



WORLD LAW BULLETIN

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Respectfully submitted,



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AFRICA

SOUTH AFRICA – Children’s Bill

On June 22, 2005, the National Assembly passed the Children’s Bill, nine years after it was originally introduced. The bill is intended to comport with the U.N. Declaration on the Rights of the Child and the U.N. Convention on the Rights of the Child. Designed to protect a vulnerable group that has received inadequate legal protection, the bill seeks to strengthen existing laws and fill in gaps regarding adoption, trafficking, and the rights of children.

The bill both outlaws practices considered harmful to children, such as virginity testing, and establishes new mechanisms for protection. While making adoptions by same-sex couples permissible, the South African legislature also seeks to provide more stringent rules regarding adoption, by regulating inter-country adoptions so that they comply with the standards of the Hague Convention. The bill establishes a National Child Protection Registry, which will record abuse of children and monitor children’s cases and services. While the bill lowers the age of majority from twenty-one to eighteen, it also lowers the age of consent for medical procedures to twelve years of age. The latter provision is an attempt by the legislature to recognize the growing impact of HIV/AIDS on children and their need for access to contraceptives and treatment. The Children’s Bill now goes to the National Council of Provinces. (Children’s Bill, June 22, 2005, *available at* Children’s Institute, University of Cape Town, <http://web.uct.ac.za/depts/ci/plr/pdf/bills/bill70b21June2005FINAL.pdf>.) (Roddy Shannon & Ruth Levush, 7-9847, rlev@loc.gov)

ZAMBIA – Extradition of Terror Suspect

According to news reports, a man wanted for questioning concerning the July 7, 2005, bombing that killed fifty-six people in London was deported from Zambia to Britain on August 7, 2005. British and American investigators interrogated Haroon Rashid Aswat, a British-born national of Indian descent who is an aide to a militant Islamic cleric, in Zambia. Mr. Aswat has also been charged in the United States with attempting to help establish a terrorist training camp in Oregon in 1999. The investigators agreed that Mr. Aswat should be deported to Britain. President Mwanawasa of Zambia admitted that the Government of Zambia had arrested Aswat on charges of violating Zambia’s immigration laws. While in custody, officials discovered that he was an alleged terrorist. A tripartite government agreement involving Zambia, Britain, and the United States sealed Aswat’s fate for deportation to Britain to face terrorist charges in connection with the bombing. A London court ordered that Aswat be held in prison until extradition hearings formally opened on August 11. (William K. Rashbaum, *U.S. Expects Deportation in Bomb Inquiry*, THE NEW YORK TIMES, Aug. 3, 2005, at A10; Alan Cowell, *Briton Sought on U.S. Terror Charges Appears in London Court*, The New York Times, Aug. 9, 2005, at 6, LEXIS/NEXIS, News Library, 90days File.) (Charles Mwalimu, 7-0637, cmwa@loc.gov)

ZAMBIA – Home Health Care

With the HIV and AIDS pandemic and its ever increasing demands on health care personnel, the government of Zambia is using alternatives to hospital-based care of the sick. Home-based care is one such option. In Zambia, as in most African countries, there is no law that provides health care for HIV patients, so families must provide the majority of care for those affected by illness. The loss of



labor and cash income, in addition to medical and other health care costs, has a negative impact on the economic well being of households as well as on society as a whole. Moreover, care for those suffering from HIV/AIDS requires specific knowledge, training, equipment, and drugs that are not readily available or accessible to the families, making effective home-based care difficult. Various international organizations, such as CARE, run programs, mostly in rural communities, that address some of the problems related to home-based care. (*Care's Home Based Care Working Wonders in HIV/Aids Fight*, TIMES OF ZAMBIA, July 27, 2005, available at <http://allafrica.com/stories/200507270238.html>.)

(Charles Mwalimu, 7-0637, cmwa@loc.gov)

ZIMBABWE – Human Rights

The United Nations called upon the Government of Zimbabwe to stop the demolition of homes and markets that it had been carrying out. It was also required to pay reparations to those who have lost housing and livelihoods. The government had evicted more than 70,000 people on political grounds, using a law enacted during the colonial era to force the evictions and demolitions. The U.N. sees these actions as having caused untold suffering and as constituting violations of human rights by the Robert Mugabe government. However, the United Nations has not called for sanctions against Zimbabwe. (*Zimbabwe's Evictions Carried Out with "Indifference to Human Suffering," UN Envoy Says*, UN NEWS SERVICE, July 22, 2005, from UNNews@UN.org.)

(Charles Mwalimu, 7-0637, cmwa@loc.gov)

EAST ASIA & PACIFIC

CHINA – Criminal Compensation Clarification

On July 5, 2005, China's Supreme People's Court (SPC) and Supreme People's Procuratorate (SPP) jointly issued the Notice on the Issue of Determining the Organs Liable for Criminal Compensation. Its purpose is to further clarify two technical issues in determining the office that must provide state compensation in cases where an organ in charge of investigatory, procuratorial, judicial, or prison administration work, or its functionaries, infringes on the rights and interests of a citizen, a legal person, or other organizations in the exercise of its functions and powers, causing damage to the victim (cf. 1994 Law of State Compensation, article 19). In 1997, the SPC and SPP also issued a joint interpretation on the subject.

The Notice provides that in cases where trials of the first instance result in a lawful right to state compensation, if the procuratorate that approved the arrest is different from the one that initiated public prosecution, the former will be held liable for compensation. In cases where a trial of the second instance or a retrial results in a right to state compensation, the court of first instance and the procuratorate that approved the arrest will be jointly liable to pay compensation. If there is a difference between the procuratorate that approved the arrest and the procuratorate that initiated public prosecution, however, the latter will be the (jointly) liable organ. The Notice does not have retroactive effect. (*'Two Supremes' Further Clarifying the Issues of Criminal Compensation*, 24 ISINOLAW WEEKLY (July 4-10, 2005), from webmaster@isinolaw.com.)

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



CHINA – Electricity Supply Regulations

On June 30, 2005, the Measures for Regulation of Electricity Supply Services (Trial) were adopted (Chinese text and English translation both available through the online subscription database ISINOLAW, ID No. 10005391). These Measures, which consist of thirty articles, are effective from August 1, 2005, on a trial basis. (China sometimes enacts new regulations “on a trial basis” and then evaluates the policy impact before making permanent regulations.) The Measures are designed to “strengthen regulation of electricity supply services,” which are institutions granted business licenses to supply electricity, and to protect the rights and interests of consumers. The electricity providers will be subject to regulation as to the quality of the electricity supply, aspects of business management, plans for urgent electricity supply, methods of handling complaints about service, and other matters. Provisions are included that specify how quickly suppliers must arrive at sites to fix any defects in the supply system. Supervision methods include requests for reports, on-site inspections, and investigation of problems. The State Electricity Regulatory Commission (SERC), established in 2003 as the main regulatory body, has been reviewing relevant regulations, particularly since the passage by the State Council on February 2, 2005, of the Regulations on Electricity Regulation. SERC has a working plan for enacting needed rules. These Measures and the March 2005 Provisional Measures on Mediation of Electricity Disputes are part of that plan. (*Regulation of Electricity Supply Standardized*, ISINOLAW WEEKLY (June 27-July 3, 2005), from webmaster@isinolaw.com.) (Constance A. Johnson, 7-9829, cojo@loc.gov)

CHINA – First Private Petroleum Corporation

On June 29, 2005, the Great United Petroleum Holding Co., Ltd. (GUPC), China’s first private petroleum group, announced its establishment. GUPC is a conglomerate of several domestic private petroleum companies and is stated to have almost fifty private enterprises as shareholders and capital in the amount of about five billion *yuan* (almost US\$604 million). The director of the All-China Society of the Private Economy, Bao Yujun, stated that GUPC’s founding “marks a breakthrough in China’s oil industry long monopolized by the state-owned economy.” According to GUPC’s Chairman Gong Jialong, the group aims to establish a transnational conglomerate with several subsidiaries covering all sectors of the oil industry, including exploration and mining, refining and chemicals, storage and logistics, wholesale and retail operations, and import and export. However, GUPC still lacks some of the necessary government-approved qualifications to engage in the petroleum business, such as a wholesale license for oil products, import licenses for oil products and fuel oil, and a petroleum exploitation license, and to be an equal player with the state-owned petroleum industry giants – China National Petroleum Corporation (CNPC), China Petroleum Corporation (Sinopec), and China National Offshore Oil Corporation (CNOOC) – may take a long time.

