-Corruption Convention*, AL-ITTIHAD, Nov. 15, 2005, *at* http://www.alittihad.co.ae/; *UAE Signs United Nations Anti-Corruption Convention,* EMIRATES NEWS AGENCY, Aug. 11, 2005, *at* http://www.wam.org.ae/; Atef Hanafi, *Cabinet's Go-Ahead on UN Anti-Corruption Convention*, KHALEEJ TIMES ONLINE, Nov. 15, 2005, *at* http://www.Khaleej times.com.)
(Dr. Abdullah F. Ansary, 7-6303, aans@loc.gov)

SOUTH ASIA

AFGHANISTAN – Employment of Foreign Nationals

The President of the Islamic Republic of Afghanistan issued a Decree in June 2005 governing employment of foreign nationals by the state or by private organizations in Afghanistan. The Decree defines a private foreign and domestic organization as one registered with the appropriate state departments of Afghanistan to conduct economic and social activities according to the laws of the country. An employment contract is defined as a document concluded between the state or a private organization in Afghanistan as one party and foreign governments, international organizations, or foreign nationals as the other party, in connection with employment. An employment contract, which may be bilateral or multilateral, contains employment terms and conditions, including the length of service and compensation and other privileges related to the parties.

In its article 4, the Decree provides that the foreign nationals must respect the relevant laws, beliefs, and traditions of the people of Afghanistan. The Decree states that foreign nationals seeking employment with the state organizations of Afghanistan must have attained eighteen years of age and possess health certificates from their respective governments, as well as from the Ministry of Public Health of Afghanistan, under one of the following conditions:

1) There is an agreement between their home country government and the government of Afghanistan and sanctioned by the Ministries of Foreign Affairs and Labor and Social Affairs of Afghanistan; or

2) There is an individual application by foreign nationals who have obtained residence permits in Afghanistan.

Employment of foreign nationals in jobs inconsistent with their expertise and education is not allowed, and employment of qualified domestic labor must be given priority over employment of foreign nationals. The salaries and other sources of income of foreign employees are taxable. Employment regulations covering foreign nationals working for state organizations must be drafted by the Ministries of Foreign Affairs and Labor and Social Affairs. (OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, Issue No.858, July 6, 2005, *at* 1-11, in Dari and Pushtu, the official languages of Afghanistan.)
(G.H. Vafai, 7-9845, gvaf@loc.gov)

BANGLADESH – Judges Boycott Courts

After two judges were killed in a suicide bombing on November 14, 2005, all judges and lawyers in Bangladesh abstained from work, suspending all court proceedings. The Bangladesh Judicial Service Association, an organization of judges, issued an ultimatum to the government, demanding increased security for all judges. Until such security is provided, the judges will boycott all courts. The Supreme Court Bar Association met and announced that its members would also boycott the courts. Bangladeshi authorities attributed the attack to members of the banned Jama'atul Mujahhiden Bangladesh and identified the surviving attacker as the former chauffeur of one of the murdered judges. (*Bangladesh: Judges Suspend Work, Give Ultimatum on Security Following Attack; Bangladesh Police Recover Bomb-Making, Jihadi Materials from Bomber's Home*, THE DAILY STAR, Nov. 14, 16, 2005, FBIS No. SAP20051116046002.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

BANGLADESH – Public Procurement Act 2005

The World Bank cancelled over a million dollars' worth of loans after investigations found evidence of violation of the procurement norms agreed to between the World Bank and Bangladesh. The Government of Bangladesh has been asked to refund the money already spent against these loans. However, the World Bank has agreed to release Development Support Credit (DSC) amounting to US$200 million as a precondition of Bangladesh's transforming its 2003 Public Procurement Regulations (PPR) into a law. Therefore the Cabinet, in a meeting held on November 2, 2005, approved a draft public procurement bill. (M. Abdul Latif Mondal *Enacting Public Procurement Law*, THE DAILY STAR, Nov. 14, 2005, http://www.thedailystar.net/2005/11/14/d51114020327.htm.) The aim of the draft law is to guarantee better value for money in public spending, by enhancing Bangladesh's capacity to utilize foreign aid in appropriate areas, and improve the foreign and domestic commercial investment environment in the country by reducing corruption and developing the capacity of the domestic contracting and consulting industries for entry into the global market. (*WB Cancels Tk 6.8cr Funds for 3 Projects*, THE NEW NATION, Nov. 8, 2005, http://nation.ittefaq.com/artman/publish/article_22989.shtml.)
(Shameema Raman, 7-3812, srah@loc.gov)

INDIA – Outsourced Legal Work

The amount of legal work outsourced to India by law firms in the United States and Europe is reported to be growing rapidly in volume and value. Various back-office legal tasks such as searches of online legal databases and patent applications are being performed by qualified Indian lawyers, at a cost of about US$100 per hour, rather than US$300-400 per hour for the same task done in New York. Sanjay Kamlani, CEO of Pangea3, a legal outsourcing pioneer, is quoted as saying that "a common history of British occupation" has resulted in similarities between the legal systems of India and the United States, with both being grounded in British common law. Legal research and publishing have been identified as tasks that could readily be outsourced to India. (*India Courts Foreign Legal Work,* ASIA TIMES ONLINE, Nov. 18, 2005, http://www.atimes.com/atimes/South_Asia/GK18Df02.htm (last visited Nov. 18, 2005).)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

INDIA – Muslim Law Triple *Talaq* Held Invalid

The High Court of Kerala State, in India, held invalid the Muslim personal law rule allowing a Muslim husband to repudiate his wife by a triple pronouncement of the Islamic formula of divorce. The court stated that such a pronouncement of divorce, even if it is made in the presence of the wife, was not sufficient to effect a break in the marital tie.

The ruling came up in a matter in which a divorced Muslim wife was held entitled to payment of maintenance by a family court while she lived apart from her husband. The husband filed an appeal against the award in the High Court, on the grounds that he had divorced his Muslim wife by pronouncing the divorce three times, in accordance with the Muslim personal law, and since the woman was no longer his wife, she was not entitled to claim maintenance. The High Court denied his contention while observing that, unless there was a mediation by two mediators for each of the two sides that ended in failure, the husband was not entitled to divorce or claim effectiveness of the divorce. (*Triple 'Talaq' Not Sufficient for Divorce: HC,* THE TIMES OF INDIA, Oct. 10, 2005, http://timesofindia.Indiatimes.com/articleshow/1253684.cms.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

INDIA – New Data Secrecy Laws to Be Enacted

The Prime Minister of India's office announced recently that it was planning to toughen data secrecy laws in dealing with cyber crime on leakage of customer information. The announcement came on the heels of a recent report by a British newspaper, *The Sun*, alleging that a call center employee in India took a bribe of US$5,000 before leaking credit card information on a thousand British customers to an undercover reporter. The news received wide publicity, because a number of banks in Britain had moved aspects of their work, such as customer support, to India in order to cut costs. This has created a booming outsourcing industry in India and led to an emotional issue in Western countries, where there is a perception that the outsourcing is taking away local jobs.

