



# WORLD LAW BULLETIN

## June 2005

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Respectfully submitted,

*Walter Gary Sharp, Sr.*

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Director of Legal Research



**Directorate of Legal Research for**  
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## AFRICA

### GUINEA-BISSAU – Vieira and Yala Cleared to Enter Presidential Election

The Supreme Court of Guinea-Bissau recently issued an opinion that would allow former presidents Joao Bernardo "Nino" Vieira and Kumba Yala to be presidential candidates in the election scheduled for June 2005. However, the Court has not publicly announced its reasons for overruling the legal obstacles that had threatened to prevent both men from standing for election.

Armando Bango, the head of the local Law Society, said he was astounded at the Supreme Court's decision to allow Vieira and Yala to stand in the upcoming election, describing it as a travesty of justice. "The Guinean judicial system had the opportunity to assert itself, but unfortunately, once again, it has been afraid to speak the truth," he said.

Vieira and Yala are both controversial figures in Guinea-Bissau. Vieira, a military strongman who ruled the country from 1980 to 1999, has been widely viewed as ineligible because he faces court charges that he ordered the assassination of five senior military officers suspected of plotting a coup against him in 1985. Since his overthrow, Vieira has been living in Portugal, the former colonial ruler of Guinea-Bissau. Legal experts had thought that his status as a political exile living overseas would also make him ineligible to stand as a candidate for elected office under Guinea-Bissau law.

Yala was elected president in 2000, only to be overthrown by a bloodless coup in 2003 after he dismissed parliament and failed to hold fresh elections. He was subsequently banned from holding political office for five years under the terms of a transitional charter to guide Guinea-Bissau back to democracy. The charter was signed by all of the country's main political parties, including Yala's own Social Renovation Party (PRS), which subsequently named him as its presidential candidate. Carlos Vamain, one of Guinea-Bissau's leading experts on constitutional affairs, stated:

With this decision by the Supreme Court, the transitional charter has died....Now the judges of the Supreme Court should simply pack their bags and go....This was not a juridical decision, but a political one.

Diplomats fear that should either man return to power, it will prove difficult to heal the wounds of Guinea-Bissau's 1998 to 1999 civil war and restore stability to this impoverished country of 1.3 million people. (Integrated Regional Information Networks website, part of the U.N. Office for the Coordination of Humanitarian Affairs, at <http://www.irinnews.org/report.asp?ReportID=47053&SelectRegion=West Africa&SelectCountry=GUINEA-BISSAU> (last visited June 13, 2005).) (Gustavo E. Guerra, 7-7104, [ggue@loc.gov](mailto:ggue@loc.gov))

### NIGERIA – Legal System

In May 2005, the Judiciary and Legal Committee of the National Political Reform Conference submitted its report on the future of the Nigerian legal system. The members examined various areas of the legal process and recommended changes in the independence of the judiciary, enforcement of judgments, elimination of corruption, separation of the office of Attorney General from the Minister of Justice, and prison reforms. The Committee especially acknowledged incidents of corruption in the judicial system involving certain judges and legal practitioners. Conditions in prisons and other



detention facilities have also been examined, and upgrades have been recommended, especially in facilities for women and children. Also in need of attention are alternative mechanisms of dispute resolution, congestion in the courts and case loads, establishment of a Constitutional Court and a Court of Appeal for Nigeria, reform of civil procedure rules for the whole federation, reexamination of the issue of the jurisdiction of the Federal High Court, and administration of juvenile justice. (*The Way Forward for the Legal System in Nigeria: A Report of the Judiciary Committee*, THE VANGUARD NEWSPAPER ON LINE, <http://www.vanguardngr.com/articles/2002/features/law/law120052005.>) (Charles Mwalimu, 7-0637, cmwa@loc.gov)

### SIERRA LEONE – Prosecution for Revealing Identity of a Witness

The U.N. News Center reported that the Special International Court for Sierra Leone ordered the prosecution of five persons for contempt of court. They are alleged to have revealed the identity of and threatened a protected witness. The Court indicated that one of the five individuals revealed the name of a witness to two other people, who later threatened to attack the home of the witness. The person who released the name was an investigator attached to the defense team of one of the alleged leaders of the former Armed Forces Revolutionary Council (AFRC), originally indicted by the Court in May 2003 on seventeen counts. These were later amended to eighteen and subsequently reduced to fourteen counts of war crimes, crimes against humanity, and other violations of international law committed in the course of the civil war in Sierra Leone. (*Sierra Leone Court Orders Prosecution for Threats To Protected Witness*, UN News Service, May 3, 2005, via e-mail from [UNNEWS@UN.org](mailto:UNNEWS@UN.org).) (Charles Mwalimu, 7-0637, cmwa@loc.gov)

### SOUTH AFRICA – Anti Terrorism Law Promulgated

In April 2005, South Africa promulgated a new anti-terrorism law. The law came into effect on May 20, 2005. It establishes a general offense of terrorism as well as terrorism-related offenses such as recruiting for, assistance to commit, and facilitating terrorist activities.

After lobbying from civil society organizations concerned about the extension of police powers, the SA Act now excludes from the definition of “terrorist activity” actions taken in pursuance of a liberation struggle in accordance with the principles of the Charters of the United Nation and the African Union, as well as in accordance with the principles of international humanitarian law.

(*Anti-Terrorism Law Promulgated, But SADC Still Lags*, SOUTHSCAN, ALLAFRICA.COM, <http://allafrica.com/stories/200505021124.html>; *Anti-Terrorism Bill*, South African Law Commission, Discussion Paper 92, Project 105, <http://www.law.wits.ac.za/salc/discussn/paper92sum.html> (page created Aug. 10, 2000) (last visited May 20, 2005).) (Ruth Levush, 7-9847, rlev@loc.gov)

## EAST ASIA & PACIFIC

### AUSTRALIA – Counter-Terrorism Powers Reviewed

The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003 grants ASIO, the domestic intelligence agency, broad powers to question and detain persons thought likely to have information about terrorist organizations or activities, even if they themselves are not charged with any crime. The Intelligence Services Act 2001 requires that the Parliamentary Joint



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Committee on ASIO, ASIS, and DSD (the domestic intelligence agency, the foreign intelligence agency, and the signals intelligence agency) review ASIO's use of the new questioning and detention powers. A report and recommendations will be made to Parliament and to the Attorney-General by January 22, 2006. A May 19, 2005, Committee hearing featured testimony by the head of ASIO, who recommended continuing the new powers for the indefinite future, as well as testimony and discussion by a number of other government officials and academic specialists in criminal law and civil liberties. Topics of discussion included balancing the roles of the executive and the judiciary in authorizing use of the questioning and detention powers, possible mechanisms to ensure ongoing parliamentary oversight of ASIO's operations, and comparison of the powers granted by the Australian legislation with those under the laws of the United States, Canada, the United Kingdom, and France. (For the Australian Security Intelligence Organisation Act 1979 and related legislation, see the Attorney-General's Department online database COMLAW at <http://www.comlaw.gov.au>; transcript of the May 19 hearing available at [http://www.aph.gov.au/house/committee/pjcaad/asio\\_ques\\_detention/Proof%20T](http://www.aph.gov.au/house/committee/pjcaad/asio_ques_detention/Proof%20T).) (Donald R. DeGlopper, 7-9831, [ddeg@loc.gov](mailto:ddeg@loc.gov))

### **AUSTRALIA – Case Against Security Guard Dismissed**

On May 19, 2005, the New South Wales Court of Appeal dismissed a case brought by a Sydney man who had been stabbed in the street after a security guard refused him entry to a fast-food restaurant. The man and his two companions were feeling threatened by a larger group brandishing knives and asked the security guard to call the police. The victim argued that by pushing him back onto the sidewalk and locking the door, the security guard was guilty of negligence. Representatives of the restaurant argued that they owed no duty of care to the plaintiff. In their decision, the three judges noted that

in general the law does not impose legally enforceable duties on one citizen to help another.... A stranger is not obliged to feed the hungry, give water to the thirsty ... or rescue those in peril. The moral commandment to love one's neighbor is not enforceable by law.

(*Broughton v Competitive Foods Australia Pty Ltd & Ors* [2005] NSWCA 168, at <http://www.austlii.edu.au/au/cases/nsw/NSWCA/2005/168.html>.) (Donald R. DeGlopper, 7-9831, [ddeg@loc.gov](mailto:ddeg@loc.gov))

### **CHINA – Civil Servants Law**

On April 27, 2005, the National People's Congress approved the Law on Civil Servants, which had been under discussion for over a decade. The Law takes effect as of January 1, 2006, and replaces the August 14, 1993, Provisional Regulations on State Civil Servants. The Law's eighteen chapters cover such matters as civil servants' qualifications, obligations, and rights; positions and grades; recruitment; assessment; appointment, and removal; promotion and demotion; awards; punishments; training; exchanges and recusals; salary, benefits, and insurance; resignation and dismissal; retirement; appeals and complaints; contract hires, and legal liability. Among other provisions, the Law stipulates that recruitment is to be carried out on the basis of open examinations, strict assessment, equal competition, and excellence of the candidates. Conditions and qualifications for advancement include such factors as "ideological and political character," work capability, educational level, and office-holding experience. The Law provides that the salaries of civil servants must be in line with local economic conditions and increase according to economic growth. Under the Law, officials in positions of leadership should resign if, for example, serious mistakes or negligence on the job cause major losses or adverse social



consequences. (Text in Chinese of the Law on Civil Servants, WWW.LAW-LIB.COM, at [http://www.lawlib.com/law/law\\_view.asp?id=91802](http://www.lawlib.com/law/law_view.asp?id=91802); *Regulatory Watch: Civil Service*, EIU BUSINESS CHINA, May 9, 2005, LEXIS/NEXIS, News Library, 90days File.)

The Law has been criticized for failing to include a disclosure rule that might have required officials to declare their income and assets, a measure “aimed at curbing rampant official corruption” as described by Hong Kong’s *South China Morning Post*. However, Professor Xue Gangling of the mainland’s China University of Political Science and Law, who took part in drafting the Law, contends that

in a country where the bulk of public officials’ wealth came from grey areas, it would be hard to accurately calculate the value of their assets. An independent body would also have to be established to check the information provided by officials.

Therefore, in his view, at present “such a declaration system wouldn’t have much of a chance of working properly.” (Shi Ting, *Disclosure Rule Left out of New Civil Servant Law*, SOUTH CHINA MORNING POST, Apr. 29, 2005, LEXIS/NEXIS, News Library, 90days File.) Under the chapter on legal responsibility, there is apparently only one anti-corruption provision. It is a “revolving door” provision stipulating that after their resignation or retirement, within three years of leaving their posts, officials who had held positions of leadership may not assume positions in enterprises directly related to their original profession or in other for-profit organizations, nor may they engage in profit-seeking activities directly related to their original profession. For officials not in leadership positions the turnaround time is two years. Offending officials will be given a certain amount of time within which to correct their actions; if they fail to do so, their illegal gains will be confiscated. In addition, the units who received the officials will be ordered to relinquish them, and depending on the severity of the circumstances, the units will be punished with a fine of from one to five times the amount of the illegal gains of the penalized personnel. (WWW.LAW-LIB.COM, *id.*)

(Wendy Zeldin, 7-9832, wzeld@loc.gov)

### CHINA – Securities Law Amendments

Draft amendments to the Securities Law, which was originally promulgated in December 1998, were submitted to the National People’s Congress Standing Committee (NPCSC) on April 26, 2005. A draft for discussion had been released as early as the end of 2002, and a special working group on revising the Law was formally established in July 2003, but review by the NPCSC was delayed from December 2003 until this year reportedly due to disagreement among most of the stakeholders. The amended Law seeks to address five problem areas: the poor quality of listed companies, securities companies’ irregular practices, protection of investors’ interests, improvement of the stock issuance and registration system, and stock market supervision. Some highlights of the amendments are as follows:

- establishment of a special fund to protect investors’ money, with the fund’s capital to be collected from securities houses. The cash trust is also to be deposited in commercial banks rather than in stock exchanges, to prevent opportunities for embezzlement by the latter.
- new clauses on information disclosure, including a provision that holds organizations or individuals who cheated investors legally liable for their actions.



- inclusion of more detailed provisions on ascertaining legal responsibilities and punishment, so as to improve investors' rights to sue for infringements listed companies.
- enhanced protection by securities houses of their clients' assets, by requiring improved internal controls to prevent possible conflicts among the interests of different clients.
- increased power of the China Securities Regulatory Commission (CSRC) to supervise the market.
- provision for future expansion of the market structure, e.g., through permitting trading on credit and other activities that are banned in the current Securities Law.

(*China Exclusive: China Amends Securities Law To Boost Slumping Stock Market*, XINHUA, Apr. 26, 2005, LEXIS/NEXIS, News Library, 90days File; *China Daily 'Opinion': Legal Protection for Stockholders*, CHINA DAILY, Apr. 30, 2005, & *China's Amended Securities Law Required To Protect Stock Investors*, CHINA DAILY, Apr. 29, 2005, both via Foreign Broadcast Information Service online subscription database (FBIS).)