One of the major sources of government support behind the establishment of GUPC is a State Council document issued on February 19, 2005, that for the first time permitted access by non-public capital to key industries such as power, telecommunications, railways, civil aviation, and oil exploitation. However, material and non-material limits have discouraged the use of private capital. For example, on June 2, 2005, the Ministry of Commerce reportedly stipulated in a draft comment that finished wholesalers must have engaged in the business for at least two years and own or control at least thirty gas stations, evoking strong objections from spokespersons for the private wholesalers. Apparently few of them could survive such restrictions. An explanation given for the draft



requirements is that they would serve to unify and standardize distribution channels and to ensure oil quality. (*Xinhua: China's First Private Petroleum Corporation Established Amid Disputes*, XINHUA, June 29, 2005, and *Beijing Review: Industry Experts Debate Reform of PRC's Oil Pricing Mechanism*, BEIJING REVIEW, July 1, 2005, Foreign Broadcast Information Service online subscription database; *Opinions of the State Council on Encouraging, Supporting and Guiding the Development of the Individual and Private Sectors of the Economy* (in Chinese), ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO (Gazette of the State Council of the People's Republic of China) 7-12 (Apr. 10, 2005).)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – National Security Council Death Knell

It has been reported that early in 2005 the Chinese Communist Party (CCP) Central Committee Office of Intelligence Coordination was disbanded, and its more than 100 staff members, from eight major central departments and ministries, have returned to their original units or been given new assignments. This Central Coordination Office (CCO), referred to as the Central Intelligence Bureau in the Chinese intelligence community, was designed to have two major functions: to serve as the functional arm of a planned “National Security Council” (NSC) of China and to plan and coordinate the work of different intelligence networks. A unique feature of the CCO was that it was not placed under the Ministry of National Security but in the CCP, with the director of the General Office of the CCP Central Committee concurrently serving as its head. The CCO began operations at the end of 2003. It continued to operate within the CCP in 2004 because it was still tasked with mapping out overall plans concerning domestic and foreign intelligence and with coordinating intelligence organs of different networks. Its demise is attributed to the cancellation of its decision-making organ, the NSC, and to the current CCP decision makers’ belief that the CCO’s role was redundant. The Political-Legal Committee coordinates the intelligence work of the Ministry of National Security and the Ministry of Public Security, and higher-level decisions are made by the Politburo, while military intelligence work is relatively independent. Furthermore, the role of the CCP Central Committee General Office director was not seen as primarily being to coordinate the work of these powerful departments.

Several years ago, a group of scholars proposed the creation of an NSC, modeled after that of the United States. It was originally envisaged to handle mid- and long-term issues such as oil reserves and food security, to deal with short-term crises, and to conduct ex post facto evaluation of responses to domestic and international issues. However, the proposal was never implemented. In mid-October 2002, before the convening of the Sixteenth Party Congress of the CCP, the idea of establishing a “national security council” or “advisory council,” re-emerged. Jiang Zemin, then CCP General Secretary and President of the People’s Republic of China, promoted the idea and he was to be chairman of the new body. (*Journal Reports National Security Council Aborted, Intelligence Coordination Office Dissolved*, DUOWEI XINWEN, June 27, 2005; *Jiang Expected to Wield Considerable Power Despite Resignation*, Hong Kong, SOUTH CHINA MORNING POST, Mar. 9, 2005; *PRC Source: China to Drop Plan for ‘National Security Council’ at 10th NPC*, Tokyo, SANKEI SHIMBUN, Mar. 4, 2003, all via Foreign Broadcast Information Service online subscription database.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)



HONG KONG – Anti-Spam Law Foreseen

Hong Kong plans to enact an anti-spam law in 2006, according to Au Man-ho, Director-General of the Telecommunications Authority. The law is being crafted based on consultations with industry groups in order to combat junk e-mails, faxes, text messages, and telemarketing calls. Mr. Au stated that direct marketing companies that make unsolicited use of automated calling can also be deemed “a spam problem.” However, the law would not apply to manually made cold calls, so as not to interfere with normal business activities. Mr. Au said that the government is working with fixed-line and mobile operators to create a code of practice and that there still needs to be public discussion of the spam issue. (*Hong Kong Plans To Enact Anti-Spam Law*, ASSOCIATED PRESS FINANCIAL WIRE, June 13, 2005, LEXIS/NEXIS, News Library, 90days File.)

On April 27, 2005, Hong Kong joined the Seoul-Melbourne Multilateral Memorandum of Understanding on Co-Operation in Countering Spam. Under the MOU, Hong Kong’s Commerce, Industry and Technology Bureau, along with eleven other agencies in mainland China, Australia, South Korea, Malaysia, the Philippines, and New Zealand, are to cooperate in minimizing spam that originates in or passes through each region to end users and to promote the exchange of information on technical, educational, and policy solutions to the spam problem. Reportedly more than sixty percent of mailings in Hong Kong are spam; ninety-five percent of them originate from outside the city, including from the United States and South Korea. (*HK Joins International Community Against Spam*, XINHUA GENERAL NEWS SERVICE, Apr. 27, 2005, LEXIS/NEXIS, News Library, 90days File; *Seoul-Melbourne Anti-Spam Agreement Enlarged* (click heading to access the text of the agreement), International Telecommunications Union, <http://www.itu.int/osg/spu/spam/intcoop.html> (last visited July 12, 2005).)
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

HONG KONG – Stronger Copyright Protections Planned

After considering the opposing views of copyright end-users and copyright owners, the Hong Kong government has formulated some proposals to bolster Hong Kong’s copyright protection regime. They include:

- 1) Maintenance of the existing scope of business end-user possession criminal liability, which is limited to four categories of copyright works (movies, music recordings, computer programs, and television dramas).
- 2) A new business end-user criminal offense to target significant infringement activities involving acts of copying for distribution, or distributing infringing copies of, works published in books, newspapers, magazines, and periodicals, in order to address copyright owners’ concerns about the ease of copying and widely distributing printed works. However, non-profit and government-subsidized schools would be exempt from such an offense.
- 3) With a view to promoting better corporate governance and accountability in preventing copyright infringements in business, introduction of a new criminal offense against directors or partners of companies that commit an act attracting business end-user criminal liability, to which they are subject unless there is evidence that they did not authorize the crime.



- 4) A new criminal offense regarding “commercial dealings in devices, products, or components and the provision of services on a commercial scale which circumvent technological measures applied to a copy of a copyright work.” This is designed to combat the sale of game consoles installed with modified chips, which reportedly contributes “substantially” to a market for copies that infringe computer games, and to deter the emergence of other similar such activities (e.g., acts that circumvent the technological protections for music available for sale on the Internet.)

(Mary Swire, *Hong Kong Plans to Ramp Up Copyright Protections*, LawAndTax-News.com, June 20, 2005, <http://www.lawandtax-news.com/asp/story.asp?storyname=20203>.)

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

INDONESIA – Gamblers Publicly Caned

On June 24, 2005, a group of Indonesians in Bireuen, in Aceh province, were caned in public for gambling. The punishments, the first of this type since the adoption of Islamic law in the province in 2003, were administered by an official and consisted of between six and ten strokes of a rattan cane, delivered on a special stage before a large crowd and local television news cameras. A religious court had convicted the gamblers in April, but the Acting Governor did not approve punishment until June 13. Aceh is the only part of Indonesia that has adopted Syariah law in the criminal justice system, and Bireuen is the only district to have passed a law on caning, in March 2005. Outside of Aceh, religious courts in Indonesia deal solely with family law matters, such as divorce. Legislators in the province advocate the use of physical punishment for a variety of crimes, including corruption, theft, and adultery, but human rights activists denounce it as degrading. (*Gamblers Caned Under Islamic Law in Indonesia’s Aceh*, AGENCE FRANCE PRESSE, June 24, 2005; *Public Caning for Aceh Gamblers*, THE STRAITS TIMES (Singapore), June 23, 2005, LEXIS/NEXIS, Asiapc Library, Curnws File.) (Constance A Johnson, 7-9829, cojo@loc.gov)

JAPAN – Amended Animal Care and Management Law

The amended Animal Care and Management Law was promulgated on June 22, 2005 (Law No. 68 of 2005). The Law will become effective within one year. The amendment strengthened control over animal-related businesses, but does not cover livestock management and farming. Animal dealers will need to register their businesses with local governments, instead of just reporting the business’s establishment. Each place of business must select one person who is responsible for animal care and management. That responsible person must take relevant classes provided by the local government. (Ministry of Environment, *Dobutsu no aigo oyobi kanri ni kansuru horitsu no ichibu wo kaisei suru horitsu ni tsuite* (Regarding the Law to Partially Amend the Animal Care and Management Law), at http://www.env.go.jp/nature/dobutsu/aigo/amend_law2/index.html.) (Sayuri Umeda, 7-0075, sume@loc.gov)

JAPAN – Criminal Code Amendment

The Criminal Code was amended on June 22, 2005 (Law No. 66 of 2005). New crimes related to human trafficking were added. Trafficking in persons that crosses national boundaries is now a crime. (*Jinshin baibai zai sosetsu* (Crime of Human Trafficking Created), YOMIURI SHINBUN, June 16, 2005.) (Sayuri Umeda, 7-0075, sume@loc.gov)



KOREA, SOUTH – Publication Using Publicly Available Materials Still Violates National Security Act

On July 5, 2005, the Supreme Court sustained a lower court decision that gave a sentence of one and a half years of imprisonment plus a two-year probation period to a college student for violation of the National Security Act. The student made thirty packets of “May Day” (a traditional day for labor protests) introduction materials, distributed them to his friends, and displayed the material on his Internet homepage. He also used a metal bar and a firebomb in a violent demonstration. The Court stated that the written speech made by the defendant threatens the existence of the government and of liberal democracy and is prohibited speech considered beneficial to the enemy under the National Security Act. The Court also stated that although the material was not a pure creation of the defendant but a composite of quotations from other publications that were publicly available, it was still of a nature to be of potential benefit to the enemy. (*Legal News*, LAWNB (Law and Business), July 5, 2005, at <http://www.lawnb.com/>.)
(Jung Hwa Lee & Sayuri Umeda, 7-0075, sume@loc.gov)

KOREA, SOUTH – Policy to Control Home Equity Loans

The Korea Financial Supervisory Service (KFSS) has analyzed the status of home equity loans approved by banks or financial institutions. The analysis indicated that there were many people who were approved for more than two home equity loans in designated areas where real estate speculation is prohibited.