The Indian Government and information technology industry played down the alleged leakage, dismissing it as a "freak incident" while pointing out that such leakage from companies has occurred all over the world. Moreover, there is no evidence to suggest that the danger of leakage of private data is greater in India than in other countries. In any case, to stop leakage, India and the offshore industry in other countries are investing heavily to protect security of confidential electronic data. (*India to Tighten Data Secrecy Laws After Call Center Scam,* VOICE OF AMERICA, July 3, 2005, http://www.voanews.com/english/archive/2005-07-03-voa.cfm?CFID=308651; *India to Tighten Data-Secrecy Laws,* INFORMATIONWEEK, June 29, 2005, http://informationweek.com/story/showArticle.jhtml?article1D=164903812.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

INDIA – State Ban on Cow Slaughter Upheld

On October 26, 2005, the Supreme Court of India handed the Bharatiya Janata Party (BJP) a major victory by upholding a total ban on the slaughter of cows and their calves, bulls, and bullocks. By a majority verdict (6-1), the Supreme Court upheld a 1994 amendment of section of 5(1)(A) of the Bombay (Animal Preservation) Act, 1994 applicable to the state of Gujarat that provided for a total ban on the slaughter of cows in the state.

Several state governments have passed laws providing for a ban on slaughtering of cows without providing for a similar ban on bulls and bullocks. The notification of a complete ban, including bulls and bullocks, passed by the Gujarat state was challenged in the state's High Court by certain butchers of the town of Mirzapur on the grounds that the ban takes away their right to pursue a business of their choice. In 1998, the state High Court had declared the amended provision as "*ultra vires*" the Constitution.

The Gujarat state government had defended that ban, arguing that the provision was in the greater public interest, promoting the directive principles of state policy enshrined in the Constitution that categorically stated that people should show compassion to animals. They therefore appealed the High Court decision. The latest verdict of the Supreme Court overruled the state High Court and three other earlier judgments of the five-judge Supreme Court Constitution benches. In view of the public interest and on a point of constitutional law, a seven-judge bench of the Supreme Court was constituted for the verdict. (*SC Upholds Gujarat Govt Ban on Cow Slaughter,* THE TRIBUNE, Oct. 27, 2005, http://www.tribuneindia.com/2005/20051027/main5.htm.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

SRI LANKA – State of Emergency Extended by Parliament

On November 25, 2005, Sri Lanka's parliament voted eighty-four to fifteen to continue the nation's formal state of emergency for one month. The government had argued for the continuance of the emergency laws, which were put into place following the August 12, 2005, assassination of Foreign Minister Lakshman Kadirgamar. Prime Minister Ratnasiri Wickremanayake presented the motion, stating that the rebel movement Liberation Tigers had killed more than twenty people in the previous month, including members of the armed forces. (*Emergency State to Come Up for Ratification in Sri Lanka Parliament,* INDIA DAILY, Nov. 21, 2005, http://www.indiadaily.com/breaking_news/51691.asp; *Sri Lanka: Emergency Extended for Another Month,* ASIAN TRIBUNE, Nov. 26, 2005, http://www.asiantribune.com/show_news.php?id=16247.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

WESTERN HEMISPHERE

ARGENTINA – E-Mail Privacy Protection

On April 12, 2005, Argentina's President, Nestor Kirchner, revoked a regulation ordering telecommunications companies to make software and hardware upgrades to store their clients' data for ten years. Decree 1563/2004 of August 11, 2004 (BOLETIN OFICIAL, Aug. 12, 2004), the implementing regulation of Telecommunications Law 25873/2003 of December 17, 2003 (BOLETIN OFICIAL, Dec. 18, 2003), would have required such companies to hand over sensitive information to the national intelligence service when requested to do so. Both the ten-year data storage requirement and the prospect of government surveillance of e-mail and online chat exchanges triggered opposition from lawmakers, the communications industry, and citizens worried about the civil rights implications of the regulation. Officials, on the other hand, explained that the measure was aimed at preventing the use of cellular phones by kidnappers asking for ransom, not to allow spying on people's e-mail. President Kirchner realized that the measure would have unintended consequences, and signed a new decree revoking Decree 1563/2004.

"Neither the law nor the decree were conceived to look into the contents of calls, e-mail, or chats," Finance Minister Anibal Fernandez said. "Obviously that was not the intention of the government when it issued the regulation to the legislation, since it is absolutely committed to respecting people's rights." Experts pointed out that the law failed to specifically mention cellular telephony. Article 1 only talked about "communications" provided by "telecommunications service providers."

Some constitutional experts were concerned that the law was an intrusion into private communications that would amount to a violation of the constitutional right of privacy, like a police raid without a judicial search warrant to back it up. Internet legislation expert Gustavo Tanús also harshly criticized the requirement that Internet service providers and other telecommunications players store data for a full decade. "The term demanded by the law is far too long, and it is both technically and economically difficult for some companies in the industry to comply with." In January, Argentina's Chamber of Databases and Online Services sought a court injunction to try to stop the decree, questioning the legitimacy of the move and warning that many small ISPs would be unable to face the extra cost involved. Judges were still considering the request when Kirchner revoked the decree. (P. Palazzo, *La suspension de la reglamentacion de la Ley sobre datos de Trafico en Materia de Comunicaciones*, May 25, 2005, LEXISNEXIS, World Library, Argentina File, 003/011279.)
(Graciela Rodriguez-Ferrand, 7-9818, grod@loc.gov)

CANADA – Government Announces Small Increase in Immigration Target

Canada's Immigration and Refugee Protection Act does not establish total annual or specific country quotas for immigrants (2001 S.C. c. 27, as amended). However, the government does establish somewhat flexible annual targets that immigration officials follow. The government recently announced that it plans to increase its target for 2006 by about 10,000, resulting in a target range of between 225,000 and 255,000 persons. The government anticipates that approximately fifty-six percent of Canada's new permanent residents will fall into the economic class, which is mostly made up of skilled workers and entrepreneurs, and that approximately forty-four percent will fall into the non-economic class, which is mostly composed of family-class immigrants and refugees.

The announced increase is smaller than expected. Analysts believe that the modest increase is partly attributable to the fact that Canada has recently increased funding for resettlement and retraining programs for persons who have been granted permanent resident status over the past few years and that the Department of Citizenship and Immigration is concentrating on reducing the backlog of nearly 700,000 applications that it already has on hand. (Carly Weeks, *Immigration Increase of 10,000 Falls Short of Promised Numbers,* OTTAWA CITIZEN, Nov. 1, 2005, *at* A1, *available at* http://www.canada.com/ottawa/ottawacitizen/news/story.html?id=b9214141-c6a7-4f43-be7e-5d46a6174149.)
(Stephen Clarke, 7-7121, scla@loc.gov)