(Wendy Zeldin, 7-9832, wzeld@loc.gov)

### **CHINA – Split-Share Structure Reform**

On May 9, 2005, China initiated a three-phase experiment to address one of the major problems deemed to be behind the country's sluggish stock markets – the split share structure. The term refers to the existence of a large volume of non-tradable state-owned shares and legal person shares. In such a system, only about a third of the shares of domestically listed firms float on the stock markets, placing public investors in an inferior position relative to the actual controllers in making corporate policies and disposing of firms' profits and assets. Four firms were selected for the first phase of the reform, which will see the institution of pilot projects on forming stock prices through the market while maintaining market stability. The second stage will see the issuance of a series of related rules and regulations, based on feedback from the trial program, to create favorable conditions for further reform. The third phase will be an expansion of the pilot program. The reform is based on State Council "Opinions" on the reform of capital markets issued in 2004, on rules issued in the CSRC's Notice on Relevant Issues of Pilot Reform of Equity Division of Listed Companies of April 29, 2005, and on the Guidelines on Business Operations for Pilot Reform of Equity Division of Listed Companies issued on May 8, 2005, by the Shanghai and the Shenzhen Stock Exchanges and the China Securities Deposit and Clearing Corporation. One potential major problem with the rules, however, is that they contain no specific regulation on stockholder turnouts in connection with the requirement that stockholders vote at a plenary corporate meeting to adopt a resolution on ways to end a company's split share structure. It is argued that such a loophole might allow majority stockholders to manipulate major corporate decisions and lead to failure of the trial program. (*CSRC Chairman on 3-Phase Reform of Split Share Structure in PRC Stockmarkets*, XINHUA, May 15, 2005, FBIS; Jiang Guocheng, *China Exclusive: China Selects Firms for Experiments to Tackle Major Problem Facing Sluggish Stockmarkets*, XINHUA, May 9, 2005, LEXIS/NEXIS, News Library, 90days File; *China Launched the Pilot Solution of the Equity Division Problem*, 15 ISINOLAW WEEKLY, May 2-8, 2005, via e-mail.)

(Wendy Zeldin, 7-9832, wzeld@loc.gov)



## HONG KONG – Estate Tax

On May 6, 2005, the Hong Kong government gazetted a bill that aims to abolish estate tax in the Special Administrative Region. As proposed, estates of persons who pass away after the commencement of the Revenue (Abolition of Estate Duty) Ordinance 2005 would not be subject to estate tax. The bill was to be introduced in the Legislative Council on May 11, 2005.

A government spokesman indicated that the measure is viewed as “vital” in order to attract and retain foreign investment, especially in view of the fact that during the past twenty years a number of countries in the region (e.g., Australia, India, Malaysia, New Zealand) have abolished the tax. According to the spokesman, “the abolition will encourage people, including overseas investors, to hold assets in Hong Kong through a Hong Kong corporate vehicle or trust. Those who currently avoid the tax through overseas investments will also be encouraged to transfer their investments back to Hong Kong.” The further development of the asset-management industry will in turn, he stated, foster growth in other professional services and also benefit other industries. In addition, the proposed abolition of the tax would reduce the time it takes to obtain grant of probate or letters of administration and thereby help ease cash-flow problems that an estate’s heirs currently face, especially when the operators of small and medium enterprises are involved. (Mary Swire, *Bill to Abolish Hong Kong Estate Tax Gazetted*, TAX-NEWS.COM, May 9, 2005, at <http://www.lawandtax-news.com/asp/story.asp?storyname=19770>.)

(Wendy Zeldin, 7-9832, wzeld@loc.gov)

## JAPAN – Anti-Monopoly Act Amended

The Anti-Monopoly Act was amended by Law No. 35 of 2005 (Apr. 27, 2005). The amendment increased the administrative fines and revised the list of unlawful activities that are subject to the fines. The amendment also introduced a system to enable the Fair Trade Commission (FTC) to grant exemption from an administrative fine if the violator voluntarily reports the violation to the FTC under certain conditions. The amendment also strengthened the FTC’s criminal investigative powers. The FTC may request a warrant from a court and seize documents from corporate offices. (Japan Fair Trade Commission, *Dokusen kinshi ho kaisei ho no naiyo* (Contents of Anti-Monopoly Act Amendment), Apr. 20, 2005, <http://www.jftc.go.jp/pressrelease/05.april/050420-3.pdf>.)

(Sayuri Umeda, 7-0075, sume@loc.gov)

## JAPAN – ID Required to Buy Pre-Paid Cell Phone

A law that obliges cellular phone service providers to obtain the identities of cellular phone users was enacted on April 15, 2005. (Law No. 31 of 2005.) There have been many fraud cases in which pre-paid cellular phone services have been used. A typical case might follow this scenario: a person calls a victim and pretends he or she is a (grand)son or daughter of the victim; the person claims to be in trouble and to require money immediately; and the person asks the victim to wire transfer the money to a specified bank account. In Japan, money can be wire-transferred very quickly. Surprisingly, many people have reportedly become victims of such schemes. A bank account may also be opened fraudulently, using someone’s stolen personal information. Fraudulent stories and schemes have become more and more sophisticated. When this law becomes effective, it will be easier for the police to identify a fraud who uses a cellular phone for such a crime. (*Hijiri Sekiguchi, Puripeido*



*keitai no akuyo boshi hoan, kon kokkai de seiritsu e* (Diet Will Pass Bill That Prevents Misuse of Pre-Paid Cellular Phone), Mar. 29, 2005, K-TAI WATCH, at [http://k-tai.impress.co.jp/cda/article/news\\_toppage/23239.html](http://k-tai.impress.co.jp/cda/article/news_toppage/23239.html).)

(Sayuri Umeda, 7-0075, sume@loc.gov)

### **KOREA, SOUTH – New Rule Compels Public Servants to Sell Stocks**

The Korean National Assembly, on April 26, 2005, passed a revision of the Public Officials Ethics Law that requires officials to sell shares worth between ten and fifty million *won* (approximately US\$10,000 - 50,000), if there is a possible conflict of interest. The exact maximum amount will later be set by presidential decree. The revision will be effective from November 2005.

According to this revision, all public servants above grade 1, including lawmakers, ministers, deputy ministers, prosecutors of high status, senior high court judges, etc., must report their stockholdings and those of their family to a review committee by December 2005. If the sector of the economy in which they work is related to the companies of the stocks they own, they must entrust the stocks to independent financial institutions, which must sell them within sixty days.

There is public curiosity regarding the shareholdings of some famous politicians and high public officers. These include prominent lawmakers such as Representative Chung Mong-joon (the largest shareholder of Hyundai Heavy Industries and one of the sons of the late founder of the company, Chung Joo-young); Korean Ambassador to the United States Hong Seok-hyun, who holds shares worth 46.7 billion *won* in thirteen companies including Joongang Ilbo (one of the major newspapers in Korea); and the Gwangju Public Prosecutors' Office head Hong Seok-jo, who owns about 280,000 shares (worth 8.1 billion *won*) of Phoenix PDE. If these officials are compelled under the revised Law to sell their stockholdings, they will in effect lose managerial rights in their companies. Ambassador Hong and Prosecutor Hong are the brothers-in-law of Samsung Chairman Lee Gun-hee and the sons of a famous late former Minister. (Bae Sung-kyu & Park Min-sun, *Jusik baksi shintakje kukhui tonggua-gowui gongzikja – 'ukmu kwanruyn ju' kangje maekak* (Stock-Trust System for Higher Officials Passes the National Assembly – Mandatory Sale of Their Stocks If the Company Is Related to Their Work Sector), CHOSUNILBO, at <http://www.chosun.com/politics/news/200504/200504260384.html> (last visited Apr. 28, 2005).)

(Min Jeong Suh & Sayuri Umeda, 7-0075, sume@loc.gov)

### **KOREA, SOUTH – Quota for Hiring the Disabled to Spread**

The government of South Korea plans to strengthen affirmative action in the judiciary and the teaching profession for people with disabilities. The government and the ruling Uri Party agreed on April 25, 2005, to expand mandatory hiring of disabled people next year under a plan currently being considered at the committee stage. If the National Assembly passes the plan, it will be implemented from the year 2006.

The plan gives the disabled a two-percent quota in all jobs, except in some professions including police officers, firefighters, and soldiers. The judiciary, the Defense Ministry, public kindergarten and elementary schools, and government agencies would no longer be exempt from the quota. That would create some 9,200 civil service jobs and 11,000 other positions for the disabled. (Park Min-sun, *Chodeunghakkyu kyusado zangaein uimu goyong haeya* (Mandatory Hiring of the Disabled in the Sectors



of Judges and Elementary Teachers), CHOSUNILBO, at <http://www.chosun.com/national/news/200504/200504260033.html> (last visited Apr. 28, 2005).  
(Min Jeong Suh & Sayuri Umeda, 7-0075, sume@loc.gov)

### **MALAYSIA – Americans Detained for Proselytizing, then Released**

On May 4, 2005, two United States citizens who had been detained for ten days by the criminal investigation department of Putrajaya, Malaysia, south of Kuala Lumpur, were released. A court ordered the charges dismissed and the men freed. They had been arrested April 25, 2005, in Putrajaya, Malaysia's administrative capital, on charges of distributing Christian religious pamphlets outside a mosque. If they had been convicted under section 298(a) of Malaysia's penal code, which prohibits causing "disharmony, disunity, or feelings of enmity, hatred or ill-will, or prejudicing ... the maintenance of harmony or unity on grounds of religion," the sentence could have been two to five years of imprisonment. The country has a sixty-percent Islamic majority.

Although the law forbids attempting to convert Muslims to any other religion, Prime Minister Abdullah Amhad Badawi has said that it is legal to distribute Malay-language Bibles, so long as the words "Not for Muslims" are stamped on the books. (*Americans Jailed for Distributing Christian Pamphlets*, ISLAM ONLINE, Apr. 29, 2005, [http://www.islamonline.com/cgi-bin/news\\_service/world\\_full\\_story.asp?service\\_id=1597](http://www.islamonline.com/cgi-bin/news_service/world_full_story.asp?service_id=1597); *Malaysia Court Frees Two Americans Suspected of Promoting Christianity*, HONG KONG AFP, May 10, 2005, at Foreign Broadcast Information Service online subscription database.)  
(Constance A. Johnson, 7-9829, cojo@loc.gov)

### **TAIWAN – Basic Law for Native Peoples**

On February 5, 2005, Taiwan's President promulgated the Basic Law for Native Peoples. It has a wide range of provisions, with the goals of safeguarding the rights of non-Chinese native peoples of the island, facilitating their economic development, and establishing good relations among ethnic groups. One of its key provisions is that the government is obliged to safeguard native peoples' equal status and to provide sufficient annual resources to native groups so that they can develop autonomy. Other resources will be dedicated to improving transportation, postal services, telecommunications, water resources, irrigation, and tourist and other public facilities in areas inhabited by native peoples. The Law bans the use of native peoples' home areas for the storage of hazardous waste and forbids forcible relocation of native peoples, other than when there is an imminent and apparent danger to be avoided.

Under the Law, a committee will be established in the executive branch of the government to review and coordinate policy matters related to the Law's provisions. Meetings will be convened to solve any disputes between the government and native peoples over their degree of autonomy, and local governments will have agencies dedicated to deal with issues that involve native peoples. In addition, the government will have a committee to organize the surveying of land and processing of land titles, so that land and natural resources rights are protected. The government will also designate an agency for research on the languages of native groups and work to protect their cultures. Interpreters for those who do not understand Mandarin Chinese will be provided for legal proceedings. One apparent oversight in the Law is the absence of a definitive statement on which groups are to be considered



“native peoples.” (*Native People’s Basic Law*, GAZETTE OF THE OFFICE OF THE PRESIDENT, Feb. 5, 2005, Record No. 146740, Global Legal Information Network, at <http://www.glin.gov>.)  
(Constance A. Johnson, 7-9829, [cojo@loc.gov](mailto:cojo@loc.gov))

### TAIWAN – Citizenship Requirements to Increase

Taiwan adopted an amendment of the law defining Republic of China (ROC) citizenship on June 15, 2005. (Amendment to the Nationality Law, Record No. 155999, and Nationality Law of the Republic of China, February 5, 1929, previously amended June 20, 2001, Record No. 107609, *both in* Global Legal Information Network, <http://www.glin.gov>.) Among the changes introduced is a requirement that foreign nationals seeking to acquire ROC citizenship know Mandarin Chinese and understand the rights and duties of ROC citizens. The Interior Ministry will be given the responsibility of defining standards for the language competency and for other required knowledge; that agency will also take charge of the testing of applicants. The purpose of the amendment in part is to push potential citizens to learn the language, which would reduce the problems they experience as immigrants moving to Taiwan. In an additional change, provisions establishing fees for issuing certificates for naturalization, forfeiture, and resumption of citizenship have been abolished. The Vice Interior Minister stated that the amendment was designed to bring the ROC naturalization law in line with similar legislation in other countries, such as the United States, Canada, and New Zealand. (Deborah Kuo, *Basic Chinese Ability Set to Become Requirement for ROC Citizenship*, CENTRAL NEWS AGENCY, May 11, 2005, LEXIS/NEXIS, Asiapc Library, Curnws file.)  
(Constance A. Johnson, 7-9829, [cojo@loc.gov](mailto:cojo@loc.gov))

### TAIWAN – Noise Pollution Rules

On May 2, 2005, Taiwan’s Environmental Protection Administration announced new noise pollution regulations that will enter into force in July. The regulations target the elimination of low-frequency noise below 200 hertz, or fifty decibels, such as the humming of machines or traffic noise that is audible through walls and is a source of distress to persons sensitive to it. Under the new provisions, manufacturers in industrial areas must not create noise above forty decibels. Shops in commercial and residential areas are not to emit noise above that level in the afternoon or above thirty-five decibels in the morning and at night. In quieter residential areas, fines will be imposed on those who emit noise above thirty decibels. Violators may be subject to penalties ranging from NT\$3,000 (approximately US\$96) to NT\$30,000, and bars, Internet cafes, and other establishments that violate the regulations might be shut down. The EPA has also called upon citizens to overhaul their electric appliances and install noise-reduction devices by July. (Wang Hsiao-wen, *EPA Announces Rules Against Low Frequency Noise*, TAIPEI TIMES, May 3, 2005, at 2, <http://www.taipeitimes.com/News/taiwan/archives/2005/05/03/2003252929>.)  
(Wendy Zeldin, 7-9832, [wzel@loc.gov](mailto:wzel@loc.gov))

### TAIWAN – Presidential Election Case Ruling

On June 17, 2005, Taiwan’s Supreme Court upheld the legality of the 2004 election victory of President Chen Shuibian, rejecting the appeal filed by the Kuomintang and the People First Party (together forming the opposition “pan-blue alliance”) to annul the March 20, 2004, reelection of President Chen and Vice President Annette Lu. Chen and Lu’s Democratic Progressive Party won the election by a very narrow margin. The losing “pan-blue” presidential candidate Lien Chan and his



running mate James Soong alleged that the election results were affected by the election-eve shooting of Chen and Lu, a referendum held on the same day as the election, activation of a “national security mechanism” that may have prevented a number of police and military servicemen from voting, and certain electoral irregularities. Lien and Soong appealed the case to the Supreme Court after the Taiwan High Court rejected their claim on November 4, 2004. The Supreme Court had opened its hearing of the case on May 27, 2005.