To keep the real estate market under control, the KFSS announced its new Home Equity Loan Control Policy. A person with a home equity loan approved for an apartment in any given area cannot obtain another home equity loan for an apartment in an area designated for control of real estate speculation. However, if a person who is registered with the business registry applies for a home equity loan for an apartment located in a designated area (if purchased before July 1, 2005) for the purpose of funding his or her business, the loan can be approved. The exception also applies if a person purchased an apartment in the designated area to reside there but ended up having two home equity loans temporarily because he or she could not dispose of the original residence. (*Kijon taechul it'ŷ myŷn tugi chiyŷk taechul mot'pada (Loan in the Speculative Area Is Prohibited if There Is an Existing Loan*, CHOSUN-ILBO, July 1, 2005, at B2.)
(Jung Hwa Lee & Sayuri Umeda, 7-0075, sume@loc.gov)

SINGAPORE – Moneychanger Rules Tightened to Combat Terrorist Financing

On July 18, 2005, the Singapore Parliament introduced the Money-Changing and Remittance Businesses (Amendment) Bill (No. 15/2005). Among other provisions, it requires the holders of a moneychanger's license or a remittance license to have minimum paid-up capital of S\$100,000 (about US\$59,200) and empowers the central bank to suspend, to vary the conditions of, or to impose new conditions on the licenses. The step to tighten money changing regulations was reportedly taken in the context of international concern about the role of *hawala*, the informal system of international money transfer used in parts of the Middle East, Asia, and Africa, in helping to fund al-Qaida-linked terrorist attacks. (*Singapore Tightens Rules on Moneychangers to Counter Terror Financing*, *Money*



Laundering, ASSOCIATED PRESS WORLDSTREAM, July 18, 2005, LEXIS/NEXIS, News Library, 90days File; *Money-Changing and Remittance Businesses (Amendment) Bill*, July 18, 2005, Parliament of Singapore website, <http://www.parliament.gov.sg/Legislation/Htdocs/Bills/050015.pdf>.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

SINGAPORE – Stricter Financial Disclosure Rules

Singapore Prime Minister Lee Hsien Loong, in a letter to members of his People's Action Party (PAP) released to the media on July 6, 2005, announced revisions to the code of conduct for PAP members in a move to counter potential corruption. The PAP has ruled Singapore since 1965 and holds eighty-two of the eighty-four seats in the Singapore Parliament. According to the revised code, which took effect on July 5, ministers must declare their financial assets and liabilities upon assuming office. A minister must ensure that family members do not accept gifts from third parties that might compromise his duties as a public office holder. Ministers cannot accept company directorships or be involved in commercial undertakings unless it is in the national interest for them to do so. Before becoming a company director, an MP must be convinced there is no conflict of interest and have a "strong understanding" of the company and of his obligations as a director. This is in contrast to guideline revisions made in April 2004 by Lee's predecessor Goh Chok Tong, which simply stated that an MP must "make every effort to familiarise himself with the business, track record and background of the key promoters of the company." (*Singapore PM Tightens Guidelines for Ministers, MPs*, AFP (Hong Kong), July 6, 2005, Foreign Broadcast Information Service online subscription database.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

TAIWAN – Bad Debt Reserve

Effective July 1, 2005, Taiwan's Financial Supervisory Commission introduced a new regulation on the reserve provision on bad debts. Bank lending is classified into the four categories of normal, to be watched, receivable, and unable to receive, and banks must now prepare higher reserves for loans in all categories. Due to the new regulations, bank profits are expected to shrink. ("Taiwan," *Asian Banker Perspectives*, THE ASIAN BANKER JOURNAL, June 30, 2005, LEXIS/NEXIS, News Library, 90days File.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

THAILAND – Emergency Powers Act

On July 15, 2005, Thailand's Cabinet approved an Emergency Powers Act in the form of a royal directive that gives sweeping new powers to Prime Minister Thaksin Shinawatra to combat a wave of violence in the Muslim southern part of the country. The Act would lift martial law, in effect in most of the region since January 2004, and in its stead declare "emergency zones" to suspend a range of civil rights. This will reportedly in effect give the Prime Minister powers formerly reserved for military commanders. Cabinet endorsement of the Act came in the wake of a coordinated attack on Yala, one of the major cities in the south. Only the approval of the king, not the parliament, is required for the Act to take effect. Once royal approval of the directive has been obtained, the Prime Minister can declare some emergency zones, subject to Cabinet approval.



The Act provides that in the emergency zones the authorities can impose curfews, ban gatherings viewed as security threats, and prohibit publications deemed as printing “distorted” information. They can also tap phones, forbid weapons possession, bar Thais from leaving the country, and deport foreigners suspected of supporting the insurgents. In addition, the Act empowers security forces to conduct searches and make arrests without warrants and to detain suspects for seven days without bringing formal charges. (*AFP: Thai PM to Receive Tough New Powers to Combat Unrest in Muslim South*, AFP, July 15, 2005, and *Yala Blasts: Thai Govt Issues Royal Directive, Declares Emergency in South*, PHUCHATKAN, (Internet version), July 15, 2005, Foreign Broadcast Information Service online subscription database.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

VIETNAM – Restrictions on Cyber-Cafes, Online Press

A new inter-ministerial directive, effective July 30, 2005, is designed to increase surveillance of the 5,000 cyber-cafes in Vietnam and to reinforce a 2004 decree. The owners of cafes with Internet access will have to take a six-month course in how to monitor their customers and also will be required to check the identity of customers and prevent them from accessing anything deemed pornographic or subversive. Additional rules make the cafes prohibit entrance to children under the age of fourteen unless accompanied by an adult and enforce a midnight closing time.

Restrictions are also being placed on online journalists, who have been described by officials as providing “sensationalist news and articles while others even publish reactionary and libelous reports and a depraved culture.” The new measures have been condemned by the Paris-based organization Reporters Without Borders, which said, “[t]hese measures are a complete negation of the free enterprise principles espoused by the World Trade Organization, which Vietnam is trying to join.” (*Vietnam Government Tightens Grip on Cyber-Cafes and On-line Press*, Press Release, July 26, 2005, Foreign Broadcast Information Service online subscription database.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

EUROPE

BELARUS – New Customs Procedures

On July 15, 2005, the President of Belarus signed an ordinance to adopt a new customs clearance procedure for aircraft engineering used by Belarusian civil aviation. The ordinance allows the removal for repairs and replacement, without the corresponding licenses, of aircraft, aircraft components, and other commodities for aircraft operation that are subject to customs processing procedures if the aircraft, components, and commodities were imported under “free operation mode” with an exemption from customs duties and VAT. Licenses will also not be required for the removal of components and equipment of aircraft and ground equipment imported temporarily with exemption from customs duties. However, the new rules do not apply to aircraft imported into Belarus temporarily. The temporary import terms applied to aircraft, components, and related products will not exceed five years. This exemption was required because the national air carrier Belavia started to replace its fleet of Soviet-made aircraft in order to meet the European Union’s stricter noise standards, which will be introduced in 2006. An agreement on the leasing of three Boeing aircraft was recently



concluded with the U.S. International Leasing Finance Corporation. (*Lukashenko Approves New Customs Procedures for Civil Aviation*, TASS BELARUS NEWSWIRE, July 17, 2005, at <http://www.securities.com>.)

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

ENGLAND AND WALES – Afghan Warlord Guilty of Torture Offenses Committed Abroad

A landmark decision was made in England on July 18, 2005, in the case of *R v Faryadi Sarwar Zardad*. An English court convicted Zardad, an Afghan warlord who had taken up illegitimate residence in the United Kingdom, for conspiracy to torture and take hostages. Zardad became the first foreign national to be convicted in England of torture offenses committed abroad that were perpetrated against non-British nationals. The Criminal Justice Act 1988 grants the British courts extraterritorial jurisdiction enabling them to prosecute certain torturers, regardless of the country in which the crimes are alleged to have taken place.