CHILE – Law on Arms Control

On September 9, 2005, measures were adopted to limit the number of non-registered arms in Chile (Law 20014, DIARIO OFICIAL, Sept. 10, 2005, amending Law 17798/1972). The amended Law also gives the enforcement authority – the Ministry of Defense – further powers and the authority to control effective compliance with the law. The Ministry of Defense is granted the unprecedented power to check registration of arms at firing ranges. The Law also establishes new requirements for arms registration, such as physical, mental, and aptitude tests on a periodic basis before the competent

authorities. The Law increases the penalties for already existing crimes and adds new related crimes such as the holding and manufacturing of bombs or incendiary artifacts. The amendments introduced by the new law reflect the fact that the fight against crime is one of the priorities of Chilean society today. (S. Cea C., *Las Principales Modificaciones a la Ley de Control de Armas*, LA SEMANA JURIDICA, July 11-17, 2005, at 3.)
(Graciela Rodriguez-Ferrand, 7-9818, grod@loc.gov)

MEXICO – Senate Studies Strict Anti-Terrorist Bill

The Mexican Senate is studying a reform bill to impose higher penalties on terrorist activities, more specifically, on those who are found guilty of financing terrorism or who fail to report terrorists. The bill imposes from six to forty years of imprisonment and fines in amounts of up to 1,200 days of the prevailing minimum legal wage on anyone who, using toxic substances, chemical agents, biological or similar radioactive material, or radiation-emitting instruments, performs terrorist acts against individuals. The same types of penalties would be imposed upon anyone who directly or indirectly finances, provides, or collects funds or resources of any kind with the knowledge that they will be used in support of terrorist persons and organizations. The bill also prescribes five to ten years of imprisonment and fines of from 100 to 300 days of the prevailing minimum legal wage on persons who know of activities or the identity of a terrorist but fail to report that knowledge to the authorities. Finally, the penalty for anyone who agrees to commit or who prepares for terrorist acts within the country is fifteen to forty years of imprisonment under the new bill. (Jorge Teherán, *El Senado Va Contra el Terrorism*, EL UNIVERSAL, Nov. 4, 2005, http://www.el-universal.com.mx.)
(Norma C. Gutiérrez, 7-4314, ngut@loc.gov)

MEXICO – Senate Working to Regulate Lobbying

The Vice President of the Senate, César Jáuregui, and representatives of lobbying firms agreed to work on the development of legislation that would regulate lobbying activities. Their first commitment is to reach an agreement by December 15, 2005, when the current session ends.

Vice President Jáuregui, a member of the National Action Party (PAN), explained that the lobbyists have presented a proposal on the regulation of their activities of advancing and defending the interests of private parties based on the one submitted to the Permanent Commission of Congress by Sami David, a Deputy [Congressman] from the Institutional Revolutionary Party (PRI), last August. The proposal includes: establishing a registry of individuals and firms engaged in the business of lobbying and making an amendment to the Internal Regulation of Congress mandating that if a Deputy or Senator is a partner of a lobbyist firm, he/she must inform the appropriate chamber and their respective congressional committees in order that he/she be excluded from congressional discussions that may entail a conflict of interests; and excluding foreign firms from lobbyist activities.

Vice President Jáuregui added that the Senate is studying a regulation to guarantee transparency in lobbying, in order to prevent lobbyists from offering benefits and gifts to legislators. He also stated:

> For us, the priority is a system to prevent conflicts of interest in Congress, under which a legislator under no circumstance could be a partner in a lobbyist firm, because one is either a legislator or a lobbyist. In this, I believe we dissent from the lobbyists' [opinion], which considers that a possibility.

Lastly, Mr. Jáuregui commented that the representatives of lobbyist firms are worried that overly restrictive legislation may be approved. (*Plantean Legislación Para Acotar Cabildeo*, REFORMA, Nov. 2, 2005, http://www.reforma.com.)
(Norma C. Gutiérrez, 7-4314, ngut@loc.gov)

MEXICO – Shop Owner Beats Coca Cola, Prompts Largest Mexican Antitrust Rulings

Mexico has imposed its highest anti-monopoly fines ever, totaling about US$68 million, against Coca Cola and dozens of its distributors and bottlers in Mexico. The fines will not be formally announced until a mandatory appeals period ends, but regulators and a Coca Cola representative confirmed them.

Raquel Chavez, who owns a small convenience store in Mexico, stated that in 2003, a Coke distributor told her to stop selling "Big Cola," an upstart brand that arrived in Mexico recently from Peru, or risk having Coke stop selling to her. She refused and denounced Coke's demands to Mexican antitrust authorities, who recently issued the ruling against Coca Cola. (*Gana mexicana batalla legal a Coca Cola*, EL IMPARCIAL ONLINE, Nov. 15, 2005, *available at* http://www.elimparcial.com/edicionenlinea/ notas/Noticias/20051115/120743.asp (last visited Nov. 18, 2005).)
(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

INTERNATIONAL LAW AND ORGANIZATIONS

AFRICAN UNION – Extradition Case

The case of the former Chadian President Hissene Habre, who is fighting a Belgian extradition request on atrocity charges, will be handed over to the African Union, whose leaders are meeting in January 2006 in Senegal (for background *see* 2005 W.L.B. 11). The case is high profile and is considered a political hot potato for the Senegalese President. He is under pressure from governments and human rights organizations in the West to send Habre to Belgium for trial. Habre has lived in exile in Senegal for fifteen years. The extradition request is also seen as a test case on whether a former head of state wanted for human rights violations should be judged in the courts of foreign nations, given the existence of the International Criminal Tribunal.

However, in Africa and in Senegal itself, Africans oppose the extradition request and see the request by Belgium as colonialist and racist. On November 25, 2005, a Senegalese Appeals Court shied away from ruling on the Belgian extradition request. Belgium holds Habre, whom it supported while in power, responsible for killing more than 40,000 people for political reasons and for the torture by his political police and state security forces of more than 200,000 others, from 1982 to 1990.

The Appeals Court in Senegal held that it was not a competent forum to rule on charges against a former head of state. Habre was released from custody on November 25, but was immediately placed under house arrest. Senegal has indicated that it will place the matter in the hands of African heads of state at the Africa Union meeting in Senegal in early 2006. (*Habre to Remain in Senegal Pending Decision by African Union,* IRINnews.org, Nov. 27, 2005, http://www.irinnews.org/report.asp?ReportID=50340&Select_Region=West_Africa&SelectCountry=CHAD-SENEGAL; *No Decision on*

Extradition of Ex-Chad Dictator, HUMAN RIGHTS WATCH, Nov. 25, 2005, http://hrw.org/do/?t=africa; *African Union to Get Chadian's Case,* THE NEW YORK TIMES, Nov. 28, 2005, http://www.nytimes.com/2005/11/28/ international/africa/28senegal.html.)
(Charles Mwalimu, 7-0637, cmwa@loc.gov)

BELGIUM/PALESTINIAN AUTHORITY – Cooperation Agreement on Training of Magistrates

On November 12, 2005, the Belgian Justice Minister and his Palestinian counterpart signed an agreement under which a certain number of Palestinian magistrates will be trained in Belgium. The Belgian Government is planning to allocate one million *euros* (about US$1.18 million) to the project over a period of four years. The present agreement is similar to an agreement signed earlier with the Iraqi Government that provides for the training of thirty-nine magistrates and police officers. (*Belgian Minister Concludes Cooperation Accord with Palestinian Authority*, BBC MONITORING INTERNATIONAL REPORTS, Nov. 14, 2005, LEXIS/NEXIS, News Library, 90days File.)
(Nicole Atwill, 7-2832, natw@loc.gov)