Presiding Judge Hsu Cho-hsiung of the Supreme Court stated: “We could not find evidence to prove that the president used the election eve shooting to effect the election result,” although he acknowledged that questions remained about the incident. Hsu also rejected the plaintiffs’ contention that voters had been swayed by election-eve manipulation and intimidation: “There is no evidence that the voters cast their ballots because of duress or violence.” The Supreme Court also rejected the allegation that emergency measures prevented security personnel from voting. It held that the Defense Ministry, not President Chen, had adopted the measures, and that “even if they went beyond their authority to keep [the soldiers and police] from the voting booths, we could not prove this decision had something to do with the president.”

The two former candidates have also appealed another case they lodged against the Central Election Commission to completely nullify the presidential election because of administrative flaws, including combining the election with a referendum on Taiwan’s relationship with mainland China. That suit was rejected by the Taiwan High Court on December 30, 2004. (Peter Enav, *Taiwan’s Supreme Court Upholds President Chen Shu-bian’s Victory in Disputed 2004 Election*, ASSOCIATED PRESS WORLDSTREAM, June 17, 2005, & *Taiwan Supreme Court Rejects Opposition Appeal To Nullify Presidential Vote*, AGENCE FRANCE PRESSE, June 17, 2005, both via LEXIS/NEXIS, News Library, 90days File; CNA: *Supreme Court To Open Hearing on Presidential Election Appeal*, CENTRAL NEWS AGENCY (Taipei), May 26, 2005, Foreign Broadcast Information Service online subscription database.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

### **THAILAND – Graft Busters Found Guilty of Abusing Power**

On May 26, 2005, the political division of Thailand’s Supreme Court found all nine members of the National Counter Corruption Commission (NCCC) guilty of abuse of power for having awarded themselves a pay raise. The Court held that the commissioners were state employees, so that any pay raise for them had to be effected by law, by changing the salary act based on a proposal by the Cabinet and approval by Parliament. Each commissioner was handed a two-year suspended prison sentence, placing the officials under public pressure to resign even were their suspended sentences interpreted in their favor to allow them continue serving on the Commission. Under the Constitution, members of independent bodies lose their status if imprisoned. Legal experts contend, however, that there is no ambiguity, that the commissioners must be removed from their posts, and that any attempt to retain the positions would violate the law and the Constitution.

The downfall of the commission members was reportedly a blow to the government opposition, which is seeking to overcome constitutional hurdles hindering their bid to censure the Thaksin Shinawatra regime, which is characterized in the local press as plagued by scandal. The Constitution provides that any censure motion related to graft be accompanied by an impeachment motion, which must be approved by the Senate and the NCCC. The ruling also is deemed to bode ill for some other independent bodies, such as the Constitutional Court, whose members also gave themselves a pay



increase. (*Thailand: All Members of Anti-Graft Committee Found Guilty of Abusing Power*, THE NATION (Bangkok), May 27, 2005, Foreign Broadcast Information Service online database.)  
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

### **THAILAND – Human Trafficking Legislation**

The Thai government announced on May 25, 2005, that it is preparing a comprehensive draft bill on the prevention of human trafficking, for submission to the next roving Cabinet meeting, scheduled to be held in a northern province on June 13-14, 2005. The Human Trafficking Prevention and Suppression Committee (HTPSC) reportedly has agreed to accelerate passage of the legislation to meet this deadline. Unlike previous legislation, including the 1996 Prostitution Suppression and Prevention Act and the Children and Women Trafficking Prevention and Suppression Act, the new law seeks to address all forms of human trafficking and to ensure tougher penalties.

At the May 25<sup>th</sup> meeting held by the HTPSC, government agencies were urged to boost the effectiveness of anti-human trafficking tools to produce their own operations manuals, and to work in conjunction with other agencies. HTPSC plans call for the Ministry of Social Development and Human Security to establish a central human trafficking prevention and suppression center; similar centers are to be set up in the provinces. Foreign diplomats will also be asked to be focal points against human trafficking abroad. The government is reported to have recently allocated Bt100 million (US\$2,484,472) from the sale of special government lottery tickets to help human trafficking victims. It is also cooperating with neighboring countries to stem trafficking, having signed an agreement with the Laotian government and worked on similar pacts with Myanmar and Cambodia. (*Thailand: Govt Forging Ahead with Human Trafficking Legislation*, THAI NEWS AGENCY, May 26, 2005, Foreign Broadcast Information Service online subscription database.)  
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

### **VIETNAM – Customs Regulations Simplified**

On May 25, 2005, Vietnam's National Assembly approved amendments and supplements to articles of the Customs Law designed to increase the transparency and simplicity of the Customs service and enable the country to become further integrated into the world economy. The amended Law will enter into force on January 1, 2006.

A number of the changes affect customs procedures for the import and export of goods. For example, many goods are now subject to free inspection, and goods transported from abroad to free-trade zones, transit ports, and bonded warehouses will enjoy simplified customs clearance. Other items exempt from inspection include transit cargoes, relief supplies, humanitarian aid, temporary imports for re-export, and machinery and equipment imported for investment projects entitled to tax-free status. The basis for decisions on post-customs clearance inspection, according to the revised Law, is information processed from the Customs service database, Customs scouts, agencies, organizations, individuals, and foreign customs offices. The Law also heightens the responsibilities of Customs offices and officers. (*Vietnam Moves to Simplify Customs Regulations*, HANOI VOICE OF VIETNAM EXTERNAL SERVICE, May 26, 2005, Foreign Broadcast Information Service online subscription database.)  
(Wendy Zeldin, 7-9832, wzeld@loc.gov)



## VIETNAM – Law on International Accords

On May 23, 2005, Vietnam's National Assembly voted to adopt the Law on Participation and Implementation of International Accords. Aside from approving the title of the Law, the body approved provisions on the Law's scope; principles for signing, participating in, and implementing international accords; the relationship between international accords and domestic legal provisions; the power to make decisions on entering into negotiation on and signing of international accords; and the power to decide on participation in multilateral international accords. (*Vietnam: Assembly Deputies Adopt Navigation, International Accords, Environment Laws*, Hanoi voice of Vietnam, May 23, 2005, translated in Foreign Broadcast Information Service online subscription database.)

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## EUROPE

### ARMENIA – New Composition of the Parliament

On May 20, 2005, the Parliament of Armenia adopted a new Law on the Election of the Members of Parliament, proposed by the President of the Republic. The Law eliminates the existing majoritarian electoral system and introduces a new electoral scheme, which combines proportional and majoritarian elections. The new Law allows political parties to run for parliamentary seats independently or establish electoral blocks with other political forces and social groups. In order to be elected to the Parliament, political parties must receive no less than five percent of electoral votes nationwide, and electoral blocks must receive no less than seven percent. The total number of parliamentarians will be reduced by ten, to 121. Members elected through party lists by a proportional system will occupy ninety seats, and members elected on a majority basis directly from electoral districts will hold thirty-one seats. The term of the Parliament is extended from four to five years.

(ARMINFO News Wire, May 20, 2005, at <http://www.securities.com>.)

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### AUSTRIA – Animal Welfare

A stringent Animal Protection Act (BUNDESGESETZBLATT no. 118/2004) went into effect on January 1, 2005. At the same time, a constitutional provision became effective that grants the federation legislative power over animal protection while granting implementing power to the states, albeit under close federal scrutiny. (Bundes-Verfassungsgesetz (Constitution), BUNDESGESETZBLATT No. 1/1930, as amended, art. 11, par. 1, no. 8, and art. 151, par. 30.) The new Animal Protection Act is more stringent than those of neighboring countries (*Bewegung in der Gefluegel-Wirtschaft*, DIE PRESSE, Feb. 22, 2005, LEXIS/NEXIS, News Library, Zeitng File), and procedural devices and new agencies guarantee its enforcement. The purpose of the Act is to ensure the treatment of animals as fellow creatures and to prevent cruelty and avoidable suffering. Livestock must be kept in a manner that is compatible with the nature of the animal, and this precludes the keeping of hens in cages.

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## BELGIUM – Transposition of Directive on Legal Protection of Biotechnological Inventions

A Law of April 28, 2005, implements Directive 98/44/EC of the European Parliament and the Council of the European Union on the Legal Protection of Biotechnological Inventions of July 6, 1998. The Law was published on May 13, 2005, in the *Moniteur Belge*, the Belgium official gazette. The Directive attempts to provide biotechnological inventions with an equal level of protection by patent law in all the Member States by specifying what is and what is not patentable in this area. The Directive should have been transposed into Belgian law by July 30, 2000. Belgium had been referred to the European Court of Justice for failure to do so. This resulted in Belgium's condemnation by the Court on September 9, 2004. The 2005 Law provides that

inventions that are new, which involve an inventive step and which are susceptible of industrial application are patentable even if they concern a product consisting of, or containing, biological material or a process by means of which biological material is produced, processed or used. Biological material that is isolated from its natural environment or produced by means of a technical process may be the subject of an invention even if it previously occurred in nature.

The 2005 Law lists the usual prohibitions or exclusions insofar as biotechnological inventions are concerned: (1) plant and animal varieties and essentially biological processes for the production of plants and animals; and (2) inventions where their commercial exploitation would be contrary to public order or morality. They include processes for cloning human beings, for modifying the germ line genetic identity of human beings, uses of human embryos for industrial and commercial purposes, and processes for modifying the genetic identity of animals that are likely to cause them suffering without any substantial medical benefit to man or animal as well as the animals resulting from such processes. The Law also regulates the granting of exploitation or application licenses of biotechnological inventions patented for public health reasons. (MONITEUR BELGE, May 13, 2005, at 22852, available at [http://www.ejustice.just.fgov.be/cgi/article\\_body.pl?language=fr&caller=summary&pub\\_date=2005-05-3&numac=2005011224](http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=2005-05-3&numac=2005011224).)

(Nicole Atwill, 7-2832, natw@loc.gov)

## DENMARK – State Church's Monopoly Broken

According to Danish law, births and deaths must be registered at a local church office run by the state Lutheran church. The Minister of Ecclesiastical Affairs and Denmark's bishops have agreed to establish a central register office for those who are not members of the state-run Lutheran church. This decision was made following the complaint of four Baptist families, who refused to register their children at the local Lutheran church. One family was reported to the police for not registering their child within six months. All parties are reportedly pleased with the decision to establish a non-denominational office. (*Church Monopoly Broken*, May 4, 2005, at Denmark.dk: Denmark's official website, "Domestic Political News" section, <http://denmark.dk>.)

(Linda Forslund, 7-9856, lifo@loc.gov)

## ENGLAND AND WALES – Confidentiality Concerns in the Mass Media

The Court of Appeal has received an appeal to a judgment that required the magazine *Hello!* to pay damages in the amount of £7,000 (approximately US\$12,600) to celebrities Catherine Zeta-Jones and Michael Douglas for breach of confidence, because unauthorized photographs were published that



were taken at the Douglas' wedding, which was considered to be a private event. The co-plaintiff in the case, *OK!* magazine, which had an exclusive contract with the couple to print the photographs of their wedding, was also entitled to damages from *Hello!* in the amount of £1 million (approximately US\$1.8 million) for lost profits, as the photographs were considered to be analogous to trade secrets. The Court of Appeal overturned this judgment and relieved *Hello!* from any responsibility in paying the damages to *OK!* on the basis that the agreement between the couple and *OK!* to take and publish the photographs was a license that did not allow them to take action against a third party for printing other photographs taken at the event and that the rights relating to the photographs were personal privacy rights that could not be transferred in the same way as commercial rights. (Douglas and Others v Hello! Ltd. and Others, [2005] EWCA (Civ) 595; Dan Tench, *Photo Finish: Last Week's Court of Appeal Decision Over the Wedding Photos of Michael Douglas and Catherine Zeta-Jones Did at Least Clarify the Law of Privacy*, GUARDIAN (London), May 23, 2005.) (Clare Feikert, 7-5262, cfei@loc.gov)

### **ESTONIA – Ban on Competition Among Rural Pharmacies**

On May 10, 2005, the newly elected Estonian legislature adopted its first law, which amends the Medicinal Products Act. The new law, which will be effective as of January 1, 2006, restricts the development of pharmacies in rural areas and stipulates requirements for opening a pharmacy. According to the law, new pharmacies in residential areas cannot be opened within one kilometer of an existing one, and the opening of new pharmacies is prohibited in settlements with less than 4,000 inhabitants per pharmacy. It is required that local authorities conduct public tenders to encourage pharmacies to open at new locations. The aim of the amendments is to develop the pharmacy business in rural areas and avoid their over-concentration in larger towns. However, pharmacy operators state that banning competition in rural areas is not enough of an incentive for investment in new pharmacies there because government-established price caps make it unprofitable to operate pharmacies with low sales. (*New Law Sets Restrictions to Pharmacy Development*, NORTHROUP NEWSLETTER, May 11, 2005, at <http://www.securities.com>.) (Peter Roudik, 7-9861, prou@loc.gov)

### **FINLAND – Challenge to EU Ban on Wolf Hunting**

The European Commission has brought a claim against Finland in the European Court of Justice, stating that Finland is breaching the Habitats Directive of the Council of the European Communities (Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora) by allowing the hunting of wolves. Finland claims that the wolf is not an endangered species in Finland because of the large number of the animals that cross the border from Russia, killing dogs and livestock. The Commission, on the other hand, states that the nationality of the wolves is irrelevant; if the wolves are on Finnish soil then they are protected under the Habitats Directive. (*Lax kamp för vargjakt får uppmärksamhet*, HUFVUDSTADSBLADET, May 6, 2005, available at <http://www.hbl.fi/>; Stephen Castle, *Finns Rebel as EU Moves to Banish Russian Wolfhunt*, THE INDEPENDENT, May 4, 2005, available at <http://news.independent.co.uk/europe/story.jsp?story=635436>.) (Linda Forslund, 7-9856, lifo@loc.gov)

### **FINLAND – New Legislation Proposed for Peacekeeping Operations**

On May 10, 2005, a working group presented a report to the Finnish Foreign Minister proposing the revision of Finnish legislation with regard to peacekeeping operations. The report



proposes the enactment of a new Military Crisis Management Act, which would replace the current legislation in the field. The Act would enable Finland to continue to participate in crisis management operations within the United Nations, the European Union, and NATO. To participate in such missions, international law and in particular the principles of the U.N. Charter will need to be taken into account, just as is necessary today. The principal rule of the Act would be that for the most part missions that Finland participates in should be mandated by the U.N. Security Council, but Finland could in exceptional cases participate in other missions.