The central criminal court in England and Wales found that Zardad and men under his command tortured and took many individuals hostage, often with the aim of extorting money and valuables. A key question for the court was whether Zardad could be held liable for torture offenses committed by the men under his control, even if it could not necessarily be proven that he committed specific acts of torture. The court responded in the affirmative. Justice Tredy sentenced Zardad to two twenty-year sentences, to be served consecutively, and recommended that Zardad be deported at the end of his sentence, despite evidence that Zardad may face death upon his return to Afghanistan. Torture had previously been declared a crime of universal jurisdiction by the U.K.'s highest court, the House of Lords, and this case serves to further strengthen that principle. (Cahal Milmo, *British Court Makes History with Conviction of Afghan Warlord*, INDEPENDENT (London), July 19, 2005, at 16; Sally Pook, *Former Afghan Warlord Given 20 Years for Crimes against Humanity*, DAILY TELEGRAPH (London), July 20, 2005, at 10.) (Gareth Thompson and Clare Feikert, 7-5262, cfei@loc.gov)

ENGLAND AND WALES – Anti-Social Behavior Measures Overturned in Courts

The High Court of England and Wales has ruled that a key piece of the government's legislation to prevent anti-social behavior is unlawful. The government had provided a package of measures aimed at preventing anti-social behavior in the Anti-Social Behaviour Act 2003, measures that included the designation of dispersal, or curfew, zones. Part 4 of the Act grants police the power to detain and forcibly return home individuals aged sixteen or under who are found unaccompanied in these dispersal zones after 9 p.m., regardless of whether they are suspected of criminal or anti-social behavior. A teenager who was questioned as a result of these powers challenged the lawfulness of the measures, stating that it breached his rights under the European Convention on Human Rights, which was implemented into the national law of the United Kingdom by the Human Rights Act 1998. The High Court ruled that the law did not give police a power of arrest, or the ability to force individuals to accompany them. Brooke, LJ affirmed that:

all of us have the right to walk the streets without interference from police constables or [community service officers] unless they possess common law or statutory powers to stop us ... [I]f Parliament considered that such a power was needed, it should have said so, and identified the circumstances in which it intended the power to be exercised.

The government plans to challenge the ruling in the Court of Appeal. (Joann Smith, *Boy, 15, Overturns Evening Curfew on Teenagers*, INDEPENDENT (London), July 21, 2005, at 4; BBC News, *Boy, 15, Wins*



Curfew Legal Battle, BBC NEWS, July 20, 2005, available at http://news/bbc.co.uk/2/hi/uk_news/england/london/4699095.stm.)

(Clare Feikert, 7-5262, cfei@loc.gov)

FRANCE – “Legitimate” and “Natural” Child Labels Abolished

Ordinance 2005-759 of July 4, 2005, reforming filiation, the legal bond that connects a person to his or her father or mother in civil law, abolishes the legal terms “legitimate” and “natural” (born out of wedlock) in the Civil Code. Although French law had long ago equalized the rights of all children whose filiation had been legally established, the Civil Code still had the legal distinction between “legitimate” and “natural” children. This distinction had lost most of its meaning since the status of the natural child had been aligned with the status of the legitimate child. Therefore, abolishing the terms brings the Civil Code in line with the previous laws banning discrimination. (Ordinance 2005-759, July 4, 2005, JOURNAL OFFICIEL, 11159 (July 6, 2005).)

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

FRANCE – New Energy Policy Law

On July 13, 2005, the French Parliament passed a new energy policy law. The law outlines four major goals: to achieve energy independence and to guarantee supply security, to ensure the competitive cost of energy for businesses and private citizens, to combat and minimize environmental damage, and to promote solidarity among the regions in ensuring access for all to energy. To achieve these goals, the law sets forth four priorities:

- To rekindle energy saving efforts in order to reduce energy intensity (the ratio of energy consumption to economic growth) by 2% per year as early as 2015 and by 2.5% between then and 2030 and, going beyond compliance with the Kyoto Protocol, to reduce France’s CO₂ emissions by a factor of four by 2050;
- To keep the nuclear option open with the launch of the European Pressurized Water Reactor (EPR). This reactor is expected to be of Framatome ANP’s EPR design, but the law does not specify a design;
- To further develop renewable energy such as wind energy and biofuels;
- To promote research into new energy technologies.

Under the new law, all provisions concerning energy law will be incorporated into an energy code in order to facilitate their implementation. (Law 2005-781, July 13, 2005, Setting the Orientations of the Energy Policy, LEGIFRANCE, available at <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=ECO0400059L>.)

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

GERMANY – Trafficking in Human Beings

On February 19, 2005, Germany reformed its criminal provisions against trafficking in human beings. (37th Reform Act of the Criminal Code, BUNDESGESETZBLATT I at 239 (2005).) The newly introduced sections 232 through 233 b of the Criminal Code list trafficking in human beings among the offenses against personal liberty and define them as the taking advantage of the vulnerability of aliens by coercing them to submit to sexual exploitation or to work for low wages and under inappropriate, slave-like conditions. Under aggravated circumstances, the penalty can be up to ten years’ imprisonment. The



new provisions aim at curtailing illegal immigration (F. Schroeder, *Das 37. Strafrechtsänderungsgesetz*, 58 NEUE JURISTISCHE WOCHENSCHRIFT, 1393 (2005)) and at meeting various international and European commitments, among them, the European Council Directive 2002/90/2005 defining the facilitation of unauthorized entry, of November 28, 2002. (OFFICIAL JOURNAL OF THE EUROPEAN ECONOMIC COMMUNITIES L 328 (2002).)

(Edith Palmer, 7-9860, epal@loc.gov)

IRELAND – New Affordable Homes Partnership Announced

On June 23, 2005, the Taoiseach (Prime Minister) announced that a new agency, the Affordable Homes Partnership (AHP), would be established in order to drive and coordinate the effort to provide affordable housing in the Dublin area. The Taoiseach stated that the housing problem in the greater Dublin area was a priority policy area for the government and that the AHP would seek to alleviate this problem. The agency has been tasked with driving and coordinating the delivery of all affordable housing in the greater Dublin area, coordinating development of supporting infrastructure in the area, taking responsibility for affordable housing initiatives, facilitating housing development, and providing public information on affordable housing availability. The agency is established under the Local Government Services Act 1971 and subject to review by the Cabinet Committee on Housing, Infrastructure and Public Private Partnerships. (Press Release, Department of the Taoiseach, *Taoiseach Announces the Establishment of the Affordable Homes Partnership to Drive and Co-Ordinate the Delivery of Affordable Housing*, July 6, 2005, at <http://www.taoiseach.gov.ie/index.asp?locID=404&docID=2056>.)

(Joann Chang, 7-7-4988, jchang@loc.gov)

ITALY – New Counterterrorism Decree and Role of the Army

On July 22, 2005, Italy's Cabinet approved a counterterrorism security package, which took the form of a decree-law. This went into effect immediately, with Parliament having sixty days to approve it. The package provides for the immediate deportation of foreign citizens whose presence in Italy is regarded as likely to be in the interests of terrorist organizations or activities, domestic or foreign. The deportation can be appealed, but only after the foreigner is outside Italy. Anyone who recruits potential terrorists may be imprisoned for seven to fifteen years; anyone who trains potential terrorists may be imprisoned for five to ten years; and anyone who, even in theoretical terms, teaches how to make an explosive may be sentenced to a one- to six-year term. It will be easier to take suspects into custody, with a wider range of offenses, such as possession of forged documents, meriting custody. A new procedure for authorizing interception of communications will permit agents of the security services to apply directly to the Prime Minister for authorization, rather than leaving that decision in the hands of prosecuting magistrates.

On July 27, 2005, the Senate passed a bill that would authorize the armed forces to take on the powers of the judicial police and patrol the streets. If the Lower House passes the bill, the new law would permit soldiers to check identity documents, search vehicles, and seize arms or explosives. The goal of the proposed law is to relieve the ordinary police of these mundane duties so that they can be deployed in other investigations and operations. (*La Repubblica* (Rome), July 23, 2005, and *RAI Radio Uno Network* (Rome), July 27, 2005, Foreign Broadcast Information Service online subscription database.)

(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)



LATVIA – Ban on Tobacco Ads in Media

On June 22, 2005, the Latvian legislature, the Saeima, amended the Law on Tobacco. The amendments ban advertisement of tobacco in the press and other print media as of July 31, 2005, and in commercials in movie theaters as of January 1, 2006. Retail sales of printed materials, including newspapers, containing advertisement of tobacco products, printed and published before July 31, will be permitted until December 31, 2005. Retail sales of printed mass media containing advertisement of tobacco, printed and published outside of Latvia, will not be permitted in the country. This ban was passed in order to meet European Union requirements. The Ministry of the Economy and Consumer Rights Protection will be responsible for enforcing the new legislation. (*Latvian Parliament Okays Restrictions for Tobacco Advertising*, NEW EUROPE NEWS CORPORATION S.A., July 4, 2005, at <http://www.securities.com/>.)