CANADA/UNITED STATES – Open-Skies Agreement Expanded

Canada and the United States have reportedly agreed to expand their open-skies agreement to allow a plane from one country to stop in the other and pick up passengers or cargo before flying to a third country, beginning in September of 2006. This will allow U.S. airlines to pick up passengers and cargo in Canada on their way to Europe and Canadian airlines to pick up passengers and cargo in the United States on their way to the Caribbean or South America. The agreement does not provide for cabotage, which would allow Canadian or U.S. airlines to fly freely between cities within the other country. Spokesmen have been quoted as saying that neither Canada nor the United States was prepared to discuss implementing cabotage at this time. However, the new agreement does expand upon the current open-skies arrangement that allows airlines to choose which cities they would like to fly to across the border without having to obtain regulatory approval. Prior to 1995, routes were reserved for approved carriers. (Sandra Cordon, *Canada, U.S. Expand Open-Skies Deal on Transporting Passengers, Cargo,* CANADIAN PRESS, Nov. 11, 2005, http://news.yahoo.com/s/cpress/20051111/ca_pr_on_bu/us_cda_open_skies;_ylt=Ak7tJTz8NmpaKeXnIEkbs2Vs9L4F;_ylu=X3oDMTBjMHVqMTQ4BHNlYwN5bnN1YmNhdA--.)
(Stephen Clarke, 7-7121, scla@loc.gov)

CANON LAW – Sexual Abuse of Minors by Priests

The Canon Law Society of America (CLSA) approved an extensive and updated version of the GUIDE TO THE IMPLEMENTATION OF THE U.S. BISHOPS' *ESSENTIAL NORMS FOR DIOCESAN/EPARCHIAL POLICIES DEALING WITH ALLEGATIONS OF SEXUAL ABUSE OF MINORS BY PRIESTS OR DEACONS* (May 2004 edition). (Text available from the "Online Bookshelf" section of the CLSA website, *at* http://clsa.org/pdf/sexual_abuse_guide.pdf?osCsid=0ce39fa541de39ae2b7f5908b5c4eea9.) The norms were approved by the U.S. bishops at a meeting held in November 2002. The norms received the required *recognitio* from the Holy See on December 8, 2002, as complementary norms to the Code of Canon Law, and then were promulgated on December 12, 2002, as a general decree of the United States Conference of Catholic Bishops. The objective of the Guide is to provide orientation and answers to canonical issues related to sexual abuse of minors by priests. For this purpose, it sets forth (1) the rights of persons who have been sexually abused by priests; (2) the rights of priests who have been accused of sexual

abuse; and (3) proceedings that can be used during the course of a preliminary investigation and any other required actions.

Persons who have been sexually abused by priests have the right to be heard. The abused must notify the authorities of the Church of their decision to initiate a process aimed at healing, reconciliation, and a just resolution. The first step by the bishop must be to determine if a crime was committed. Those who have been abused have a right to protect their reputation and to privacy. They also have right to challenge a resolution, through appeal, if they find the Church's response in the ecclesiastical judicial process is inadequate. The last recourse to overturn a decision made at the diocesan level is to take the matter to the Holy See. Finally, there is the right to a judicial trial if necessary, if mediation or arbitration has been unsuccessful.

Priests who have been accused of sexual abuse of minors have the right to protection of their reputations during the preliminary investigation of allegations of sexual abuse, which must be initiated "promptly and objectively" (Canon 1717). They have the right to due process; priests who hold ecclesiastical office cannot be removed without canonical due process. At the same time, they are encouraged to retain the help of civil and canonical counsel. Because the Code of Canon Law is above any national or diocesan ruling, they can expect that procedures at those levels will be in accordance with the Code; the universal law of the Church still applies. It is also important to point out that canon law has a statute of limitations, called a prescription. The prescription for crimes of sexual abuse committed by a priest between November 27, 1983 (date of enforcement of the new Code), and April 25, 1994 (date of special derogation granted to the United States by the Hole See), expires when the victim completes the twenty-third year of age; for crimes committed after April 25, 1994, the prescription expires when the victim completes the twenty-eighth year of age.

There are steps that must be taken immediately by the victim, the bishop, and the accused priest when the ecclesiastical authorities are notified of allegations of sexual abuse. First, the victim brings the case to the bishop's attention to see that the abusive priest is removed from the ministry according to canonical procedures; he/she can also contact the civil authorities. The victim will be asked to provide a statement, as well as answers to concrete questions by the investigator. At the conclusion of the investigation, if the victim is not satisfied with the procedure and is convinced that the solution proposed is inadequate, he or she can seek other remedies in an appropriate canonical court. Second, the bishop must promptly and objectively initiate a preliminary investigation of a penal process (Canon 1717-1719). During the investigation, the bishop seeks the advice of the Review Board, a body composed, according to the norms, of least five members (the majority of them lay persons) who are deemed to be of outstanding integrity and judgment and who are in full communion with the Church, whose main function is not to investigate but to provide advice. The bishop has the responsibility to address the harm suffered by the victim and he may, with the parties consent and to avoid going to trial, make a decision about questions of damages (Canon 1718, 4). Third, the accused priest has the right to seek civil and canonical counsel and the right to speak with his bishop; he cannot be forced to confess to the offense if he chooses not to voluntarily admit commission of the abuse. The priest may be asked to undergo a medical or psychological evaluation, but if he refuses the request it cannot be used against him. Finally, the accused priest has the right to appeal any decision taken against him if there is enough evidence that the penalties were imposed unjustly or in an unwarranted manner.
(Dario Ferreira, 7-9817, dfer@loc.gov)

CENTRAL AMERICA – Prospective Free Trade Agreement with EU

The Vice Minister of Foreign Trade of Costa Rica, Doris Osterloff, reported on the on-going technical preparations by the Central American countries to negotiate together, as a block, a free trade agreement with the European Union. To this effect, preparatory technical meetings have been held; the last one will take place in Managua, Nicaragua, in January 2006. The EU requires as a precondition a certain level of integration among the Central American countries, including the formation of a customs union. According to the Vice Minister, all the conditions have already been met to start the negotiations. She noted that the presidents of the Central American countries would meet with EU leaders in Vienna in May 2006 to discuss initiation of these negotiations. (Marvin Barquero S., *Alistan Negociación con UE para Mayo Próximo*, LA NACIÓN, Nov. 11, 2005, http://www.nacion.com.)
(Norma C. Gutiérrez, 7-4314, ngut@loc.gov)

CHINA/NEPAL – Border Inspection

On October 30, 2005, at the second meeting of the Nepal-China Joint Inspection Committee, representatives of both sides initialed four documents designed to facilitate work procedures related to fieldwork for the third joint inspection of the Nepal-China boundary. The documents cover facilitated procedures for temporary border crossing, boundary-marker surveying specifications, specifications for partial updating of maps, and specifications on developing a geographical information system for the joint border. The agreements will be signed at a future meeting. The planned date of commencement of the joint inspection is April 2006. The two previous border inspections were reportedly held in 1979 and 1988. (*Xinhua: Nepal, China Agree on Joint Border Inspection*, XINHUA, Oct. 31, 2005, FBIS No. CPP20051031054022.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA/UNCHR – Visit by U.N. Special Rapporteur on Torture