The reason for setting up the working group was the changes that have taken place in the field of international crisis management. Finland's full participation in international crisis management operations and especially the establishment of the EU's Rapid Reaction Force have made it necessary to review the Finnish legislation. (*Finnish Legislation on Peacekeeping Operations To Be Revised – Working Group Report Delivered*, Press Release No 145/2005, Ministry of Foreign Affairs, May 10, 2005, available at <http://www.valtioneuvosto.fi/vn/liston/base.lsp?r=94067&k=en>.) (Linda Forslund, 7-9856, lifo@loc.gov)

### **FRANCE – Approval of Convention on Cybercrime and Additional Protocol**

On May 19, 2005, the French Parliament authorized the approval of the Convention on Cybercrime, the first international treaty on crimes committed via the Internet and other computer networks. It deals with offenses related to infringements of copyright, computer-related fraud, child pornography, and network security.

The Parliament also authorized the approval of the Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems. The Protocol requires Member States to criminalize, when committed intentionally, the dissemination of racist and xenophobic material through computer systems, as well as racist and xenophobic-motivated threats and insults, including the denial, gross minimization, approval, or justification of genocide or crimes against humanity, particularly those that occurred during World War II. (Law 2005-493, JOURNAL OFFICIEL, May 20, 2005, at 8729.) (Nicole Atwill, 7-2832, natw@loc.gov)

### **GERMANY – Immigration Law**

Shortly after a new Immigration Act (BUNDESGESETZBLATT 2004 I 1950) became effective on January 1, 2005, the German legislature decided to improve it through a Reform Act (BUNDESGESETZBLATT 2005 I 721), adding new provisions to control illegal aliens. Among these is the creation of a database for identification documents issued by foreign authorities. Asylum petitioners often discard their passports or other identification documents in order to claim a false identity or to impede their deportation, and it is expected that the new database will assist in the identification of such persons. (*Bundesrat macht Weg fuer Aufenthaltsrecht frei*, ASSOCIATED PRESS WORLD STREAM – GERMAN, Feb.18, 2005, LEXIS/NEXIS, NEWS LIBRARY, Zeitng File.) (Edith Palmer, 7-9860, epal@loc.gov)



### LITHUANIA – Changes in Lustration Procedure

On May 20, 2005, the Parliament of Lithuania adopted amendments to the nation's 2000 Lustration Act, which regulates the confessions and registration of former KGB collaborators. The amendments affect the formation of a seven-member Lustration Commission (Lithuania's version of a Truth and Reconciliation Commission), which had not previously been established. The President of the Republic, the Prime Minister, and the Speaker of the Parliament will each nominate two members of the Commission, and the head of the National Security Department will nominate one member. The Law requires that would-be nominees be well-known, respected, and competent people who have the confidence of the public. The term for the Commissioners is four years.

The Commission, when it begins working, will announce a one-year period for former KGB collaborators to confess. The Law states that the names of those individuals who confess will not be publicly released, and no restrictions on their employment, excluding elected positions, will be applied. These amendments should eradicate the current restrictions on individuals recruited by the former Soviet Special Services taking jobs in the public and private sector, which the European Court of Human Rights recognized as incompatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms. Since 2000, about 1,500 Lithuanian nationals have reported their collaboration with the KGB. (*New Legal Amendments for Lustration Commission*, ELTA, Lithuania News Agency, May 20, 2005, at <http://www.securities.com>.) (Peter Roudik, 7-9861, [prou@loc.gov](mailto:prou@loc.gov))

### LITHUANIA – Increased Border Control

On May 18, 2005, the Parliament of Lithuania adopted amendments to the Law on the Fundamentals of Transportation Activity. These amendments charge domestic transport carriers with the duty of checking on whether passengers coming to Lithuania possess all the required travel documents. With the amendments coming into effect as of July 1, 2005, Lithuanian transportation companies engaged in passenger carriage by international routes, except for railways, will check whether their foreign passengers have all the necessary travel documents, i.e. passports, ID cards, visas, etc., in their possession. Should the State Border Guard Service find any foreigner without any of the travel documents a foreigner is required to have to enter Lithuanian territory, the carrier will be fined an amount equal to US\$5,000 for each undocumented passenger. Previously, the carriers were not authorized to check the documents of passengers and were not subject to any sanctions. (*Parliament Authorizes Lithuania's Carriers to Check Travel Documents*, BNS BALTIC NEWS SERVICE, May 19, 2005, at <http://www.site.securities.com>.) (Peter Roudik, 7-9861, [prou@loc.gov](mailto:prou@loc.gov))

### NORWAY – Proposal for New Treatment for Addicted Convicts

The Norwegian Council of State discussed on April 29, 2005, a proposal to amend the Norwegian Penal Code to offer alternatives to prison sentencing for addicts who have committed criminal acts. A trial narcotics program will be put into effect in urban areas during the fall of 2005. The purpose of the program is to improve treatment for addicts with criminal histories, as well as to prevent future crimes. The program will incorporate treatment, education, follow-ups on individuals with housing problems, activities for leisure time, and other measures that are deemed important for the individuals' rehabilitation and integration into society. The idea behind the proposal is that the imposition of prison sentences on



addicts who have committed crimes is not very effective if these individuals do not also receive treatment. The idea of offering compulsory treatments was borrowed from the United States' Drug Courts. (Ministry of Justice and the Police, *Alternativ til fengsel for kriminelle rusmisbrukere*, Press Release No. 3--2005, Apr. 29, 2005, available at <http://www.odin.no/jd/norsk/aktuelt/pressesenter/presse/012101-070333/dok-bn.html>.)

(Linda Forslund, 7-9856, lifo@loc.gov)

### **RUSSIAN FEDERATION – Cancellation of Acquittals Permitted**

On May 10, 2005, the Russian Constitutional Court rescinded a provision of the Criminal Procedural Code that banned reconsideration of court decisions at the request of victims or the prosecution if it could lead to the worsening of a defendant's position and a stricter verdict. In the view of the appellants, the article violated the right of plaintiffs to court protection. According to the ruling, which took effect immediately, any "not guilty" verdict may be overturned even after it enters into legal force if a complaint is filed with an appropriate court by the crime victims or by the prosecutors on the grounds that a lower court's decision was too lenient. If the review finds violations of the law, such as issuance of an unduly light sentence or improper acquittal, the lower court will have to reconsider the case. It is expected that the ruling may serve as another mechanism of state repression and may worsen the human rights situation in Russia, because it will lead to endless prosecution of opposition figures through the government-controlled judiciary. (*Double Procuracy* (Editorial), *Gazeta.ru*, May 11, 2005, at [http://www.gazeta.ru/comments/2005/05/11\\_e\\_284111.shtml](http://www.gazeta.ru/comments/2005/05/11_e_284111.shtml).)

(Peter Roudik, 7-9861, prou@loc.gov)

### **SWEDEN – Court Rules Allowing Children to Witness Abuse a Violation of Their Integrity**

The District Court of Huddinge, Sweden, has found a father guilty of violating the integrity of his children by allowing them to witness his abuse of their mother on several occasions. The court stated that the intent requirement was met, as the father must have realized that the children's integrity would be violated by the witnessed abuse.

The crime "gross violation of integrity" under the fourth chapter of the Swedish Penal Code includes battery, molestation, and threats, provided that they are repeat offenses. In the case at hand, it would not have been enough for the children to have witnessed one occasion of abuse in order for the father to be incriminated. The Children's Ombudsman (Barnombudsmannen) stated in the newspaper *Dagens Nyheter* that she was "happily surprised" by the court's decision and that she agreed with the court's view that children who witness abuse are victims. She hopes that the decision will not be overturned on appeal, but if it is, she believes that the law needs to be amended to reflect this new viewpoint.

In addition to the violation of his children's integrity, the father was sentenced for battery of his two sons and for threatening them. He was ordered to pay damages and sentenced to three and a half years in prison. This sentence also included the violation of his wife's integrity, rape, and abuse of his stepdaughter. The father pleaded not guilty to all of the charges against him and claims that the fights between him and his wife were the result of his wife's provocation. (*Brott att låta barn se misshandel*, *DAGENS NYHETER*, May 2, 2005, available at <http://www.dn.se>.)

(Linda Forslund, 7-9856, lifo@loc.gov)



### SWEDEN – Gay Couple Wins Discrimination Case

On July 1, 2003, a new law prohibiting discrimination on the basis of sexual orientation (among other grounds) entered into force in Sweden. A few days later, two women were asked to leave a restaurant in Stockholm because they were publicly displaying affection. The restaurant owner claims that he would have acted in the same manner if the couple had been heterosexual and that he had asked them to leave only after they had become aggressive. In the civil law suit in the District Court (the lower court), the debate focused on the nature of the display of affection, and ultimately the court agreed with the restaurant. The Court of Appeals, on the other hand, ruled that the restaurant had discriminated against the two women because of their sexual orientation, stating that the District Court's decision would render the new law meaningless. The restaurant was ordered to pay damages to the accuser. A criminal case concerning the same matter has also been appealed to the Court of Appeals. (Daniel Dickson, *Lesbiska vann mål om puss på krogen*, DAGENS NYHETER, Apr. 25, 2005, available at <http://www.dn.se>.) (Linda Forslund, 7-9856, lifo@loc.gov)

### UKRAINE – Registration of Internet Publications Required

On May 23, 2005, the Ministry of Communications and Transportation of Ukraine issued a decree ordering the mandatory registration of all Ukrainian websites whose owners are legal entities. The decree provides for the creation of a National Registry of Electronic Information Resources and establishes a registration fee and the proper registration procedure. Provincial branches of the Communications Ministry are responsible for conducting the registration. In order to register, the owner of the website must provide information about the site's content, approximate size of the site in bites, and information on the authors and the technical personnel working on the site. Internet providers are not allowed to serve unregistered websites and are obliged to monitor routine activities of the registered websites and their compliance with registration requirements. The registration may be cancelled in cases of distribution of information prohibited by law (e.g., pornography) or in other cases that are vaguely stipulated in the decree. These cases may include distribution of information "hurting the business reputation or dignity of particular individuals," "discriminating against individuals on the basis of their economic status," and use of profanity, among others. (*Ukrainian Internet Community Fights to Preserve Its Independence*, May 24, 2005, at <http://www.securities.co.uk>.) (Peter Roudik, 7-9861, prou@loc.gov)

### UNITED KINGDOM – British Terror Suspect Closer to Extradition

On May 17, 2005, British terror suspect Babar Ahmad lost his case against extradition to the United States. Ahmad is accused of running websites that supported terrorism by inciting holy war and he could face additional charges of raising money in support of terrorism if extradited to the United States. His lawyers argued that Ahmad could face the death penalty in the United States if he were convicted of his alleged crimes and that, if the evidence were available, he could be successfully prosecuted in the United Kingdom. However, the judge concluded that there was no statutory barrier to the extradition and that the treaty between the two countries allowed the United States to seek extradition. The Secretary of State for the Home Department must now decide whether to extradite Ahmad pursuant to the United States-United Kingdom extradition treaty. Ahmad can either appeal this case to the High Court or face possible extradition by the Home Secretary. (Jennifer Sym, *Defeat for Extradition Case Suspect*, INDEPENDENT (London), May 17, 2005.) (Joann Chang, call Clare Feikert, 7-5262, cfei@loc.gov for additional information)



**UNITED KINGDOM – Tobacco Death Case Fails**

A widow whose husband died from lung cancer in 1993 has failed to successfully pursue a case in the Court of Session, Scotland, against the tobacco company, Imperial Tobacco. The judge was not able to find in the widow's favor to award her damages, as it could not be proven that her husband was not aware of the dangers associated with smoking. The judge stated that the plaintiff/the widow had failed to establish every issue that would have been necessary for a successful claim. (McTear v Imperial Tobacco Ltd. [2005] CSOH 69.)  
(Clare Feikert, 7-5262, cfei@loc.gov)