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

LITHUANIA – Bar Exam for Lawyers Introduced

On July 7, 2005, new amendments to the Law on the Bar entered into force. They tighten the requirements for persons wishing to practice as attorneys. Now, a person who has completed their legal education and possesses a law degree will have to pass a lawyer's qualification exam. In order to be eligible to take the exam, the aspiring attorney must have worked no less than five years in a legal profession or no less than two years as an assistant to a practicing private attorney. The exam will be administered by the national bar association, and the results of the exam will be reported to the Lithuanian Ministry of Justice, which is responsible for the registration of attorneys. Other amendments to the Law extend the rights of attorneys, who will now be allowed to provide the services of an intermediary, a legal expert, or a conciliator in commercial disputes. (VALSTYBĖS ŽINIOS [official gazette] No. 125, 2005, Item 2143, <http://www.valstybes-zinios.lt/vpp2//lt/news.listShow.>)

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

MALTA – International Assistance with Illegal Immigration

The Maltese Foreign Minister has asked the European Union for support in dealing with the country's increasing illegal immigration problem. The Foreign Minister stated during his meeting at the European Union's General Affairs and External Relations Council (GAERC) on July 18, 2005, that Malta is straining to provide health care, accommodation, and other services to the illegal immigrants who seek shelter in Malta, the most densely populated country in the EU. The arrival of 3,000 illegal immigrants in Malta would be approximately equivalent to 420,000 in Italy. Furthermore, the Ministry of Foreign Affairs noted that Malta is constrained by human and financial resources in coping with the continuous influx of illegal immigrants.

This call for assistance from the EU follows Malta's request on July 5, 2005, to the EU ambassadors residing in Malta to help with repatriation for those illegal immigrants who must be sent back to their countries of origin, to assist in the resettlement of individuals granted asylum, and to provide naval support to prevent and deter illegal immigration. (Department of Information-Malta, *The Minister of Foreign Affairs Raises in Brussels the Need for Support for Malta's Illegal Immigration Problem*, Release No. 1083, July 18, 2005, at http://www.gov.mt/frame.asp?l=2&url=http://www.doi.gov.mt/en/press_releases/calendar.asp; Department of Information - Malta, *Malta Asks EU Members for Urgent Assistance in Dealing with Illegal Immigration*, Release No. 1038, July 10, 2005, at



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http://www.gov.mt/frame.asp?l=2&url=http://www.doi.gov.mt/en/press_releases/calendar.asp; *Malta Launches International Awareness Campaign*, THE TIMES, July 19, 2005, at <http://www.timesofmalta.com/core/article.php?id=193730>.)
(Joann Chang, 7-4988, jchang@loc.gov)

MOLDOVA – New Utilities Payment Plan Introduced

On June 27, 2005, the government of the Republic of Moldova approved a new pilot project to introduce a new system of utility payments, which will be implemented as an experiment in three districts of the Republic. Under the plan, as of January 1, 2007, utility bills will be paid according to household income. All families whose income is under the subsistence level will be eligible for reduced payments; however, the exact amount of payments for different categories within the population will be calculated on the basis of the so-called “social questionnaire.” It is expected that the implementation of this plan will allow the government to stop subsidizing utility companies, instead sending payment to eleven population categories. (*Infotag-Daily News Bulletin*, June 27, 2005, at <http://www.securities.com/>.)

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

RUSSIAN FEDERATION – Retroactive Application of Tax Laws Allowed

On July 14, 2005, the Constitutional Court of the Russian Federation rejected as unconstitutional a request from tax authorities to strike down the statute of limitations for tax violations. The Federal Tax Service argued that the statute contradicted two provisions of the Russian Constitution: the guarantee of equality before the law and a requirement that everyone pay their taxes in full. However, the Court ruled that in instances of obstruction, authorities could pursue tax cases within the specified period covered by the inspection.

This ruling means that tax authorities can investigate and prosecute individuals and legal entities after the three-year statute of limitations has expired if they can prove that the taxpayer obstructed the original tax inspection. The Court stated that such an application of the law is constitutional if the authorities initiated the investigation within the three-year period being examined. According to the court decision, in such cases the investigation and prosecution may continue indefinitely. The decision as to whether a taxpayer has obstructed an inspection is left to individual courts. This ruling, which has the force of law, will affect every company working in Russia, as well as every taxpaying individual. (ROSSIISKAI GAZETA, July 15, 2005, at <http://www.rg.ru/Anons/Zakon/index.html>.)

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

SWEDEN – Labor Court Upholds Parish’s Decision to Fire Priest

In a decision rendered on July 20, 2005, the Swedish Labor Court established that a parish had the right to fire a priest for using the parish’s money for private purposes. On four occasions, the priest was found to have used the parish’s funds to buy food that was not used for the congregation’s activities, and she also bought herself a vase.

The Court states in its decision that a priest’s honesty and irreproachable behavior must meet high standards. Through her actions, the priest has abused the congregation’s confidence and neglected her obligations. According to the Court, the priest’s long employment and the fact that she has



performed her job well in other respects is irrelevant. (Anders Larsson, *Rätt att avskeda ohederlig präst*, NORSTEDTS JURIDIK AB, Juridik Idag, July 20, 2005, available at <http://www.nj.se/NJAB/Nyhetsbrev.nsf/0/761F3FB1CD24E7FDC12570440045AD1E!OpenDocument>. (Linda Forslund, 7-9856, lifo@loc.gov)

SWEDEN – Reduction of Life Sentences

On June 22, 2005, the Swedish government sent a referral to the Council on Legislation proposing that a person who is sentenced to life in prison should be able to submit a petition to the court to have his or her sentence reduced. If the proposed legislation were enacted, a person who serves a life sentence would have to serve at least ten years before the sentence could be reduced.

At present a life sentence is not a pre-determined amount of years in Sweden, but a person who is sentenced to life in prison can submit a petition for mercy to the government. If the petition is granted, the sentence will be set to a specific term. According to the Swedish Prison and Probation Service, a life sentence today means that a person will serve approximately twenty years in prison. The new legislation as proposed would enter into force on January 1, 2006. (Department of Justice, *Omvandling till livstidsstraff prövas i domstol*, Press Release, June 22, 2005, available at <http://www.regeringen.se/sb/d/5647/a/46846>.) (Linda Forslund, 7-9856, lifo@loc.gov)

SWITZERLAND – Stem Cell Research

On November 28, 2004, the Swiss people approved by referendum the Act on Embryonic Stem Cell Research. The Act became effective on March 1, 2005 (*Loi fédérale relative à la recherche sur les cellules souches embryonnaires*, Dec. 19, 2003, RECUEIL OFFICIEL DES LOIS FÉDÉRALES 947 (2005)). The Act permits, within tightly regulated limits, the harvesting of embryonic stem cells that are a by-product of in vitro fertilization and the exclusive use of these stem cells for research purposes. Among the practices prohibited by the Act are cloning, the creation of embryos for research purposes, and commercial dealings involving embryos and stem cells. The legislative intent of the law is to strike a balance between the constitutional values of human dignity on the one hand and freedom of research on the other. (*Botschaft zum Bundesgesetz über die Forschung an überzähligen Embryonen*, BUNDESBLETT 1163 (2003).) (Edith Palmer, 7-9860, epal@loc.gov).

UKRAINE – Status of Presidential Advisers Defined

On July 15, 2005, President Viktor Yuschenko of Ukraine issued a decree on the patronage service of the President of Ukraine, which includes advisers and scientific consultants to the President. Advisers are appointed and dismissed by the President for the entire presidential term of office and serve either as permanent members of staff or on a voluntary basis. Foreigners may be appointed as non-staff presidential advisers only.

The duties of advisers include drafting proposals on formulation and implementation of state policies in specific areas, drafting presidential decrees and proposals on vetoed laws, and preparing materials for presidential speeches and events in which the President is participating. The decree grants to the adviser the right to request any information from state and private organizations and to participate



in the meetings of the Cabinet of Ministers. Meetings of all presidential advisers are to be convened by the Office of the President no less than once a month. (*Yuschenko Sets Up Advisory Board*, UKRAINIAN NEWS ON-LINE, July 15, 2005, at <http://www.securities.com>.)
(Peter Roudik, 7-9861, prou@loc.gov)

UNITED KINGDOM – Terminally Ill Man Loses Right to Compel Doctors to Provide Nutrition

The Court of Appeal has overturned a High Court judgment that compelled doctors to continue to provide life-sustaining nutrition to a terminally ill man after he loses the ability to communicate. The General Medical Council, the national doctors' organization of the United Kingdom, stated that the High Court ruling has put doctors in an "impossibly difficult position" as it would compel them to provide treatment in cases where their professional view was that such treatment would not be beneficial or would even be futile and that the patient had no right to demand any particular form of treatment. (Stephen Howard, *Dying Man Loses GMC Appeal over His Right to Be Fed*, INDEPENDENT (London) July 28, 2005, at <http://news.independent.co.uk/uk/legal/article302183.ece>.)
(Clare Feikert, 7-5262, cfei@loc.gov)

NEAR EAST

IRAN – Controversy over Amount of Dowry

The House Judiciary Committee of the House of Representatives in Iran has recently approved a bill that ties the amount of a dowry to the employment and income of the father of the bride; the parties have no right to raise the amount higher than that amount. The House and the Guardian Council must approve the proposed bill. (HAMSHAHRI, (Tehran), July 12, 2005, at <http://www.hamshahri.org/hamnews/1384/840421/news/ejtem.htm>.)