The United Nations Commission on Human Rights (UNCHR) Special Rapporteur on the Question of Torture, Manfred Nowak, conducted a two-week tour of China, from November 20, 2005, to December 2, 2005, after a decade of repeated requests for a visit agreed to by the Chinese Government had been systematically postponed by it. Although China's Criminal Law and Criminal Procedure Law have provisions against the use of torture and a new law adopted in August 2005 (effective as of March 1, 2006) stipulates punishments for policemen who torture detainees during interrogation and commit other abuses, human rights activists and lawyers have repeatedly noted that the practice of torture to force confessions remains widespread in China. Mr. Nowak spent time in Beijing, Tibet, and Xinjiang, visiting detention centers to investigate allegations of torture and other human rights abuses. He indicated that China had not imposed any conditions on the trip and that he had insisted on being given the freedom to see detention centers and prisons of his choice as well as prisoners of his choosing in private. However, during the visit, some government authorities (the Ministries of State Security and Public Security in particular) tried at various times to obstruct or restrict his fact-finding efforts. According to a press release issued by the Special Rapporteur, prison officials imposed their own working hours as limits for interviews, thereby curtailing the number of facilities that he could visit and the number of detainees he could interview. Nor was he able to obtain a letter of authorization to visit detention centers on his own. Officials from the Ministry of Foreign Affairs accompanied him to ensure unrestricted access; in the process, the detention center authorities were typically informed an hour in advance, so that, strictly speaking, the visits could not be considered

"unannounced." Although, according to the press release, the Special Rapporteur cannot make a detailed determination as to the current scale of the methods of torture used in China, he "believes that the practice of torture, though on the decline – particularly in urban areas – remains widespread" in that country. Mr. Nowak will submit his findings at the 2006 meeting of the UNHCR. (Posting of Stephanie Kleine-Ahlbrandt, skleine-ahlbrandt@OHCHR.ORG, to CHINALAW@ hermes.gwu.edu, Nov. 22, 2005 (the posting captures several articles on the topic); United Nations Press Release, *Special Rapporteur on Torture Highlights Challenges at End of Visit to China* (Dec. 2, 2005), http://www.unhchr.ch/huricane/huricane.nsf/view01/677C1943FAA14D67C12570CB0034966D?opendocument.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

COLOMBIA/ECUADOR/MEXICO – International Drug Ring Broken

On November 10, 2005, authorities in Colombia, Mexico, and Ecuador shut down an international drug trafficking and money laundering operation, arresting fifty-six suspects in simultaneous raids in the three Latin American countries. The network smuggled drugs to the United States and Europe and laundered money in Latin America. It was reported that twenty-four individuals were arrested in Colombia, twenty-one in Mexico, and eleven in Ecuador. (*Gran captura de traficantes de droga*, Nov. 10, 2005, WWW.UNIVISION.COM, *at* http://www.univision.com/content/content.jhtml?cid=734628 (last visited Nov. 21, 2005).)
(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

EUROPEAN COURT OF HUMAN RIGHTS/TURKEY – Judgment in Headscarf Case

On November 10, 2005, the European Court of Human Rights in Strasbourg issued a judgment in the case of *Leyla Sahin v. Turkey*. The facts of the case involve a Turkish Moslem national, Leyla Sahin. When the applicant was a medical student in Istanbul, the university issued a regulation prohibiting attendance at courses by students wearing headscarves. Since Sahin refused to comply with the regulation, she was prevented from participating in classes. Upon exhausting the domestic remedies, Sahin applied to the European Court of Human Rights, claiming that such a prohibition infringed upon her right to freedom of religion and her right to express her religion, as embodied in article 9 of the European Convention on Human Rights and Fundamental Freedoms.

In examining the facts of the case, the Court first established that there was interference with the right to freedom of religion and that that interference was prescribed by law. Then the Court proceeded to examine whether such interference was necessary in a democratic society. It stated that secularism as it applies in Turkey is consistent with the values of the European Convention. The Grand Chamber of the Court followed the rationale of the Chamber, which stated that "when examining the headscarf in the Turkish context, there must be borne in mind the impact which wearing such a symbol, which is presented or perceived as a compulsory religious duty, may have on those who choose not to wear it."

Furthermore, the Court noted that there were extremist political movements in Turkey that sought to enforce their own religious symbols and ideas on Turkish society as a whole. Thus, the Turkish Government, by passing and enforcing regulations prohibiting the use of headscarves in schools, seeks to ensure and protect legitimate goals, especially pluralism in universities. The Court concluded that:

> where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women are being taught and applied in practice, it is understandable that the relevant authorities should wish to preserve the secular nature of the institution concerned and so consider it contrary to such values to allow religious attire.

The Court held that the Turkish Government had the right to interfere, that such interference with the religious freedom of those who wanted to wear headscarves was justified in a pluralistic and secular society, and that it was also proportionate to the aim pursued. (Judgment of the European Court of Human Rights (ECHR): Leyla Sahin v. Turkey, *available at* http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=Sahin%20%7C%20v.%20%7C%20Turkey&sessionid=4597659&skin=hudoc-en.)
(Theresa Papademetriou, 7-9857, tpap@loc.gov)

FRANCE/SWITZERLAND – Aerial Policing Agreement

On October 27, 2005, France and Switzerland signed a bilateral agreement on aerial policing within the framework of the international fight against terrorism. Under the agreement, French military airplanes are authorized to pursue a suspect target within Swiss air space without prior approval, and vice versa. This is a first for Switzerland, which has always been careful to preserve its neutrality. France has already signed such an agreement with Belgium. (*La Suisse signe un accord de surveillance aérienne avec la France*, LE MONDE, Oct. 27, 2005, *at* http://lemonde.fr (archives).)
(Nicole Atwill, 7-2832, natw@loc.gov)

MEXICO/MERCOSUR – Membership Invitation

Mexico recently was invited to join MERCOSUR, a trade agreement signed by Argentina, Brazil, Paraguay, and Uruguay. The President of Uruguay, Mr. Tabaré Vazquez, who is currently the head of the MERCOSUR Secretariat, extended the offer to the Mexican Government. It has been reported that Mexico's Foreign Relations Minister, Mr. Luis Derbez, will attend a meeting with representatives of the countries that are parties to MERCOSUR in order to discuss the offer. The meeting is scheduled to take place in Montevideo, Uruguay, in December 2005. (Mexico Ministry of Foreign Affairs official website, *Invitan a México a integrarse al Mercosur*, Nov. 18, 2005, *available at* http://www.sre.gob. mx/comunicados/prensa_hoy/nuevo/hojas/noviembre/18/ic08.htm.)
(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

NAFTA – Proposal for Customs Integration

Eloy Cantú Segovia, Secretary of Economic Development of the government of the Mexican state of Nuevo León, has called for an urgent furthering of the economic integration of the economies of the three NAFTA countries in order to move towards the so-called "NAFTA plus." The first step, in his view, should be customs integration.