**NEAR EAST****EGYPT – Relinquishing Foreign Nationality as a Requirement for Parliamentary Candidates**

Parliamentary sources close to the government revealed that the amendment being discussed concerning the law on elections for the Parliament and the Consultative Council reflects a strong tendency towards requiring candidates who hold dual citizenship to prove that they have relinquished the foreign nationality and kept only Egyptian nationality. (AL-SHARQ AL-AWSAT newspaper, Internet edition, May 20, 2005, <http://www.asharqalawsat.com/details.asp?section=4&issue=9670&article=300397>.)  
(Issam Michael Saliba, 7-9840, isal@loc.gov)

**IRAN – Indictable Offenses Must Be Charged by Prosecutors, not Police**

Filing of charges is the duty of the public prosecution office, not the law enforcement authority, asserted Mahmud Hashemi-Shahrudi, the head of the judiciary of the Islamic Republic of Iran, at a meeting of the country's public prosecutors. He criticized the performance of certain public prosecutors who have allowed law enforcement officers to conduct criminal investigations independently, without the intervention of the prosecution office. The head of the judiciary revealed that a new criminal procedure law is being drafted that will soon be presented to the government and the legislature. Under the draft, public prosecutors and judges will not work on behalf of the state to prosecute individuals with the sole purpose of protecting state interests rather than the people's interests, a policy that is currently pursued. Constitutionally, the judiciary is entrusted with the dual functions of protecting state security and justice. This is not enough, Hashemi-Shahrudi argued, because people must feel that the judiciary is their service. Security is attained not by force but by civility, he maintained. In the past, the Volunteers (a militia created after the revolution in 1979 and institutionalized later as an independent national force) used to arrest people and investigate them in mosques or basements. This was wrong, Hashemi-Shahrudi stated, as investigation is the duty of a judge, not a law enforcement officer. The head of the judiciary stressed that criminal investigation must be conducted by a judge and without raising private and family matters with the suspect. (HAMSHAHRI (daily newspaper, Tehran), May 6, 2005, at 4, [at http://www.hamshahri.org/hamnews/1384/840215/news/ejtem.htm](http://www.hamshahri.org/hamnews/1384/840215/news/ejtem.htm).)  
(Gholam H. Vafai, 7-98745, gvaf@loc.gov)



### ISRAEL – Jonathan Pollard Petitions for Recognition as Political Prisoner

On May 8, 2005, Jonathan Pollard petitioned the Israeli High Court of Justice to order the government to recognize him as a “Prisoner of Zion.” Mr. Pollard is currently serving a twenty-year prison sentence in the United States for espionage for Israel. The Benefits for Prisoners of Zion and Their Families Law, 5752-1992 provides those who qualify with financial benefits to be paid by the Social Security Agency. The law defines a “Prisoner of Zion,” among others, as a person who is being imprisoned or exiled in an enemy country for over six months because of his Judaism or because of the hostile relations of that country with Israel, if he could be subject to the Law of Return 5710-1952.

The State had rejected Mr. Pollard’s request for such recognition in 2004 based on its conclusion that “the United States is not an enemy country but Israel’s great ally.” In his current petition, Mr. Pollard alleges that according to the legal definition of “an enemy country” even the Soviet Union could not have been considered as such, but Jews who had been imprisoned there nevertheless enjoyed the status of “prisoners of Zion.” Mr. Pollard further alleges that he had been subjected to torture by U.S authorities and that the State cannot disregard his condition because he served as its agent. (Yuval Yoaz, *Pollard to the High Court of Justice: I Was Subjected to Cruel Torture*, HAARETZ, May 9, 2005; The Benefits for Prisoners of Zion and Their Families Law, 5752-1992, SEFER HAHUKIM, Issue No. 1395, p. 205 (5752-1992), as amended.) (Ruth Levush, 7-9847, rlev@loc.gov)

### ISRAEL – Restrictions on Use of Real Property to Prevent Offenses

On March 30, 2005, the Knesset (Israel’s Parliament) passed the Restrictions on Use of Real Property for Prevention of Offenses Act, 5765-2005. The law authorizes a circuit court to issue a decree for the restriction of use of a place if the court is convinced that there is a reasonable suspicion that the place would otherwise be used for the commitment of certain enumerated offenses. The offenses listed by the law include procuring women for lewd purposes, instigation to practice prostitution, trade in humans for the purpose of prostitution, and maintaining or leasing a place for the purpose of prostitution. The law provides for the relevant conditions and ninety-day time limits for the duration of judicial decrees, as well as for rights of appeal by those affected.

The law further authorizes a commander of the police to issue an administrative (non-judicial) decree if one is required immediately in order to prevent the commission of an offense. Such a decree is limited in duration and can be extended to a period not exceeding thirty days. (Restrictions on Use of Real Property for Prevention of Offenses Act, 5765-2005, the Knesset website, at <http://www.knesset.gov.il/>.) (Ruth Levush, 7-9847, rlev@loc.gov)



## SOUTH ASIA

### INDIA – Death Sentence in Attack on American Center

On January 22, 2002, two groups of terrorists, including Aftab Ansari, a Dubai-based terrorist linked with the ISI (Inter-Services Intelligence) of Pakistan, carrying AK-47 guns launched a sudden attack on the American Center located in the busy Chowringhee area in Kolkata, India, and gunned down seven policemen guarding the center. The attack was so swift and sudden that the guards were taken by surprise and were unable to respond. The terrorists escaped through the crowded area.

The attackers were finally arrested and charged with various offenses under the Indian Penal Code (Code No. 45, 1860, §§ 120, 120A, 121, 302, & 307) and the Arms Act (§ 27A), relating to murder of innocent persons, treason, possession of illegal weapons and various other criminal and subversive activities. After the trial, which was conducted under heavy security inside the Presidency Jail in Kolkata, the special session judge, on April 26, 2005, convicted the six defendants and the following day sentenced them to be hanged to death.

While the attorney for the convicts strongly attacked the judgment and vowed to appeal, the prosecutor and the public affairs officer of the American Center expressed satisfaction at the outcome of the trial and the punishment awarded. (*Man Who Bombed American Center Convicted*, THE TRIBUNE, Apr. 27, 2005, <http://www.tribuneindia.com/2005/20050427/main6.htm>; *Six to Die for Attacking American Center*, THE TRIBUNE, Apr. 27, 2005, <http://www.tribuneindia.com/2005/20050427/main2.htm>.)

(Krishan Nehra, 7-7103, kneh@loc.gov)

### PAKISTAN – Court Actions in Gang-Rape Case

In February 2002, the Meerwala village tribal council in the Dera Ghazi Khan district of Punjab Province ordered the gang-rape of a woman, Mukhtar Mai, in a so-called “honor” punishment and to settle a score with Mai’s teenage brother, Shakoor. He had been accused by the council of an illicit sexual relationship with the sister of one of the accused men from the rival Mastoi tribe. There was a worldwide outcry against the culprits and widespread sympathy for the victim. Six men, including two tribal council members, were convicted and sentenced to death in August 2002; eight others were acquitted.

On March 3, 2005, the appellate circuit bench of the Lahore High Court (LHC) overturned five of the six convictions, and the sixth man had his death sentence reduced to life in prison. Procedural delays in filing the complaint, contradictions in the statements given by the complainant at the investigation stage, and inconsistency in the statements of the main prosecution witnesses were cited by the division bench (two judges) on appeal as reasons behind its decision. The court further observed that action could be taken against the trial judge if defendants were wrongly put on death row. The Court also considered it inconceivable that two of the brothers who were accused could be in the same house with the woman simultaneously at the time of the rape.

The High Court decision produced a firestorm of criticism from human rights groups in Pakistan and abroad and thousands of women, in a protest demonstration, demanded protection for Mukhtar Mai, the victim. Following the acquittal of the accused, on March 11, 2005, Pakistan’s



highest Islamic court, the Federal Shariat Court (FSC), threw out the acquittals of the five men, stating that the LHC circuit bench had no authority to hear the appeal against the original convictions.

On March 14, 2005, in an effort to stop judicial bickering between the FSC and the LHC, the Supreme Court (SC) of Pakistan intervened and took *suo moto* notice of the matter. The SC issued orders staying implementation of the orders of the circuit bench of the LHC and the FSC, eventually issuing an order to the effect that the suspension of the High Court's order by the FSC was a course not warranted by the Constitution and the law. Meanwhile, Mukhtar Mai appealed to President General Pervez Musharraf to take a personal interest in her case and ensure that justice is done. (*Village Gang-Rape Sentences Are Upset by Court in Pakistan*, THE NEW YORK TIMES, Mar. 4, 2005, <http://www.nytimes.com/2005/03/04/international/asia/04pakistan.html?th=&pagewanted=print&position>; *The Pakistan High Court Revokes Rape Case Acquittals*, THE WASHINGTON POST, Mar. 12, 2005, at A20; *LHC for Action Against ATC Judge: Mukhtar Mai Case*, THE DAWN, Mar. 10, 2005, <http://www.dawn.com/2005/03/10/top10.htm>; *Supreme Court To Hear Mukhtar Mai Case*, THE DAWN, Mar. 15, 2005, <http://www.dawn.com/2005/03/15/top7.htm>; *Mukhtar Mai Appeals to President for Justice*, THE DAWN, Mar. 18, 2005, <http://www.dawn.com/2005/03/18/top9.htm>.)

Pakistan's Supreme Court, on June 27, 2005, overturned the acquittals of thirteen men who were originally accused in the rape in 2002. The court will hold another hearing later to decide on possible punishments, which might include the death sentence. (THE NEW YORK TIMES, June 28, 2005: <http://www.nytimes.com/aponline/international/AP-Pakistan-Rape-Victim.htm?pagewanted>.) (Krishan Nehra, 7-7103, kneh@loc.gov)

## WESTERN HEMISPHERE

### ARGENTINA – Capital Inflows Restrictions

On June 9, 2005, the government of Argentina adopted tighter controls on capital inflows to discourage “speculative” funds and protect the *peso* from strengthening further against the dollar. The measure was adopted by Decree 616/2005, which requires investors bringing capital into the country to set aside thirty percent of the total amount for twelve months. This measure adds to the existing rules, which require inflows to remain in the country for at least one year. Inflows for trade financing and direct foreign investment in productive sectors as well as investment in primary issues of bonds and shares are exempted from this requirement.

The measure is aimed at preserving a competitive exchange rate policy while encouraging genuine foreign investment. Argentina's economic recovery since its financial collapse in December 2001 has made it difficult to keep the local currency competitive. A regulation will provide implementing details on how the controls will be applied. (Decree 616/2005 of June 6, 2005, BOLETIN OFICIAL, June 10, 2005, at 1-2.) (Graciela Rodriguez Ferrand, 7-9818, grod@loc.gov)

### CANADA – Supreme Court Backs Provincial Ban on Tobacco Displays

The Supreme Court of Canada has ruled that Saskatchewan's law banning the display of tobacco products in establishments open to persons under the age of eighteen is constitutional. The Saskatchewan law, known as the “shower curtain law,” effectively requires stores that carry tobacco



products to be hidden from view. (Tobacco Control Act, 2001 S.S. ch. T14.1.) This law had previously been ruled unconstitutional because it is inconsistent with the federal Tobacco Act. (1997 S.C. ch 13.) The federal law prohibits advertising of tobacco products, but does allow for displays in stores. In its ruling, the Supreme Court held that the two laws could coexist and that a store could continue to display tobacco products by restricting admission to only persons over the age of eighteen. The Supreme Court also held that the doctrine of “paramountcy,” under which valid federal legislation takes precedence over otherwise valid provincial legislation, did not apply. (Rothmans Benson and Hedges v. Saskatchewan, 2005 S.C.C. 13.) (Stephen F. Clarke, 7-7121, [scla@loc.gov](mailto:scla@loc.gov))

### **CUBA – Plan to Double Minimum Wage**

President Fidel Castro of Cuba has announced plans to more than double the country's minimum wage. Workers earning about 100 Cuban pesos (US\$4.10) a month will see their wages rise to 225 pesos from May 1, 2005. The move will benefit 1.6 million workers, including farmhands, plumbers, and undertakers, who survive on the lowest wages in communist Cuba. President Castro said the minimum wage increases would cost the Cuban government about 1.1 billion pesos annually. President Castro's confidence in the economy has been buoyed by closer trade relations with Venezuela and China (*see below*, article on trade agreement with Venezuela). Oil deposits have also recently been discovered off Cuba's coast. (*Cuba Plans to Double Minimum Wage*, Apr. 22, 2005, BBC NEWS, at <http://news.bbc.co.uk/1/hi/business/4472357.stm>.) (Gustavo E. Guerra, 7-7104, [ggue@loc.gov](mailto:ggue@loc.gov))

### **MEXICO – Adherence to Rome Statute of International Criminal Court**

The legislative process for the adherence of Mexico to the Rome Statute of the International Criminal Court, which was initiated in 2001, was concluded on May 4, 2005, when the Permanent Commission of the Congress of the Union declared the approval of the amendment to article 21 of the Federal Constitution by twenty states of the Mexican Federation. Article 21 concerns powers to impose penalties, prosecute offenses, and punish violations of administrative regulations. The constitutional amendment recognizes the authority and jurisdiction of the International Criminal Court to prosecute and punish Mexican citizens who commit crimes against humanity. (Lilia Saúl, *Se Adhiere México a Corte de la ONU*, EL UNIVERSAL, May 5, 2005, <http://www.eluniversal.com>.) (Norma C. Gutiérrez, 7-4314, [ngut@loc.gov](mailto:ngut@loc.gov))

## **INTERNATIONAL LAW AND ORGANIZATIONS**

### **ASEAN – Inter-Police Chief Conference**

Participants in the 25<sup>th</sup> ASEAN Chiefs of National Police Conference (ASEANPOL), held in Bali, Indonesia and concluded on May 19, 2005, agreed to the creation of a shared database for ASEAN police forces. The database, to be put in place by December 2005, is expected to facilitate the expeditious exchange of information among police officers in Southeast Asia and help prevent transnational crime. It will subsequently be linked to the Interpol database.