The term dowry, or what is commonly and traditionally known under Islamic law as *Mahr*, refers to the amount of money or property that the groom offers to the bride upon marriage. This property becomes the exclusive property of the bride after the ceremony and consummation of the marriage, and she is free to dispose of it in whatever manner she wishes. The institution of *Mahr* is based on religion and a tradition for which there is no parallel in the marriage laws of the United States. The groom has to surrender the dowry to his future wife either immediately after the marriage contract is concluded or else later, according to the wife's wishes.

Dowry is not an integral part of the marriage contract and a marriage is legally valid without it. The parties to a marriage may agree that there should not be any dowry, or a very insignificant amount of property is named, such as a few ounces of sugar. Socially, however, in some of the Islamic societies, the dowry has assumed special significance, and families believe that the higher the amount of the dowry, the greater the social status of the bride. It has become highly competitive in certain societies, which has caused a social problem and a barrier to marriage. It is also believed that the higher the amount of the dowry, the more durable the marriage. A high dowry is considered a deterrent to divorce.

(Gholam H. Vafai, 7-9845, gvaf@loc.gov)



ISRAEL – Laws of Evidence (Protection of Children)

On June 20, 2005, the Knesset (Israel's Parliament) passed the Laws of Evidence (Protection of Children) (Amendment No. 12) 5765-2005. The law authorizes the questioning of a child with the knowledge of his parent, regarding offenses he or she is not suspected of committing. A special children's investigator normally conducts the questioning in sexual and violent offenses. The amendment authorizes the summons of a child for questioning even without informing the parent if the child so requests and a welfare officer has not objected, if notifying the parent will delay the investigation because of difficulty in informing the parent with reasonable effort and such delay may hamper the investigation or the prevention of a crime, and if the best interest of the child and concern for his/her physical or mental state so requires. The amendment also regulates the conditions for removal of a child from the place where he or she lives for the purpose of the interrogation.

According to the Laws of Evidence (Protection of Children) (Amendment No. 10) Bill 5764-2003, the relevant provisions of which were incorporated into Amendment No. 12, authorizing the questioning of a child without the consent of the parent is needed in cases where the guardian or a family member of the minor is suspected of committing the crime or where the best interest of the child requires this. (Laws of Evidence (Protection of Children) (Amendment No. 12) 5765-2005, Knesset website, <http://www.knesset.gov.il>; Laws of Evidence (Protection of Children) (Amendment No. 10) Bill 5764-2003, Hataot Hok Hamemshala [Government Bills], *available at id.*) (Ruth Levush, 7-9847, rlev@loc.gov)

ISRAEL – Regulations for Implementation of the Gaza Strip Disengagement Plan

On June 30, 2005, the Minister of Justice approved the Regulations for Implementation of the Disengagement Plan (Procedure for Appeal under the Law), 5765-2005. The Implementation of the Disengagement Plan Law, which had passed in the Knesset on February 16, 2005, is designed to implement the governmental decision regarding the evacuation of Israelis and their assets from the Gaza Strip, the grant of appropriate compensation, and assistance for relocation for eligible persons. The Law establishes a special committee for determining eligibility and compensation amounts. The Law further prescribes the appeal process for decisions of the eligibility committee.

The Regulations, which were published on July 7, 2005, describe the procedure for appeals of the committee's decisions, including required information, time limits, preliminary hearings, order of arguments, delivery of the verdict, etc. (Implementation of the Disengagement Plan Law, 5765-2005 (passed on Feb 15, 2005), Knesset website, <http://www.knesset.gov.il>; Regulations for Implementation of the Disengagement Plan (Procedure for Appeal Under the Law), 5765-2005, KOVETZ HATAKANOT (Subsidiary Legislation), Issue No. 6396 (July 7, 2005); Nevo online legal database, <http://www.nevo.co.il/>.) (Ruth Levush, 7-9847, rlev@loc.gov)



LEBANON – Work Permits for Palestinians

The Lebanese Minister of Labor issued a ministerial order allowing Palestinians who are born in Lebanon to work in certain professions that are usually reserved for Lebanese, under Ministerial Order 79/1 of June 2, 2005. The application of the order is limited, however, to professions that do not require mandatory participation in professional associations, especially the liberal professions such as the practice of law and medicine. (AS-SAFIR Newspaper, June 28, 2006, <http://www.assafir.com/>.) (Issam M. Saliba, 7-9840, isal@loc.gov)

SAUDI ARABIA – Political Activists Released

On August 9, 2005, the Custodian of the Two Holy Mosques King Abdullah bin Abdulziz ordered the pardon and release of a number of political activists who had been serving jail terms since May 2005. Scholars Abdullah Al-Hamid and Matrouk Al-Faleh and poet Ali Al-Domaini were arrested in February 2004, after they advanced a petition advocating a new constitution and calling for the Saudi rulers to take steps towards becoming a constitutional, rather than an absolute, monarchy. On May 15, 2005, a court in Riyadh convicted and sentenced the three political activists to prison terms of nine, six, and seven years, respectively. On July 23, 2005, the appellate court in Riyadh upheld the prison sentences. The pardon of the three political activists was accompanied by the pardon of a member of the dissidents' defense team, who was detained after criticizing the judiciary during the men's trial and was awaiting trial.

King Abdullah also ordered the pardon and release of an Islamic scholar, Saeed bin Zu'eer, who was serving a five-year sentence on terrorism-related charges because of televised statements that the Saudi government alleged had endorsed or justified violent acts of Osama ibn Laden. The United States and human rights organizations praised the release of these political activists. Although royal pardons are a recognized tradition, the release of these activists constitutes a special event and a step towards freedom of expression and human rights in Saudi Arabia. The King also pardoned several Libyans who had been detained over an alleged plot to assassinate King Abdullah when he was crown prince. (*King Abdullah Orders Pardon for Prisoners of Conscience*, ROYAL EMBASSY OF SAUDI ARABIA, 2005 NEWS STORY, July 8, 2005, <http://www.saudiembassy.net/2005News/News/NewsDetail.asp?cIndex=5469>; *King Abdullah Pardons the Libyans Who Conspired Against the Kingdom Security and Ordered the Release of Al-Hamid, Al-Faleh, Al-Domaini, bin Zu'eer, and Al-Lahim*. AL-RIYAD NEWSPAPER, Aug. 9, 2005, at 1.) (Dr. Abdullah F. Ansary, 7-6303, aans@loc.gov)

SUDAN – Press Censorship Lifted

The Sudanese National Security Organization declared the lifting of direct censorship over newspapers. A number of journalists welcomed this action and considered it a positive step. Security personnel previously in charge of censorship visited newspapers houses and informed journalists that their censorship duties had ended. (AS-SHARQ AL-AWAST Newspaper, July 12, 2005, <http://www.asharqalawsat.com/>.) (Issam M. Saliba, 7-9840, isal@loc.gov)



SOUTH ASIA

AFGHANISTAN – Further Restrictions on Foreigners

Article 44 of the Travel and Residence of Foreign Nationals in Afghanistan Act has been amended. Now any foreign national who fails to extend his or her expired visa will be fined US\$2 for each day following the expiration of his visa. If a person's failure to extend his or her visa lasts for more than one month, the amount of the fine increases to US\$5 dollars per day. Should the failure to extend the visa be longer than two months, the foreigner will be expelled from the country within one week, in addition to being fined. (OFFICIAL GAZETTE, No. 826, Apr. 29, 2004, at 1.) (Gholam H. Vafai, 7-9845, gvaf@loc.gov)

INDIA – Illegal Migrant Act, 1983 Quashed

On July 12, 2005, the Supreme Court of India struck down the Illegal Migrant (Determination by Tribunals) Act, No. 30 of 1983, which had applied only in the state of Assam. The Court declared that the Act resulted in a failure of the central government in its constitutional duty to protect Assam from "external aggression," because the Act encouraged rampant illegal migration from Bangladesh. In voiding the *vires* of the Act and the rules thereunder, the Court took a serious view of the Governor of Assam's report, which stated that the illegal migration from Bangladesh has effected a demographic change in several districts and that an insurgency has resulted. The Court ordered that the statutory tribunals set up under the 1983 Act must immediately cease functioning in Assam.

In the year 2000, a large number of petitions were filed, some in favor of and some against the Act. The main petition challenged the constitutional validity of the Act on the grounds that it was discriminatory to continue the operation of the Act only in the State of Assam. A parallel mechanism for determination of the status of illegal migrants had been created; the Foreigners Act has been applicable in the rest of the country since 1948 for the same purpose. There was wide political interest in the outcome of the petitions, since the ruling Congress supported the continuance of the Act for Assam, while the opposition parties wanted to have it declared unconstitutional and to bring the state in line with the rest of the country. (*IMDT Encouraged Infiltration, Assam Faces Aggression: SC*, THE HINDUSTAN TIMES, July 14, 2005, http://www.hindustantimes.com/news/181_1430163,0008.htm; *SC Strikes Down Illegal Migrant Act in Assam*, THE TRIBUNE, July 13, 2005, <http://www.tribuneindia.com/2005/20050713/main2.htm>.) (Krishan Nehra, 7-7103, kneh@loc.gov)

PAKISTAN – Provincial Assembly Passes Strict Islamic Law on Social Vice

The North West Frontier Province (NWFP) Assembly passed a highly controversial *Hasba* (also spelled *Hisba*) bill on July 14, 2005. The opposition called it an effort to "Talibanize" society. The bill is designed to create a new accountability department, *Mohtasib* (ombudsman), to be headed by an Islamic cleric who will not be answerable to courts, to ensure "adherence to moral values of Islam at public places." The *Mohtasib* will control entertainment shows and other similar activities in public places. He will stop men and women, who are not related to each other but who are found together in public places, from associating with each other and will discourage singing and dancing. Any criticism of the *Mohtasib*, his personality, or his role will be considered an offense. Violators will be subject to imprisonment for up to six months or a fine.