Mr. Cantú Segovia's proposal was in response to an analysis made by the World Trade Organization, published on November 2, 2005, stating that the commercial block formed in 1994 by Canada, the United States, and Mexico, is the least dynamic in the world, with a deficit almost ten times higher than that of the European Union.

Mr. Cantú Segovia further stated that NAFTA has "already done its job," but the move he was proposing would preserve the trade benefits of the trade agreement while bringing the three countries to a more effective level of economic integration. According to him, the economic development level reached by the EU is a clear example of what a customs union can achieve for its country partners. (Emilio Ruiz Parra, *Recetan al TLC Integrar Aduanas*, EL NORTE, Nov. 3, 2005, http://www.elnorte.com.)
(Norma C. Gutiérrez, 7-4314, ngut@loc.gov)

NORDIC COUNCIL – Action Plan to Fight Obesity

The Nordic Council of Ministers and the Danish Veterinary and Food Administration held a conference in early November 2005 to discuss an action plan for the Nordic countries for better health and quality of life. The conference's participants are looking to lead the way in the global effort to stop obesity and related diseases caused by lack of exercise and weight problems. A working group, comprised of representatives from all the Nordic countries, was set up and will now evaluate and analyze the information from the conference and draw up the action plan. The ministerial council for food is expected to adopt the action plan in June 2006. Some of the proposals from the conference include:

- setting up a Nordic Center for Public Health in Gothenburg Sweden;
- banning television ads for unhealthy foods directed at children;
- making health information available to pregnant women;
- promoting physical activity; and
- improving the labeling of foods.

(Nordic Council, *Obesity Action Plan,* NORDIC NEWS, Nov. 16, 2005, *available at* http://www.norden.org/webb/news/news.asp?id=5729&lang=6.)
(Linda Forslund, 7-9856, lifo@loc.gov)

SRI LANKA/UNITED STATES – Memorandum of Intent for Assistance for Counter-Terrorism

On October 27, 2005, the Secretary of the Ministry of Public Security of the Government of Sri Lanka and the U.S. Ambassador signed a Memorandum of Intent (MOI) providing assistance to Sri Lanka for enhancement of the Sri Lankan Government's ability to counter terrorism and to strengthen cooperation between the two countries in fighting terrorism. To show the significance that the Sri Lankan Government attaches to the MOI, an additional secretary of the ministry and the Inspector-General and his deputy were present on the occasion to witness the execution of the MOI.

The MOI provides for assistance to Sri Lanka in the form of training and technical cooperation in enhancing the anti-terrorism abilities of the island government in order to deter terrorism and strengthen the common interests of the two governments in international anti-terrorist efforts. The U.S. Government will provide assistance under three basic stages: (1) needs assessment, (2) course and consultation offerings, and (3) on-going program reviews. The needs assessment will determine the current level of capabilities of the Sri Lankan Government and determine areas where assistance could be of value. The assessment will evaluate the country's ability to respond to terrorist threats and will focus on the following areas:

1) Law enforcement, including preservation of the peace and protection of life and property, protection of the national leadership and the seat and function of government, and protection of diplomats.

2) Control over international borders.

3) Protection of critical infrastructure.

4) Management of terrorist attacks that have national security implications.

Based on the needs assessment, the U.S. Government will begin formal training courses for police personnel selected by the Sri Lankan Government. Those trained personnel would then have job opportunities directly related to their training and would be posted in the relevant positions. Some of the trained personnel will train others in the future. The MOI will allow the Sri Lankan Government to use the equipment only for the operational purposes for which it was provided. (*Sri Lanka Signs Memorandum of Intent With US on Anti-Terror Cooperation*, THE COLOMBO DAILY MIRROR, Oct. 29, 2005, FBIS No. SAP20051031047008.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

UNITED NATIONS/CAMBODIA – Khmer Rouge Trial Plans Moving Forward

The United Nations is proceeding with plans for special tribunals to try the former leaders of the Khmer Rouge, accused in the deaths of hundreds of thousands of Cambodian civilians between April 1975 and January 1979. Special, mixed courts, with Cambodian and foreign judges, will be set up. Kofi Annan, the U.N. Secretary-General, has been considering nominees to fill the court positions. According to a U.N. spokesman in a November 23, 2005, briefing, the review of names will be completed in December and candidates will be given interviews. International Judges, an International Co-Prosecutor, an International Co-Investigating Judge, and International Judges of the Pre-Trial Chamber will be selected. Cambodia had signed an agreement with the U.N. to set up a four-judge trial court and a five-judge Supreme Court within the national legal system to try those considered responsible for serious violations of Cambodian and international law. The agreement specifies that decisions in the two courts will be by majority vote. (*UN Moves Ahead with Cambodian Trials Court for Khmer Rouge Leaders*, UN NEWS SERVICE, Nov. 23, 2005, from UNNews@un.org.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

WIPO – Annual Assembly

On October 5, 2005, the World Intellectual Property Organization (WIPO) concluded the annual assembly of its member states. Among the highlights of this year's assembly was the resolution of an impasse in the negotiations for a WIPO Substantive Patent Law Treaty. This was accomplished through a decision to resume talks next year, after holding a three-day open forum in January 2006 that will allow participants from different geographical areas and with different levels of technical expertise to discuss the issues that have been raised so far. (*WIPO Press Release 427*, Oct. 5, 2005, http://wipo.int.) Prior to the taking of that resolution, the discussions on a substantive patent law treaty had reached a stalemate due to the seemingly irreconcilable differences between industrialized and developing nations. (F. Williams, *Patent Law Truce Ends Deadlock at UN Body*, FINANCIAL TIMES, EUROPE EDITION, Oct. 6, 2005, *at* 6, LEXIS/NEXIS, News Library, Curnws File.)
(Edith Palmer, 7-9860, epal@loc.gov)

RECENT DEVELOPMENTS IN THE EUROPEAN UNION

Prepared by Theresa Papademetriou, Senior Foreign Law Specialist, Western Law Division

Registration of Medicines

A regulation was recently adopted introducing new rules on fees applied to registering medicines for human and veterinary use with the European Medicines Agency (EMEA). The Agency has its seat in London and is the body responsible for authorizing medicines for use in the European Union. Companies that wish to obtain authorization to market a drug in the EU must apply to EMEA. The Agency also advises companies on research and development issues. The new rules include a reduction in fees applied to generic drugs; new fee categories for new services provided by the EMEA, such as expert opinions on traditional herbal medicines; and extension of the deadline for payment of the fees from thirty to forty-five days. (Press Release, IP/05/1439, *Registration of Medicines: Following a European Commission Proposal, Fees Will Be Reduced and Rules Streamlined* (Nov. 17, 2005), *available at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1439&format=HTML&aged=0&language=EN&guiLanguage=en.)