At the conclusion of the conference, Indonesian National Police Chief Da'i Bachtiar also announced that his country and Singapore had reached the final stage in talks to establish an extradition treaty. Nevertheless it was reported that while discussions on legal aspects of the treaty relevant to the respective governments had been concluded, four more rounds of talks would be necessary in order to formulate the actual substance of the document. (*Indonesia, Singapore Close to Extradition Treaty, New Database for ASEAN Police*, MEDIA INDONESIA, May 20, 2005, as translated in Foreign Broadcast Information Service online database.)  
(Wendy Zeldin, 7-9832, wzel@loc.gov)

### COMMONWEALTH CARIBBEAN – CCJ Inaugurated

On April 16, 2005, the long-awaited Caribbean Court of Justice was inaugurated in Trinidad and Tobago's capital city of Port of Spain. This new regional court was established for two reasons. The first was to replace the London-based Judicial Committee of the Privy Council as the court of last resort in the region. The second was to have a local court to resolve disputes over the Treaty Establishing the Caribbean Community. (Treaty text available at <http://www.caricom.org>.)

However, while the members of Caricom have agreed to give it jurisdiction to interpret the Treaty, only Barbados and Guyana have agreed to give the new Court jurisdiction to hear appeals from their domestic courts on questions of domestic law. Ten other nations have thus far failed to enact legislation that would be required to replace the Privy Council. In some of these cases, the government is reported to have had second thoughts, while in others the opposition has blocked implementation. The result is that the Caribbean Court of Justice has far narrower jurisdiction than was anticipated when the Caribbean Development Bank borrowed \$100 million to establish it. Nevertheless, supporters of the Caribbean Court still hope that its list of full members will grow over time. (*Justice in the Islands*, THE ECONOMIST, Apr. 16, 2005, at 48.)  
(Stephen Clarke, 7-7121, scla@loc.gov)

### CUBA/VENEZUELA – Trade, Other Agreements

Venezuelan President Hugo Chavez visited Cuba on April 28, 2005, in order to meet with Fidel Castro to promote a trade pact between Venezuela and Cuba aimed at tying together the region's economies without United States involvement. Castro and Chavez were expected to sign a string of new trade and other agreements between their two countries, covering such topics as energy, health, education, infrastructure, housing, and culture.

Chavez and Castro are opposed to the Free Trade Area of the Americas, a United States-backed pact to join the economies of countries throughout the western hemisphere. They are promoting their own idea for a hemispheric trade pact, the Bolivarian Alternative for the Americas, which would tie together the region's developing nations without United States involvement. The name refers to South American independence hero Simon Bolivar, frequently invoked by the Chavez government. (Official website of the Cuban Ministry of Foreign Relations, <http://www.cubaminrex.cu> (last visited Apr. 28, 2005); *Chavez Meets with Castro*, CNN website, <http://www.cnn.com/2005/WORLD/americas/04/28/cuba.venezuela.ap/index.html> (last visited Apr. 28, 2005.))  
(Gustavo E. Guerra, 7-7104, ggue@loc.gov)



**EUROPEAN COURT OF HUMAN RIGHTS – Judgment in Ocalan v. Turkey**

On May 12, 2005, the European Court of Human Rights in Strasbourg delivered its judgment in the case of Ocalan v. Turkey. The applicant, a Turkish national, was the leader of the Worker's Party of Kurdistan (PKK) that fought for an independent Kurdish state in Turkey and for more rights for the Kurdish people. He was accused of establishing an armed group of terrorists with the intent to destroy the territorial integrity of Turkey. He was arrested and taken into custody in February 1999, then found guilty of terrorist acts and given a death sentence. Due to the subsequent enactment of a constitutional amendment banning the death penalty, his sentence was later commuted to life imprisonment.

The applicant complained to the European Court of Human Rights of violations by the Turkish officials of article 5, paragraphs 1, 3, and 4 of the European Convention on Human Rights, regarding the right to liberty and security of a person, and article 6, pertaining to the right to be tried by an independent and impartial tribunal. He also complained of lack of access to a lawyer while in police custody and of violation of article 2 concerning the right to life, article 3, on prohibition of torture, and article 14, on the non-discrimination of enjoyment of rights included in the Convention.

The Court found Turkey in violation of article 5, paragraph 4, on account of lack of legal remedy by which the applicant could have the lawfulness of his detention in police custody decided; in violation of article 5 paragraph 3, on account of failure to bring the applicant before a judge promptly after his arrest; in violation of article 6, because the applicant was not tried by an independent and impartial tribunal; in violation of article 6, paragraphs 1 and 3(b) and (c), because of the lack of a fair trial; and in violation of article 3, concerning the imposition of the death penalty following an unfair trial. The Court also ordered Turkey to pay the applicant's lawyers €120,000 (approximately US\$145,000) within three months for costs and expenses. (European Court of Human Rights, Judgments and Decisions, Ocalan v. TURKEY, available at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=2411239&skin=hudoc-en&action=request>.)

(Theresa Papademetriou, 7-9857, tpap@loc.gov)

**INTERNATIONAL LABOR ORGANIZATION – Forced Labor**

The International Labor Office published a new study, the first on such a large scale, on May 11, 2005. It is entitled "A Global Alliance Against Forced Labor" and estimates that over ten million people are being taken advantage of through forced labor. Among these, at least 2.4 million are victims of human trafficking. The report identifies the issue of forced labor as a problem of global dimensions. The vast majority of people in forced labor, close to 9.4 million, come from Asia, while 1.3 million are from Latin America and the Caribbean, 660,000 from sub-Saharan Africa, 260,000 from the Middle East and North Africa, 360,000 from industrialized countries, and 210,000 from other countries in transition. The report also makes clear that new forms of forced labor occur that affect in particular migrant workers in rich and poor receiving countries. It emphasizes that forced labor can be eradicated through the combined efforts of national governments and private institutions working together in order to enforce labor standards. (International Labor Organization, *ILO Releases Major New Study on Forced Labor*, available at <http://www.ilo.org/public/english/bureau/inf/pr/2005/22.htm>.)

(Theresa Papademetriou, 7-9857, tpap@loc.gov)



### ISLAMIC LAW – Scholars Criticize Zarqawi’s Fatwa

A number of Islamic scholars, using pseudonyms and writing on Internet sites closely connected to Al-Qaeda, attacked the *Fatwa*, or Islamic law interpretation, offered by Abu Musab al-Zarqawi to justify the collateral killing of innocent people through suicide bombing operations. A Saudi Islamic researcher, Yousef Al-Dini, said that the opinion of Zarqawi falls outside Islamic law, since Zarqawi is not an expert in the field. (AL-SHARQ AL-AWSAT newspaper, Internet edition, May 20, 2005, <http://www.ashargalawsat.com/details.asp?section=1&issue=9670&article=300423>.) (Issam Michael Saliba, 7-9840, [isal@loc.gov](mailto:isal@loc.gov))

### JAPAN/MALAYSIA – Free Trade Agreement

On May 25, 2005, Malaysia and Japan agreed in principle on a free trade agreement. Under its terms, Malaysia will immediately end tariffs on auto parts for Japanese manufacturers with plants in Malaysia and will gradually eliminate the tariffs on finished cars, starting with larger vehicles, with all of the tariffs to be removed by 2015. In response, Japan will cooperate with the Malaysian automobile and auto parts industries, to make them more competitive. Malaysia will also exempt all iron and steel products from tariffs within ten years. In the agricultural sector, Japanese tariffs on a number of foods will be eliminated immediately, including those on mangos, papayas, okra, shrimp, and jellyfish. Other products will have lowered rates. Malaysia will end its tariffs on apples, pears, and persimmons. In addition, Japan will provide technical training for about 1,000 Malaysians over the next ten years. (*Gist of Japan-Malaysia Free Trade Agreement*, KYODO WORLD SERVICE, May 25, 2005, Foreign Broadcast Information Service online subscription database.) (Constance A. Johnson, 7-9829, [cojo@loc.gov](mailto:cojo@loc.gov))

### MEXICO/BOLIVIA – Gas Agreement

Presidents Vicente Fox of Mexico and Carlos Mesa of Bolivia signed a cooperation agreement that would allow Bolivia to supply natural gas to Mexico. Mexico will thus be able to reduce its higher-priced natural gas imports from Texas. The agreement provides for the creation of a bi-national commission whose function will be to analyze the development of both countries’ markets for natural gas, giving priority to the Bolivian market. (José Luis Ruiz, *Firma Fox Acuerdo para Importar Gas de Bolivia*, EL UNIVERSAL, May 4, 2005, <http://www.eluniversal.com>.) (Norma C. Gutiérrez, 7-4314, [ngut@loc.gov](mailto:ngut@loc.gov))

### NICARAGUA/VENEZUELA – Oil Agreement Negotiations

President Bolaños of Nicaragua will pursue the negotiation of a “special cooperation” agreement to receive assistance from Venezuela to resolve the current energy crisis in the country, created by the increase in oil prices on the international market. On May 8, 2005, President Hugo Chavez of Venezuela declared his willingness to establish mechanisms of cooperation with Nicaragua on this matter, despite Nicaragua’s structural difficulties of a financial nature. (Agence France-Presse, *Gobierno de Nicaragua Solicitará a Chávez Trato Especial en Petróleo*, PETROLEUMWORLD, May 5, 2005, <http://www.petroleumworld.com.ve/nota05051105.htm>.) (Norma C. Gutiérrez, 7-4314, [ngut@loc.gov](mailto:ngut@loc.gov))



## RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

### Public Consultation on Tissue Engineering

There are no common rules among the EU Member States on the issue of genetic engineering. This new biotechnology field includes treatment for skin, cartilage, and bone diseases or injuries. The European Commission is currently working on establishing new rules on authorization, supervision, and post-authorization monitoring of advanced therapies, including tissue engineering and cell and gene therapy. Prior to putting forward the proposal for new legislation, the European Commission is seeking comments from the public on the following aspects:

- Future establishment of a centralized marketing authorization procedure;
- Formation of a new multidisciplinary expert committee (Committee for Advanced Therapies) within the European Medicines Agency, to evaluate new therapy products and follow developments in this field;
- Detailed guidelines for the application of good manufacturing practice and good clinical practice to advanced therapies.

*(Tissue Engineering: Commission Consults Public on How to Regulate Advanced Therapies, Press Release, IP/05/575, May 19, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/575&format=HTML&aged=0&language=EN&guiLanguage=en>.)*

### Agreement Between the EU, Israel, and Jordan on Strengthening Trade Links

On May 20, 2005, representatives from the EU, Israel, and Jordan agreed on the PanEuroMed Protocol of Origin. Once ratified by the respective parties, it will be part of the Association Agreements between the EU and Israel and the EU and Jordan. It is anticipated that this protocol will ensure that preferential access given to goods originating in one country will also extend to products manufactured from materials originating in the other countries. Consequently, under the Protocol, products made or originating in the Mediterranean area will be permitted to enter the European Community area on a preferential basis. *(Jordan, Israel and the EU Agree to Enhanced Trading Links, Press Release, IP/05/586, May 20, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/586&format=HTML&aged=0&language=EN&guiLanguage=en>.)*

### European Center for Disease Prevention and Control

On May 27, 2005, the Health and Consumer Protection Commissioner Markos Kyprianou, the Swedish Minister for Public Health and Social Services, and a representative of the Luxembourg Presidency will inaugurate the European Center for Disease Prevention and Control (ECDPC) in Stockholm. It is anticipated that the Center will enhance and further develop the surveillance system for diseases that has been in operation at the EU level since 1998. This system comprises two components: a) an early warning system and b) a response system against infectious diseases. *(Stronger Global Defences Against Epidemics: Markos Kyprianou Welcomes New WHO Agreement, Press Release IP/05/585, May 20, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/585&format=HTML&aged=0&language=EN&guiLanguage=el>.)*



## European Union and Corporate Governance

Following the adoption of its May 2003 Action Plan to reform company law and corporate governance, the European Commission began seeking public consultations on establishing minimum standards that should apply to shareholders' rights in listed companies. The first round of consultations took place in September 2004. For the next round, the Commission is concerned with and is seeking contributions on the following questions: a) transparency of stock-lending agreements and the status of depositary receipt holders; b) the distribution of relevant information prior to general meetings in order to ensure that all shareholders, regardless of place of residence, receive information in time to cast an informed vote; c) the right to ask questions and issue resolutions, taking into consideration the fact that many shareholders are non-residents; d) adoption of alternative methods of voting, i.e., electronically or by proxy; and e) dissemination of voting results to all shareholders at the end of general meetings. (*Corporate Governance: Commission Consults on Minimum Standards That Should Apply to Shareholder's Rights*, Press Release, IP/05/561, May 13, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/561&format=HTML&aged=0&language=EN&guiLanguage=en>.)

## Negotiation of a Trade Investment Enhancement Agreement (TIEA) between the EU and Canada

The European Union is the second largest trade partner of Canada. The latter is among the group of ten main EU partners. In 2002, at an EU-Canada summit meeting, the EU and Canadian representatives agreed to begin negotiations on a trade and investment enhancement agreement (TIEA). Until the agreement is concluded, a series of negotiating rounds will take place in the EU and Canada. The next round is scheduled to occur in Ottawa at the end of September 2005.