On July 15, 2005, President Pervez Musharraf, in the exercise of his powers under article 186 of the Constitution, asked the Supreme Court of Pakistan for an opinion as to the constitutionality of the bill. While critics in the opposition denounced the bill as creating a virtual theocracy in the NWFP by empowering mullahs appointed as *Mohtasibs* at the provincial, district and sub-district levels to oversee people's public and private lives, the provincial government defended it as implementation of Islamic injunctions.

The provincial governor, who has thirty days to sign the bill into law, has stated that the bill is "unconstitutional" and that "we cannot allow a state within a state." The Supreme Court had held parts of the bill unconstitutional and the governor was advised not to sign it. (*Federal Govt Asks AG to File Reference*, THE DAWN, July 15, 2005, <http://www.dawn.com/2005/07/15/top2.htm>; *Musharraf Seeks to Overturn Hisba Bill Through Court Intervention*, THE PENINSULA, July 16, 2005, http://www.thepeninsulaqatar.com/Display_news.asp?section=World_News&subsection; *Pakistan Provincial Assembly Passes Bill to Eliminate Social Vice*, IRNA, July 18, 2005, <http://www.irn.ir/en/news/view/menu-234/0507140978193933.htm>.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

WESTERN HEMISPHERE

CANADA – Provinces Consider Extending Daylight Savings Time

Congressional consideration of the proposal to extend daylight savings time in the United States, which a conference committee recently scaled back from an additional two months to an additional month, has received considerable attention in Canada's provinces. Canada does not have a federal statute comparable to the Uniform Time Act. Instead, each province decides whether it will observe daylight savings time. At present, Saskatchewan is the only province that generally does not have daylight savings time. Parts of British Columbia, Ontario, and Quebec have also decided to stay on standard time all year round, but these areas are relatively small. Most of the provinces have already indicated that they would probably adopt whatever changes the United States decides to make. The Premier of Ontario stated that "We're not anxious to have a disconnect between us and our chief trading partner." (*Provinces Grapple with U.S. Daylight Time Decision*, CBC NEWS, July 20, 2005, available at <http://www.cbc.ca/story/canada/national/2005/07/20/daylight-savings-folo050720.html>.)

Many assembly plants along the border incorporate parts from the other country within hours of their reception. The last time Canada and the United States had different time systems was during the oil crisis of 1974-75. The United States did not turn back its clocks that winter.
(Stephen Clarke, 7-7121, scla@loc.gov)

CHILE – Court of Appeals Lifts Pinochet's Immunity

On July 5, 2005, the Santiago Court of Appeals stripped Augusto Pinochet of immunity in a case involving political prisoners killed during his dictatorship of Chile. The full court ruled eleven to ten to strip Pinochet of his immunity as a former head of state in the case called "*Operacion Colombo*," in which it is alleged he was involved in the abduction and killing of political prisoners. Pinochet was found responsible by the court for the cover-up of murders of up to 119 political opponents, including armed rebels from the revolutionary leftist movement. The cover-up consisted of planting news stories



in Argentina and Brazil alleging that the guerillas had died fighting among themselves. The defense is expected to appeal the ruling before the Supreme Court. (*Operacion Colombo: La Corte quito los fueros a Pinochet*, DIARIO CLARIN, July 6, 2005, <http://www.lanacion.com.ar>.) (Graciela Rodriguez-Ferrand, 7-9818, grod@loc.gov)

COLOMBIA – Paramilitary Law

On June 22, 2005, the “Law on Justice and Peace” was passed by the Colombian Congress to set out rules for disbanding paramilitary and rebel-armed groups. The legislation, which offers reduced prison sentences and financial benefits for those demobilized, is still pending approval by President Álvaro Uribe. The Law has been harshly criticized, especially by human rights groups like Amnesty International, which expressed its concern that the new legislation goes too far to protect the paramilitary, failing to respect the rights of the victims to “the truth, justice and reparations.” Objections have also been raised over the prospect that the perpetrators of atrocities might be freed because of the extremely short period – sixty days – that the Law provides for their indictment. (*Colombia Aprueba Ley de Justicia y Paz*, Bogota, June 23, 2005, Radio Nederland, at <http://www2.rnw.nl/rnw/es/actualidad/americas/colombia>.) (Graciela Rodriguez-Ferrand, 7-9818, grod@loc.gov)

COSTA RICA – First Summit Against DR-CAFTA

The representatives of the Central American Common Trade Union (PSSC), which is the umbrella group of trade unions and social organizations of Central America, agreed that its first social-political summit would be held in Costa Rica in the summer of 2006. Its objective will be to plan and unify positions for the offensive actions that the region will adopt against the United States-Dominican Republic-Central America Free Trade Agreement (known as DR-CAFTA). Following the first summit, the PSSC will hold throughout the region several round tables and meetings to plan the actions and details that the groups would jointly carry out. The accord issued by the PSSC leaders reveals the rejection by the participants of the ratification of the free trade agreement by the legislative and executive branches of the governments of Guatemala, El Salvador, and Honduras, “in infamous alliance [*contubernio*] with the transnational [corporations] and oligarchies with [*sic*] the United States.” In addition, the representatives requested the governments of Costa Rica and Nicaragua, and in particular their legislative bodies, not to ratify the FTA. (Krissia Morris Gray, *Costa Rica Será Sede de la Primera Cumbre Político Social en Octubre*, LA PRENSA LIBRE, July 14, 2005, <http://www.prensalibre.co.cr>.) (Norma C. Gutiérrez, 7-4314, ngut@loc.gov)

MEXICO – Congressional Committee Approves New Stock Market Law

Deputy Alfonso Ramírez Cuéllar announced on July 11, 2005, that at the last minute of a special session of the Mexican Congress the members of the Committee on Finances of the Chamber of Deputies approved a bill on a new stock market law. The bill must now be discussed and voted on by the Chamber of Deputies in a plenary session. (Felipe Gazcón, *Aprobó la Ley de Hacienda la Ley Bursátil*, EL FINANCIERO, July 11, 2005, <http://www.elfinanciero.com.mx>.) (Norma C. Gutiérrez, 7-4314, ngut@loc.gov)



MEXICO – Special Counter-Terrorism Measures

The Mexican government initiated a special plan to prevent acts of terrorism in response to the recent terrorist attacks in London. Secretary of Interior Carlos Abascal said that under the “Plan Centinela,” the authorities will conduct special surveillance of embassies and offices of diplomatic representatives that could be subject to terrorist attacks, particularly those representing countries that are directly involved in combating terrorism. Secretary Abascal added that surveillance would be intensified in the ports, airports, and oil, hydroelectric, telecommunications, and transportation infrastructure of the whole country. Plan Centinela, which came into force on July 7, 2005, includes implementation of a plan of detention of persons and seizure of items related to crimes (*aseguramiento*) and the dismantling of human trafficking organizations. (*México Pone en Marcha Plan Contra Terrorismo*, CUARTO PODER, July 8, 2005, <http://www.cuarto-poder.com.mx>.) (Norma C. Gutiérrez, 7-4314, ngut@loc.gov)

PERU – Anti-Spam Legislation

On April 11, 2005, Alejandro Toledo, President of Peru, and Carlos Ferrero, President of the Council of Ministers, signed a law making unrequested advertising or promotional messages sent through e-mail, or spam, illegal and subject to fines. The official gazette, *El Peruano*, published the text of the law on the following day. The law gives e-mail users the right to reject or accept the reception of commercial electronic mail; to revoke the authorization to receive it, except when the authorization is an essential condition for the provision of e-mail service; and to use filter systems or programs of the e-mail providers. (E-mail providers in Peru are obligated to offer blocking systems and/or filters for the reception and transmission of unsolicited emails that occur through the companies’ servers.) All unrequested commercial, promotional, or advertising e-mails must carry the word “Advertisement” in the subject field of the message; contain the name, domicile, and e-mail address of the person or company sending the message; and fulfill other requirements.