Revision of Block Exemption of Passenger Tariff Conferences

The European Commission recently formulated a draft Block Exemption Regulation that proposes to eliminate the special exemption status that tariff conferences enjoy for routes within the EU. Since 1993, tariff conferences have been exempt from the prohibition of restrictive business practices as provided in article 81 of the EC Treaty. The proposed regulation, which will be enforced as of January 1, 2007, provides for a one-year transitional period in order to allow the International Air Transport Association (IATA) to find other arrangements. For routes between the EU and third countries, the regulation provides an extension of the exemption status until 2008, under the condition that participating airlines inform the Commission so that the latter will be in a position to review the situation in 2008. (Press Release, IP/05/1432, *Competition: Commission Proposes to Revise Block Exemption for IATA Passenger Tariff Conferences* (Nov. 16, 2005), *available at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1432&format=HTML&aged=0&language=EN&guiLanguage=en.)

EU and the Former Yugoslav Republic of Macedonia (FYROM)

The FYROM applied to become an EU member on March 22, 2004. The European Commission evaluated the FYROM's application in order to ensure that the applicant country meets the political and economic criteria established by the Copenhagen European Council of 1993 and the conditions for the Stabilization and Association Process for the Western Balkans. On November 9, 2005, the Commission adopted its opinion on the application and recommended that the Council grant the status of candidate country to the FYROM. The Commission found that the FYROM is a functioning democracy that respects the rule of law and fundamental rights. The country still needs to reform its judiciary and its administrative apparatus and also to improve its fight against corruption. Formal accession negotiations will commence upon further evaluation of the FYROM's progress on compliance with membership criteria. (Press Release, IP/05/1391, *The Commission Recommends Candidate Status for the Former Yugoslav Republic of Macedonia* (Nov. 9, 2005), *available at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1391&format=HTML&aged=0&language=EN&guiLanguage=en.)

Gene, Cell Tissue-Based Therapies

On November 16, 2005, the European Commission published a draft regulation designed to cover a legal gap in the field of certain advanced medical therapies. As the Vice President of the Commission stated:

> Advanced therapies have a huge potential, both for patients and industry. With this proposal we guarantee the highest level of health protection for patients. At the same time we give the biotech industry a coherent EU-wide framework, which allows them to innovate, grow and create jobs.

The main points of the draft regulation include:

- a centralized marketing authorization procedure;
- a new and multidisciplinary expert committee operating within the European Medicines Agency;
- requirements for risk management and traceability; and
- incentives for small and medium-sized enterprises.

The proposed rules on advanced therapies are reportedly fully compatible with human rights and principles embodied in the European Convention of Human Rights and Fundamental Freedoms, as well as the Charter of Fundamental Rights. Moreover, they are in line with the principle of subsidiarity, allowing certain issues to be dealt with at the national level. (Press Release, IP/05/1428, *Commission Unveils New Rules to Support Gene, Cell or Tissue Based Therapies* (Nov. 16, 2005), *available at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1428&format=HTML&aged=0&language=EN&guiLanguage=en.)

EU Parliament Endorses Legislation on Chemicals

More than a year ago, the European Commission introduced tough legislation on chemicals, otherwise known by the acronym REACH, for registration, evaluation, and authorization of chemicals. It is a comprehensive piece of legislation and supersedes forty directives regulating various aspects of chemicals. The thrust of the chemicals legislation is the mandatory registration of chemicals in a central database and imposition of tough standards on chemical companies to prove that approximately 30,000 industrial chemicals do not pose a threat to humans or the environment. The initial version of the draft legislation drew severe criticism from manufacturers of chemicals. On November 15, 2005, the European Parliament approved a milder version of the proposal submitted by the Commission. In the current version, safety tests would be required only for a smaller number than the original number of 30,000 substances. An additional requirement for expensive tests on the long-term effects of toxicity of chemicals on the environment and their impact on DNA was completely eliminated. On the other hand, the Parliament tightened the requirements for authorization to use some hazardous substances. Companies would have to find alternative substances for some dangerous materials. Environmental groups claim that the legislation is not as tough as originally planned, whereas business lobbyists argue that it "is going in the right direction." (*Chemical Protection Legislation Approved*, ASSOCIATED PRESS, Nov. 17, 2005, as published in FORBES, *available at* http://www.forbes.com/associatedpress/feeds/ap/ 2005/11/17/ap2343536.html.)

SOUTH KOREA: COPYRIGHT INFRINGEMENT AND SOFTWARE STREAMING SOLUTIONS

Prepared by Jung Hwa Lee, Contract Foreign Law Specialist

Executive Summary

This report examines the recent copyright dispute on software streaming solutions between universities, software companies, the Korean Government, and, ultimately, an international software alliance. It analyzes the legal implications of the incident and the solution on which the disputing parties settled. The parties finally agreed that copyright infringement matters involving software streaming solutions should be resolved by negotiating the scope of usage under the licensing contract between the software streaming service provider, the copyright holder, and the user, rather than by litigation under the rules of copyright law.

I. Background

In April 2004, six software manufacturers, including Microsoft, Adobe Korea, and Hangul & Computer (hereinafter "the plaintiffs"), filed a complaint with the District Court for Chong-Ju City[1] against Ju-Sung University, for violation of the Act on Protection of Computer Programs.[2] The university had enabled its users' access the plaintiffs' software through a software streaming service, which was not allowed explicitly under the contract with the plaintiffs.[3] The plaintiffs alleged that the university committed unauthorized transmission, replication, and modification of their products by employing software-streaming solutions to enable logged-in users' access to the software programs made by the plaintiffs after installing them in the server computer. The plaintiffs announced that they were contemplating suing another ten universities for the same violation.[4]

Ju-Sung University has been using Z!Stream, a software streaming program, to let its students log in to the university's system and thus to use the software installed in the server. When a software streaming solution is employed, application settings and profiles are cached in the local computer, providing instant access for subsequent use. The plaintiffs alleged that the university infringed their rights to transmit, duplicate, and modify their program under article 7 of the Act on Protection of Computer Programs by employing a software streaming solution that leaves end users' computers with a cache file, including settings and profiles of the application, and by modifying their program in the course of installing the streaming software.[5]

---

[1] Hyung-Ju Lee, *Legal Nature of Software Streaming Service,* TECHNOLOGY & LAW CENTER SEMINAR MATERIAL 55 (Seoul National University, 2005).

[2] Act No. 6233 (Jan. 28, 2000), as amended by Act No. 6843 (Dec. 30, 2002).

[3] Sun-Hee Youn, *Software Streaming Solution and the Related Legal Issues*, 38 MICROSOFT BUSINESS FOCUS (Sep./Oct. 2004), *available at* http://www.microsoft.com/korea/magazine/200409/column/column.asp (last visited Sept. 12, 2005).

[4] Lee, *supra* note 1.