The TIEA addresses a variety of topics that were addressed in the first round of negotiations, including: a) services, i.e. mutual recognition of professional qualifications, temporary entry, financial services, b) government procurement, c) trade facilitation, d) investment; e) intellectual property; and other matters. (*Trade Issues, Bilateral Trade Relations, EU and Canada Launch Negotiations on a Trade and Investment Enhancement Agreement*, May 19, 2005, Press Release IP/05/578, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/578&format=HTML&aged=0&language=EN&guiLanguage=en>.)



## THE REPUBLIC OF THE SUDAN

### A BRIEF OVERVIEW OF ITS HISTORY, STRUCTURE OF GOVERNMENT, AND LEGAL SYSTEM

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#### *Executive Summary*

*The Republic of the Sudan, the largest country in Africa, has a diverse population divided mainly between Muslim Arabs in the north and Christian Africans in the south. Its present legal system has been influenced by the British/Egyptian condominium that governed the Sudan for the first half of the twentieth century, after a brief period between 1881 and 1898 during which a local religious leader, Mohammed Ahmed led the fight for independence from Egypt, created what is known as the Mahdiyya state, and applied Islamic law. Since gaining independence from British/Egyptian rule in 1956, the Republic of the Sudan has had a turbulent political history, with military coups taking place and new constitutions being issued every few years. The present regime of Omar Al Bashir issued a permanent constitution that was approved by a referendum held in May of 1998. In July of 2005, another interim constitution was approved by the Parliament to accommodate the implementation of the peace agreements that ended the war between the rebels in the south and the central government. The general outline of the structure of government in this overview, however, is based on the Constitution of 1998*

#### **I. Preliminary Note**

The Republic of the Sudan, within its present boundaries, covers an area of about one million square miles (about one-fourth of the United States) and thus constitutes the largest country on the African continent.<sup>1</sup> It borders Egypt to the north; the Red Sea, Eritrea, and Ethiopia to the east; Kenya, Uganda, the Democratic Republic of the Congo, and the Central African Republic to the south; and Chad and Libya to the west.<sup>2</sup>

The current Sudanese population is customarily described as Arab Muslim in the north and African Christian in the south. The reality of regional demographics, however, is more nuanced. The Darfur region in the west of the country, for example, which is mostly African and overwhelmingly Muslim, does not fit the customary description.

Archeological discoveries suggest that human habitation in the Sudan (derived from the Arabic phrase *bilad as-sudan*, “countries of the blacks,” to describe sub-Saharan Africa) goes back many thousands of years and that the Nile valley, rather than Mesopotamia, may have been the birthplace of human civilization. The contacts between kingdoms in the Sudan and Egypt are also ancient. This phenomenon is not surprising because the two regions share the Nile River, which crosses their entire

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<sup>1</sup> THE AFRICA GUIDE, <http://www.africaguide.com/facts.htm> (last visited July 14, 2005).

<sup>2</sup> Central Intelligence Agency, *Sudan*, THE WORLD FACTBOOK, <http://www.cia.gov/cia/publications/factbook/geos/su.html> (last visited July 14, 2005).



territories, starting at the lakes of central Africa in the south and following a northward path of approximately 4,000 miles before ending on the Mediterranean seashore.<sup>3</sup>

For most of its history, the Sudanese region was under the influence and colonization of Egypt, but there were times when their roles were reversed. While Arab conquests during the seventh century CE, under the banner of Islam, firmly consolidated Arab political power over Egypt and the rest of North Africa, the Nubian Christian kingdoms that emerged in the Sudan in the sixth century continued to consolidate their political power, protect their independence, and, at times, intervene militarily to protect the Coptic Christians in Egypt beyond the period of Islamization of North Africa. A Muslim army comprised of the Arabs in Egypt invaded the Nubian territory in 642 and again in 652 without being able to prevail. The Nubians fiercely defended their territories and forced the invading army to sign a peace agreement and withdraw.

Towards the end of the thirteenth century the power of the Nubian kingdoms started to decline due in large part to the intervention of the Mamluks, who ruled Egypt until its conquest by the Ottoman Empire in 1517.

With the decline of the Nubian Christians' political authority, the spread of Islam in the Sudan, which the Muslim army was not able to impose through military force, started to take hold. The Islamization of the Sudan occurred gradually and peacefully through trade and cultural contacts with the Arabs of Egypt from the north and of the Arabian Peninsula across the Red Sea from the east. This peaceful process quickened in pace, apparently due to the successive waves of Arab migration into the Sudan that took place between the thirteenth and fifteenth centuries. The Arab immigrants during this period, like their predecessors who entered the Sudan from across the Red Sea in pre-Islamic times, settled in the northern and central parts of the region and intermarried with the local population. This integration helped the assimilation process and led to the Arabization and Islamization of the Sudan.

By the early sixteenth century, the Islamic identity had asserted itself in the Sudan and any political authority the Nubian Christians had had faded away. The alliance between the Arabs who settled in the Sudan and the Funj (an ethnic group from the Sudan; little is known about their origin) led, in 1504, to the emergence of the Al-Zarqa Sultanate, known also as the Funj State or Empire, which remained in power until early in the nineteenth century. During its reign, the Funj State came increasingly under the influence of the rulers of Egypt, which had become a part of the Ottoman Empire.<sup>4</sup>

## II. Modern Historical Background

The modern history of Sudan is generally recognized to have started in 1821, when Muhammed Ali, the governor of Egypt under the Ottoman tutelage, sent his army into the Sudan, forced the surrender of the last Funj sultan, and established a new government, known as the Turqiah (indicating its association with the Turkish or Ottoman Empire). The new government was run by an Egyptian

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<sup>3</sup> *A Fact File About the Nile River*, MBARRON.NET, [http://www.mbarron.net/Nile/fctfl\\_nf.html](http://www.mbarron.net/Nile/fctfl_nf.html) (last visited July 14, 2005).

<sup>4</sup> Library of Congress Federal Research Division, *Sudan: The Funj*, COUNTRY STUDIES, <http://lcweb2.loc.gov/frd/cs/sdtoc.html> (last visited July 14, 2005).



bureaucracy and adopted a legal system heavily influenced by the Turkish system. In 1850, for example, new commercial and criminal codes, similar to the ones issued in the Ottoman Empire, were introduced and implemented under the jurisdiction of secular, rather than Islamic, courts. Even in personal status matters, Islamic judges were to apply and follow the Hanafi school of law that was applied in the Ottoman Empire, rather than the Maliki school to which Muslim Sudanese had traditionally adhered.

### A. The Mahdist State

Starting in 1881, Mohammed Ahmed, a religious leader in the Sudan who claimed to be the “Mahdi” (Arabic word connoting the awaited person who guides Muslims onto the right path), led an uprising against the Egyptians and won a decisive victory against them in Khartoum in 1884. His victory led to the creation of a new political order that is generally referred to as the “Mahdiyya” or Mahdist State.<sup>5</sup>

The new state adopted Islamic law and outlawed local customs and traditions that contradicted the teachings of Islam. The Mahdiyya ruled the Sudan as an independent state until 1898, when it was deposed militarily by the United Kingdom, which had become the new colonial power in Egypt.

### B. The British-Egyptian Agreement

Between 1899 and 1955, the Sudan was governed in accordance with a joint British-Egyptian agreement,<sup>6</sup> which recognized Egyptian rule over the Sudan but gave the United Kingdom actual authority. Article 3 of the joint agreement stated, for example, that the supreme military and civil presidency of the Sudan is vested in a Governor-General appointed by the Khedive of Egypt, based on a request from the British government. Under the agreement, the Khedive of Egypt had the authority to dismiss the governor-general, but only with the consent of the British government.

Even though the joint agreement did not give the United Kingdom any direct responsibility or legal right over the Sudan, the Governor-General who exercised almost complete power reported directly to British authorities. In addition, the new administration was directed by British army officers and later by British civil administrators, with the Egyptians occupying only mid-level posts. This stratification effectively made the Sudan a British colony. In 1910, an Executive Council was created to assist the Governor-General and approve all legislation and budgetary decisions, but real authority remained under British colonial supervision.

The present-day borders of Sudan resulted from treaties Britain concluded in 1902 with Ethiopia to the east and in 1909 with Belgium, which controlled the Belgian Congo to the south. The western boundary resulted from the annexation of the Darfur region in 1916. Darfur had come under direct Egyptian control in 1874, but became independent as a part of the Mahdist state. However, when the British deposed the Mahdist state, Darfur had reverted to being a satellite emirate of the Ottoman Empire.

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<sup>5</sup> *History of Sudan*, WIKIPEDIA, [http://en.wikipedia.org/wiki/History\\_of\\_Sudan](http://en.wikipedia.org/wiki/History_of_Sudan) (last visited July 14, 2005).

<sup>6</sup> Library of Congress Federal Research Division, *Sudan: The Anglo-Egyptian Condominium, 1899-1955*, COUNTRY STUDIES, <http://lcweb2.loc.gov/frd/cs/sdtoc.html> (last visited July 14, 2005).



The colonial governance of the Sudan ended in 1955, when it gained independence in accordance with a 1953 agreement between the United Kingdom and Egypt. This agreement provided for the Sudanese to decide their political status at the end of a three-year transitional period. The administration of justice during the British rule of the Sudan resulted in the creation of two distinct court systems, one under Islamic law and the other under enacted or secular laws, with each having separate rules and jurisdictions.

### C. The Post-Independence Period

On January 1, 1956, the Sudan gained full independence and adopted a transitional constitution that provided for a five-member council to act as the supreme authority of the state. On November 17, 1958, a senior military leader, Ibrahim Abboud, took control of the government through a military coup, banned political parties, and appointed a commission to draft a permanent constitution. Abboud governed Sudan through a supreme council of the armed forces. The Abboud regime enjoyed relative popularity during the early stages after the coup, but failed to foster a successful economic program or secure the continued support of the army. This led to three military attempts to oust it from power. Sudan went back to civilian rule in 1964, which only lasted until 1969, when another coup led by colonel Jaafar Al Numeiri overthrew the government and ruled Sudan. Al Numeiri was overthrown by a subsequent coup in 1985 that was led by Abd al Rahman Siwar Al Dahab, who allowed political parties to operate, held elections, and handed over power to civilian rule. However, a fourth military coup took place on June 30, 1989, led by Omar Hassan Ahmed Al Bashir. It suspended the transitional Constitution of 1985 that had replaced the permanent Constitution of 1973. In 1998, the regime of Omar Al Bashir issued a permanent constitution that was approved by a referendum held in May of that year.

### III. Structure of Government

Under the Constitution of 1998, the government is divided into three branches: the executive, the legislative, and the judicial. All branches should be guided by certain guiding principles<sup>7</sup> and respect certain freedoms, protections, and rights guaranteed to every human being.<sup>8</sup> These freedoms, protections, and rights are:

- The right to life, freedom, and personal safety, especially against slavery, forced labor, humiliation, or torture;<sup>9</sup>
- The right to equal treatment before the law and the judiciary and against discrimination, whether based on race, sex, or religious belief;<sup>10</sup>
- The right to Sudanese citizenship for anyone whose father or mother is Sudanese;<sup>11</sup>
- Freedom of movement and the right to reside within, exit, or return to the country;<sup>12</sup>

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<sup>7</sup> SUDAN CONST. arts. 1 to 19.

<sup>8</sup> *Id.* arts. 20–34.

<sup>9</sup> *Id.* art. 20.

<sup>10</sup> *Id.* art. 21.

<sup>11</sup> *Id.* art. 22.



- Freedom of religion;<sup>13</sup>
- Freedom of expression;<sup>14</sup>
- Freedom of association;<sup>15</sup>
- The right to privacy of communication.<sup>16</sup>

## A. Executive Branch

The executive power belongs to a two-tiered system. The upper tier consists of the Office of the Presidency and the Council of Ministers. The second tier consists of a Governor and a Council of Ministers for each of the twenty-six provinces.<sup>17</sup>

### 1. The Office of the Presidency

The Office of the Presidency is vested in a President who is elected by more than fifty percent of the popular vote for a term of five years. The President can be re-elected for only one subsequent term. The President appoints two vice presidents, one of whom, called the First Vice President, assumes the Office of the Presidency during any temporary absences of the President or during the sixty-day period allotted for elections after a President vacates his office.

Article 46 of the Constitution gives any person aggrieved by a presidential act the right to contest that act before the Constitutional Court for violations of the Constitution or before the regular courts for other violations of the law. The main functions of the president are to:

- Appoint and dismiss ministers;
- Appoint two vice-presidents and assistants;
- Preside over the Council of Ministers;
- Appoint interim governors;
- Chose candidates for governors;
- Appoint and terminate judges;
- Declare states of emergency.<sup>18</sup>

### 2. The National Council of Ministers

The Council of Ministers is formed of members appointed by the President and is considered the highest authority in the country. Its decisions are made by unanimity or by majority when

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<sup>12</sup> *Id.* art. 23.

<sup>13</sup> *Id.* art. 24.

<sup>14</sup> *Id.* art. 25.

<sup>15</sup> *Id.* art. 26.

<sup>16</sup> *Id.* art. 29.

<sup>17</sup> *Id.* art. 108.

<sup>18</sup> *Id.* art. 131.



unanimity is impossible. The President presides over the Council of Ministers, whose decisions prevail over all other executive orders. Its deliberations are confidential and cannot be revealed unless the Council decides otherwise. While the National Assembly is supposed to supervise the executive branch and may withdraw its confidence from a minister,<sup>19</sup> a minister cannot be dismissed except by the President, who does not seem to be bound by a recommendation from the National Assembly on this issue.

### 3. Governors of the Provinces

Each of the provinces has a Governor elected from three candidates chosen by the president from a list of six persons presented to him by the region's provincial assembly]. The winning candidate must receive more than fifty percent of the votes cast, otherwise a second round of voting is held between the two candidates who received the highest number of votes. The Governor serves a four-year term and may be re-elected for only one additional term. If the office of governor becomes vacant and the Public Election Commission determines that it is not possible to hold elections, the President has the power to appoint a Governor to serve until elections can take place. The Governor appoints the members of the Council of Ministers for his province, after consultations with the President, and is responsible directly to the President.<sup>20</sup>

### 4. Councils of Ministers for the Provinces

Each province has a council of ministers whose authority and functions are modeled after the national Council of Ministers, but limited in scope to the province where it is created.

## B. Legislative Branch

The legislative power is vested in a two-tier system, one at the national level and one at the provincial level. However, the constitution provides that Islamic Law (*Shari'a*) and the consensus of the nation, as reflected constitutionally, by referendum and customs, are *the* sources of legislation, and there shall be no legislation that contravenes these basic principles; nevertheless, legislation may be guided by the nation's public opinion, the opinions of its scholars and thinkers, and by the decisions of its rulers.<sup>21</sup> Any decisions that gain the confidence of the people through referendum have authority above the law and are not can not be repealed except through another referendum or by a two-thirds majority of the National Assembly.

### 1. The National Assembly

The National Assembly consists of members seventy-five percent of whom are chosen through direct general elections from geographic areas, divided in a manner that reflects a fair representation of the country's population, and twenty-five percent of whom are chosen through special or indirect elections to ensure the representation of women and scientific and professional constituencies who represent national or regional electoral colleges. In the event the Public Election Commission decides

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<sup>19</sup> *Id.* art. 73.

<sup>20</sup> *Id.* art. 62.

<sup>21</sup> *Id.* art. 65.



that elections are not possible within an area or by means of an electoral college, the President has the power to appoint a member for the vacant position until an election is held. Governors and members of the Council of Ministers, as well as members of the assemblies of the provinces, cannot be candidates for, or continue to be members of, the National Assembly. The National Assembly serves a four-year term and convenes at its main seat in Umdurman (which neighbors Khartoum). However, it may convene in exceptional circumstances in any other place chosen by its president.

The President, the national Council of Ministers or any of its members, and any committee or member of the National Assembly may propose legislation to be enacted into law. Any proposed legislation, unless it is offered by a member and awaiting approval from a relevant committee, is presented to the National Assembly the first time for title recognition; a second time for discussion of its scope and purposes and preliminary approval; a third time for detailed discussions and introduction and approval of amendments, if necessary; and a fourth time for final approval, article by article and, then as a whole. Proposed legislation approved by the National Assembly does not become law until the president signs it or until the President fails to act upon it within thirty days from the date of presentation to him.

## 2. The Assemblies of the Provinces

Each province has an assembly and is subject to the same constitutional provisions applicable to the National Assembly, taking into consideration, however, that the assembly is only for the relevant province, that the governor of the province assumes powers similar to those of the president, and that members of the Council of Ministers of the province assume powers similar to those of members of the national Council of Ministers.

### C. Judicial Branch

Judicial power is vested in an independent body known as the Judicial Authority, which is empowered to resolve disputes by issuing judgments in accordance with the Constitution and the law.<sup>22</sup>

The Judicial Authority is headed by a president who is the president of the Supreme Court and the president of the Supreme Judicial Council. His functions include the planning and general supervision of the judiciary; presentation of recommendations to the president regarding the appointment, promotion, and termination of service of judges; preparation of the judiciary budget; and expression of opinions regarding proposed legislation affecting the judiciary.<sup>23</sup>

Judicial power is exercised by a three-tier court system that includes the Supreme Court, courts of appeals, and courts of first instance.<sup>24</sup> In addition to these are a Constitutional Court and a Public Employees Justice Commission that has exclusive jurisdiction over public employee grievances.

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<sup>22</sup> *Id.* art. 99.

<sup>23</sup> *Id.* art. 102.

<sup>24</sup> *Id.* art. 103.



#### IV. Some Aspects of the Present Legal System

The most unique aspect of Sudan's present legal system is its abrupt and radical Islamization. Despite the spread of Islam into northern and central Sudan in the sixteenth century, the systematic application of Islamic law did not begin there probably until the Egyptian conquest of 1821, which brought Egyptian judges and Islamic courts into the Sudan. Islamic jurisdiction during that period mainly covered matters and issues of family law. Other legal matters remained subject to customary law and secular laws issued by the Ottoman Empire. Between 1885 and 1898, however, the Mahdist state applied its puritan version of Islamic law, abolished secular courts, and tried to suppress customs that contravened Islam.

Under colonial rule, which started in 1899, two independent legal systems were recognized. In 1902 the Governor-General of the Sudan issued an ordinance called "The Sudan Mohammedan Law Courts Ordinance 1902" that established an independent Islamic judiciary consisting of a three-tier court system presided over by a "Grand Kadi" (Supreme Judge), who had authority to issue, with the approval of the governor-general, orders regulating the decisions, procedures, constitution, jurisdiction, and functions of the Mohammedan Law Courts. The competency of these courts was limited to questions regarding marriage, divorce, guardianship of minors or family relationships, *wakf* (charitable bestowal), gifts, and succession. All other legal matters were under the jurisdiction of the secular court system and were decided according to laws enacted by the governor-general. This secular system was modeled very much after the English common law, with some modification to fit Sudanese society. Even after its independence, Sudan's legal system continued to function smoothly as designed by the British administration, notwithstanding the issuance of new laws or the amendment of existing ones.

In 1980, the judiciary was reorganized and unified to integrate the two court systems into one, and the office of Grand Kadi was effectively eliminated. Major changes occurred in 1983, when the Numeiri regime issued a number of new laws dealing with a variety of issues. The purpose of these laws was to incorporate the *Shari'a* or Islamic law principles. The most important category of new laws was probably that dealing with criminal affairs.

The present regime of Omar Al Bashir has continued the policy of Islamizing the legal system. In 1991, new penal and criminal procedure codes were issued. The new 1998 Constitution incorporated clear language to make *Shari'a* the source of legislation and prohibit any incompatible laws.<sup>25</sup>

##### A. Criminal Procedure Code

In 1899, the Governor-General of the Sudan issued penal and criminal procedure codes that were modeled after British law as applied in India. These two codes were amended or reissued in 1925, 1941, 1955, and 1974. In 1983, the Numeiri regime, in the name of reforming the law and restoring the Islamic *Shari'a*, abrogated these two codes and issued two new ones. The 1983 codes were reissued again in 1991, under the present regime. The Criminal Procedure Code of 1991 and the

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<sup>25</sup> *Id.* art. 65.



1998 Constitution subscribe to the basic principles that protect individual rights against government abuses. For example:

- Each person is free and shall not be arrested or detained except in accordance with a law that requires a statement of accusation and specifies the duration of arrest, the means of release, and that respect for the dignity of treatment be maintained.<sup>26</sup>
- The accused is presumed innocent until proven guilty.<sup>27</sup>
- No crime exists or punishment is imposed for an act except in accordance with a prior law that existed at the time the act was committed.<sup>28</sup>
- The accused shall not be required to present self-incriminating evidence.<sup>29</sup>

### 1. Criminal Courts

There are three different levels of criminal courts: the Supreme Court, the courts of appeals, and the courts of the initial level. The courts of the initial level are the general criminal courts; the first-, second-, and third-class criminal courts; and the criminal popular courts. In addition to these courts, there can be special criminal courts created by the chief justice pursuant to the Judiciary Act of 1986.<sup>30</sup>

Criminal offenses are not classified in order of their severity except that the jurisdiction of the courts of the initial level is based on limits of the terms of punishments each can dole out. A sentence may not exceed four months if issued by a third-class court; seven years if issued by a second-class court; or life imprisonment (but not the death penalty) if issued by a first-class court. There are no limits on a sentence (including the death penalty) issued by a general criminal court. When a popular criminal court or a special court is created by an order, that order has provisions determining limits on the sentences the court can issue.

### 2. Office of Public Prosecution

The Public Prosecution Office files criminal charges and supervises criminal proceedings. That office is composed of the Attorney General and his deputies or prosecutors. The President may, pursuant to the recommendation of the Attorney General and after consultation with the Minister of the Interior, assign a police force to conduct, under the supervision of the Attorney General's Office, any criminal investigation or criminal proceedings as advised by a prosecutor.<sup>31</sup>

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<sup>26</sup> *Id.* art. 30 & art. 4 (d), (f); Crim. Proc. Code, 69(1) (1991).

<sup>27</sup> SUDAN CONST. art. 32; Crim. Proc. Code, art. 4 (c) (1991).

<sup>28</sup> *Id.*

<sup>29</sup> Crim. Proc. Code, art. 4(d) (1991).

<sup>30</sup> SUDAN CONST., art. 6.

<sup>31</sup> *Id.* arts. 17, 24.



### 3. Arrest of Individuals

A prosecutor or a judge may arrest or issue a warrant to arrest any person who commits a criminal act in the presence of the prosecutor or the judge, fails to appear pursuant to a subpoena, or whose order of release was withdrawn.<sup>32</sup> The arrest warrant must be in writing, signed and stamped by the issuer, and must contain the accusations and reasons for the arrest.<sup>33</sup> An arrest without a warrant may occur under certain circumstances, however, such as when a person commits a crime in the presence of a policeman and refuses to give the policeman his accurate name and address or when a person commits a crime listed in the second addendum to the Code of Criminal Procedure.

When arrested pursuant to a warrant, the accused is brought immediately before the prosecutor or judge who issued the warrant. The accused may be kept in detention for investigative purposes for no more than twenty-four hours, unless the prosecutor renews the arrest for a period not to exceed three days.<sup>34</sup> The detainee is to be treated in a dignified manner, is not to be abused physically or mentally, is to be provided with necessary medical care, has the right to contact his lawyer and his family, and is not to be transferred to a different place without the approval of the prosecutor or the judge.<sup>35</sup>

#### B. Penal Code

Among the laws issued by the Numeiri regime in 1983 to fully Islamize the legal system and politics of the Sudan, the most important was the Penal Code of 1983, which was reissued in 1991. This Code incorporates traditional Islamic criminal rules in defining statutory offenses and imposing Islamic criminal punishments.

#### 1. Criminal Responsibility

The Penal Code of 1991 delineates criminal responsibility by attaching it only to persons who act freely and who, at the time the criminal act was committed, were in a lucid state of mind. For example, acts committed by a preadolescent child do not constitute crimes.<sup>36</sup> The same exemption applies to acts committed by a person while he is intoxicated, save when he consumes the intoxicant “freely and without necessity.”<sup>37</sup> Acts committed in self defense or under justified orders issued by competent authorities also do not constitute crimes.<sup>38</sup> Any person committing a crime outside Sudan for which he could have been prosecuted in Sudan will not be tried if it is proven that he was tried by a competent court outside Sudan and was either declared innocent or duly discharged his sentence.<sup>39</sup>

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<sup>32</sup> *Id.* art. 67.

<sup>33</sup> *Id.* art. 69.

<sup>34</sup> *Id.* art. 79.

<sup>35</sup> *Id.* art. 83.

<sup>36</sup> Penal Code, art. 9 (1991).

<sup>37</sup> *Id.* art. 10.

<sup>38</sup> *Id.* art. 11.

<sup>39</sup> *Id.* art. 6(2).



## 2. Punishments

In addition to the regular punishments that were contained in previous penal codes since 1899, the penal codes of 1983 and 1996 adopted Islamic criminal punishments, or *Shari'a* punishments. *Shari'a* punishments are segmented into three categories: retribution in kind (*qisas*), punishments referenced in the Quran (*hudud*) for crimes considered to have wronged the deity, and discretionary punishments (*ta'zir*).

The retribution punishments are punishments of the same nature as the crime committed, consistent with the idiom of “an eye for an eye.” However, the aggrieved person or his heirs may forgive and accept an alternative punishment such as blood money. The *hudud* punishments include execution, death by stoning, crucifixion, amputation of limbs, banishment, and flogging. The *ta'zir* punishments are for crimes that were not addressed in the Quranic discourse and include reprimands, lashes, and imprisonment.

## 3. Offenses

The Penal Code of 1991 classified criminal offenses into the following categories: crimes against the state, crimes against the military, sedition, crimes against public order, crimes relating to public health and safety, abuse of public office, interfering with the administration of justice, counterfeiting, crimes relating to religion, crimes against the person, crimes against public mores and reputation, crimes against personal freedom, and crimes against property.

However, like its 1983 predecessor, the Penal Code of 1991 introduced and codified within the above categories criminal offenses that were formulated under classical Islamic law. This change led to the creation of a dual system for some of the offenses, either because of the religion of the accused or because of the strict evidentiary rules as applied under Islamic law. Thus, theft is an offense that may come under one of two regimes: either the Islamic regime, under which the punishment is the amputation of a hand,<sup>40</sup> or the secular regime, under which the punishment is a maximum seven-years' imprisonment, a fine, or up to one hundred lashes.<sup>41</sup> Drinking alcohol is another example. If an individual were convicted of drinking alcohol his punishment would be forty lashes only if he is a Muslim. If he is not, then there is no crime, unless the drinking occurred in public.<sup>42</sup>

The Islamic offenses, on the other hand, are not applicable in the Sudan's southern regions where the population is mostly non-Muslim.

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<sup>40</sup> *Id.* art. 171.

<sup>41</sup> *Id.* art. 174.

<sup>42</sup> *Id.* art. 78.