[5] BSA, *Business Software Alliance (BSA) Announces Its Opinion on the Program Deliberation and Mediation Committee's (PDMC) Authoritative Interpretation on Software Streaming* [in Korean], *at* http://www.bsa.org/korea/press/newsreleases/prKorea20040811.cfm (last visited Sept. 12, 2005); *The Chairman of Asian Pacific Division of the American BSA, Jeff Hardy, Expresses His Concern on the Intervention of the Korean Government in the Software Streaming*

II. PDMC Authoritative Interpretation

SoftOnNet, Inc., the manufacturer of Z!Stream, the software that made the streaming practice possible, requested that the Ministry of Information and Communication (MIC) mediate the matter.[6] Pursuant to the Act on Protection of Computer Programs, the Program Review Committee under the MIC can mediate a dispute at the request of the parties concerned.[7]

The Program Deliberation and Mediation Committee (PDMC), a consultative body under the Ministry, reached an Authoritative Interpretation that "Enabling limited numbers of simultaneous users within the scope of the licensing contract to access the software through the software streaming method is not a copyright infringement."[8] According to the Interpretation, there is no major infringement of copyright that occurred in the course of using the software streaming solution, except for a possible infringement of the right to transmit, which also can be resolved through a licensing contract between the user and the independent software vendor, allowing the application to be used with the software streaming solution.[9]

This Interpretation is not legally binding, but it created enormous controversy nationally and internationally because the software streaming practice is becoming dominant in the market. The Interpretation is the first and only official interpretation made by the authority where there is neither a readily applicable legal standard nor a licensing policy developed by the copyright holders in contemplation of the software streaming practice.[10] The Korea Software Property Rights Council (SPC)[11] and the Business Software Alliance (BSA)[12] protested against the Interpretation and, in August 2004, demanded further review of the matter.[13]

According to the PDMC's Interpretation, a software streaming service does not infringe the right to duplicate because the cached file cannot be operated or used independently. End users cannot discover the elements of the file or reuse it without connecting to the server computer.[14] Similarly, PDMC decided that a right to modify is not infringed by the service simply because the encoding process occurs when the

---

Controversy [in Korean], CURRENT ISSUES (Aug. 26, 2004), *available at* http://www.pdmc.or.kr/pds/trend/inside_view.jsp?pkid=142..

[6] Lee, *supra* note 1.

[7] Act No. 6233, *supra* note 2, arts. 35-36.

[8] PDMC, *Authoritative Interpretation on Software Streaming Solution*, *at* http://www.pdmc.or.kr/main/hotissue/issueList.jsp?fkid=1&subject=SOFTWARE%20 %20 %20 %20 &pCpage=1&pageSize=10, (last visited Sept. 12, 2005).

[9] Lee, *supra* note 1, at 61.

[10] Min-ok Han, *PDMC Said It Is Only a Guideline*, DIGITAL TIMES, Aug. 11, 2004, *available at* http://www.dt.co.kr/content/2004081102011460699002.html.

[11] Datanet, *SPC Says Against PDMC's Decision*, *at* http://www.datanet.co.kr/news/news_view.html?cate1=&cd=19952&page=1 (last visited Sept. 12, 2005).

[12] BSA, *supra* note 5.

[13] PDMC, *Software Property Right Council and BSA Say That Software Streaming Technology Infringes Copyright* [in Korean], CURRENT ISSUES (Aug. 11, 2004), *available at* http://www.pdmc.or.kr/pds/trend/inside_view.jsp?pkid=77. []

[14] BSA, *supra*, note 5.

streaming solution is loaded on an application to "stream" it. This kind of encoding does not include any modification of the source code or execution file and thus should not be considered an infringement of a right to modify.[15]

As to the right of transmission, PDMC pointed out that using a software streaming solution for package software developed for PCs should not be allowed. However, it also stated that where a copyright holder provides a licensing contract to authorize simultaneous usage, whether the software streaming method infringes the right to transmit or not should be decided based on the terms of the licensing contract.[16]

III. Analysis

Software streaming solutions were developed to decrease the amount of time it took end users to access an application installed in a central server computer. Rather than "pushing" down and installing entire applications, the first time that an application is requested by end users the streaming program responds and pulls the requisite software package from the central server.[17] When the session terminates, application settings and profiles are cached in the local computer, providing instant access for subsequent use with little impact on bandwidth.[18] A streaming method is a good tool for users, according to a Merrill Lynch industry update report, because it saves information infrastructure costs and increases the efficiency of software management.[19]

In the United States, most of the plaintiffs, including Microsoft and Adobe, have been entering licensing contracts allowing users to employ a software streaming solution. Therefore, using a software streaming solution in the United States has never been disputed legally. Somehow the same manufacturers have not introduced the terms in licensing contracts with Korean customers.[20]

The plaintiffs argued that there should not be anything left behind on the client's hard disk after use of the application through software streaming, comparing software streaming to the old downloading type of software usage.[21] No streaming software meets this requirement at this time. However, according to the PDMC, the requirement is not necessary to avoid infringing copyright.[22] Unauthorized replication is prohibited because it deprives copyright holders of legitimate opportunities to make a profit by

---

[15] *Id.*

[16] *Id.*

[17] Softricity, *Application Delivery with SoftGrid*, http://www.softricity.com/products/delivery.asp (last visited Sept. 12, 2005).

[18] *Id.*

[19] Jason Maynard, Karen Russillo, & Kelly Fong, *Software Goes on Demand*, INDUSTRY (Merrill Lynch/ Global Securities Research & Economics Group, Global Fundamental Equity Research Department), Feb. 10, 2004, *at* http://www.nexternal.com/eCommerce/mlsoftware.pdf.

[20] PDMC, *Software Streaming is Used Worldwide* [in Korean], CURRENT ISSUES (Dec. 19, 2004), *available at* http://www.pdmc.or.kr/pds/trend/inside_view.jsp?pkid=745&cpage= 6&pageSize=10.

[21] Han, *supra* note 10.

[22] PDMC, *MP3 Companies, Can They Reach an Agreement?* CURRENT ISSUES (Sept. 22, 2004), *available at* http://www.pdmc.or.kr/pds/trend/inside_view.jsp?cpage= 9&pkid=285&pageSize=10.

replacing the software application purchase with the replication.[23] However, although the cached files are saved in the client's hard disk after the software streaming solution is used, the application cannot be operated independently with the cached files without connecting to the server computer again.[24] Therefore, it cannot be said that a replication taking a sales opportunity away from the copyright holder ever occurred in this case.

The right of transmission is not infringed by a software streaming method used under a licensing contract that limits simultaneous users. It should not be considered infringement of the right to transmit just because the licensing contract does not authorize explicitly authorize the buyer to use a software streaming solution.[25]

If the copyright holders try to restrict a software streaming solution because it leaves some cached files in the end users' computers, then they discriminate against Korean customers, because they provide licensing contracts allowing a software streaming solution for customers other than Korean customers. [26]

IV. Conclusion

After numerous debates among jurists, software experts, and manufacturers, the parties settled out of court on condition that the software streaming service provider present a framework that enables the copyright holders to control the total number of simultaneous users.[27] As suggested in the PDMC's Interpretation, the parties decided to resolve the problem by clarifying in the licensing contract the terms of use of the software streaming solution and the number of simultaneous users allowed.

The possible occurrence of copyright infringement by using software through a software streaming solution will be decided based on the existing licensing contract and the interpretation of that contract. Therefore, Korean experts suggest that users more fully examine the software streaming solution when they try to enter into a licensing contract with the software copyright holders or vendors. Alternatively, software streaming service providers can allow multiple use of one copy of the product by entering into a contract directly with the copyright holders.[28]

* * * * *

[23] Lee, *supra* note 1, at 62.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] Youn, *supra* note 3.