An unrequested promotional e-mail is considered illegal when it does not comply with the requirements established by the law, contains a false name or false information that leads to not being able to identify the person or company sending the e-mail, contains deceitful information in the subject field that does not coincide with the content of the e-mail, or is sent or transmitted to someone more than two days after the recipient has made a request not to be sent such advertisements. The recipient of illegal e-mails can bring suit against the sender for monetary compensation, which can be equivalent to one percent of a “tax unit” for each of the illegal e-mails, with a maximum limit of two “tax units.” The law empowers the Commission of Consumer Protection and the Commission to Repress Unfair Competition of a national intellectual property and defense of competition institute to set fines according to the Law on Consumer Protection and the Standard for Advertising to Defend the Consumer. The Ministry of Transportation and Communications has ninety days to issue implementing regulations of the law. (Asociación Peruana Antispam, *Ley que regula el uso del correo electrónico comercial no solicitado (Spam)*, ANTISPAM PERÚ, at <http://www.antispam.org.pe/legal.htm> (last visited July 21, 2005).) (Sandra Sawicki, 7-9819, sasa@loc.gov)



INTERNATIONAL LAW AND ORGANIZATIONS

AMED – Inaugural Session

The first Asia-Middle East Dialogue (AMED) meeting convened in Singapore from June 20 to June 22, 2005. AMED is “an international forum bringing together ministers, government officials, and academics in an international symposium aimed at creating blueprints for increased political, economic and cultural cooperation.” Among other issues raised during the forum, at a meeting with his Thai counterpart the Singapore Foreign Minister proposed the creation of a regional hub to combat piracy. (*Thailand Backs Singapore Piracy Plan*, THE NATION (Bangkok), June 23, 2005, <http://www.nationmultimedia.com/search/page.arcview.php?clid=4&id=117452&date=2005-06-23&usrssess=.>)

Delegates from fifty-seven Asian and Middle Eastern countries, including some from the Palestinian National Authority, attended the meeting. The next AMED conference is scheduled to take place in Egypt in 2007. (*Asia-Middle East Dialogue Calls for Better Co-Operation*, THAI PRESS REPORTS, June 27, 2005; *Promise and Pitfalls in the Middle East*, BBC MONITORING INTERNATIONAL REPORTS, June 29, 2005; and Ravi Nambia, *Promise and Pitfalls in the Middle East. ZO:B-All Region*, NEW STRAITS TIMES (Malaysia), June 29, 2005, all via LEXIS/NEXIS, News Library, 90days File.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

AUSTRALIA/EAST TIMOR – Agreement on Offshore Gas Revenues

On July 6, 2005, Australian Foreign Minister Alexander Downer announced that after several years of negotiation, Australia and East Timor had reached agreement on sharing revenues from offshore gas and oil deposits in the Timor Sea. The maritime boundary in that area is undetermined, and this has discouraged development of the gas and oil fields. News accounts say that the revenues from the Greater Sunrise field will be split fifty-fifty, which is expected to provide East Timor with more than A\$13 billion (about US\$9.75 billion) per year. Australian Prime Minister John Howard said on July 6, 2005, that agreement had been reached on the boundary treaty, which East Timor expects to sign “in the next few weeks.” He described the agreement as “a very fair and generous arrangement for East Timor.” (Prime Minister of Australia, John Howard, interview of July 6, 2005, *available at* <http://www.pm.gov.au/news/interviews/Interview1447.html>; Australian Broadcasting Corporation, *East Timor, Aust Gas Deal ‘Fair,’ available at* <http://www.abc.net.au/news/newsitems/200507/s1407637.html>.)

(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

AUSTRALIA/EGYPT – Return of Smuggled Artifacts

On July 19, 2005, Australia’s Minister for the Environment and Heritage, Senator Ian Campbell, announced that Australia had responded to a request by the Egyptian government for help in a global search for ancient artifacts that had been smuggled out of Egypt by locating the objects and returning them to Egypt. Australian Federal Police in Melbourne took possession of the items, funerary objects about 2500 years old. They acted under provisions of the Protection of Movable Cultural Heritage Act 1986 that authorize the Australian government to respond to official requests from foreign governments to return cultural heritage items that have been illegally exported. In Egypt,



the objects will be used as material evidence in the prosecution of the smugglers. (Australian Minister for the Environment and Heritage, Media Release, *Ancient Artefacts Returned to Egyptian People*, July 19, 2005, available at <http://www.deh.gov.au/minister/env/2005/mr19jul05.html>.) (Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

CANADA/DENMARK – Dispute Over Hans Island

In 1973, Canada and Denmark reached an agreement on the border between Ellesmere Island in Canada and the semi-autonomous Danish territory of Greenland. This agreement did not settle the dispute over Hans Island. Over the years, armed forces from both countries have visited this small, uninhabited island and reinforced their claims. Nevertheless, Denmark reacted to the recent unannounced visit of Canada's Minister of Defense by summoning Canada's ambassador to the foreign ministry for "talks." (*Keep Off Our Tiny Frozen Island, Denmark Tells Canada*, YAHOO NEWS CANADA, July 25, 2005, available at http://news.yahoo.com/news?tmpl=story&u=/afp/20050725/wl_canada_afp/canada_denmarkpolitics_050725164323.)

Hans Island is thought to be important because its location affects the manner in which the maritime boundary between northern Greenland and Canada is determined. There are significant stocks of shrimp and turbot in this region. Many experts believe global warming will make this region of greater significance. (Rob Heubert, *The Return of the Vikings*, MARITIME AFFAIRS, at http://www.naval.ca/article/Heubert/The_Return_of_the_Vikings.html (last visited July 25, 2005).)

The dispute over Hans Island is one of several disputes Canada has with Arctic neighbors. Canada and the United States disagree over the status of the Northwest Passage and the maritime boundary between Alaska and the Yukon. Canada and Russia also appear to have overlapping claims to the continental shelf. (Stephen Clarke, 7-7121, scla@loc.gov)

CENTRAL AFRICA – Leaders Sign New Treaty to Protect Rainforest

Leaders of the ten countries that make up the Congo Basin concluded a treaty aimed at protecting the world's second largest rainforest. The treaty, signed at the end of a two-day summit in Brazzaville, capital of the Republic of Congo (ROC), provides for the creation of a new forestry commission, a sub-regional fund to finance the protection of the rainforest, and the harmonization of national laws on logging. The new commission will be charged with tracking poachers across borders and providing funds for training and conservation. According to the U.N. Food and Agriculture Organization, an average of 13,700 hectares of forest was lost each year from 1990 to 2000 in the Congo Basin, which has a total area of about 520 million hectares.

The countries taking part in the summit were the ROC, the Democratic Republic of Congo, Burundi, Cameroon, Central African Republic, Chad, Equatorial Guinea, Gabon, Sao Tome and Principe, and Rwanda. (Integrated Regional Information Networks (IRIN) website, part of the U.N. Office for the Coordination of Humanitarian Affairs, at http://www.irinnews.org/report.asp?ReportID=45421&SelectRegion=Great_Lakes&SelectCountry=Central%20Africa (last visited June 13, 2005).) (Gustavo E. Guerra, 7-7104, ggue@loc.gov)



LAOS/VIETNAM – Border Cooperation

A Memorandum of Understanding was signed by the Border Guard Command in the two northern Vietnamese border provinces of Dien Bien and Son La and a visiting delegation from the Military Command of Laos' Phongsaly and Luang Prabang provinces. The agreement will promote cooperation in the management of the common border region. Joint programs at the local level will include education for local communities about border regulations, communication between the two countries on situations relating to border security, and common instructions for border guard forces. Patrols of border guard posts will be increased, and there will be combined efforts to repair landmarks. The countries will also cooperate to solve resettlement issues that may arise and to control illegal border crossings and other violations of border regulations. The local border guard units will hold annual meetings to review the status of the cooperative projects. (*Laos, Vietnam Promote Border Cooperation*, LAO NEWS AGENCY, July 7, 2005, at <http://www.kplnet.net/English/News1.htm>.) (Constance A. Johnson, 7-9829, cojo@loc.gov)

MEXICO/CANADA/UNITED STATES – Initial Security and Prosperity Partnership Report

On June 27, 2005, high-ranking government officials of the United States, Mexico, and Canada released the first report of the Security and Prosperity Partnership of North America (SPP), which identifies initial results, key themes and initiatives, and work plans that further promote the security and prosperity of the continent. President George Bush, President Vincente Fox of Mexico, and Prime Minister Paul Martin of Canada created the SPP at their March 23, 2005, meeting on the Baylor University Campus in Waco, Texas. Led at the ministerial-level, working groups were tasked with creating an initial report in June 2005 and developing periodic progress reports thereafter. A number of the issues in the SPP report have crosscutting security and prosperity components.

Among the security goals identified in the report, all three countries have agreed to establish a single, integrated North American Trusted Traveler Program in less than three years. This program will offer a single application portal, and enrolled participants will have access to all trusted traveler dedicated lanes at land, air, and sea ports of entry.

Key initiatives identified by the prosperity working groups include the development of a coordinated strategy by 2006 to combat counterfeiting and piracy in North America. In addition, the report addresses common principles for conducting e-commerce, streamlining regulation, simplifying trade flows, and effecting more cooperation in making air transportation, energy, steel, automotive manufacturing, and other economic sectors more competitive. Agreements have also been reached to enhance cooperation on public health and safety protections related to the safety of consumer goods, as well as safe international trade opportunities for certain agricultural products. (Official website of the Security and Prosperity Partnership of North America, at http://www.spp.gov/spp/report_to_leaders/index.asp?dName=report_to_leaders (last visited June 28, 2005).) (Gustavo E. Guerra, 7-7104, ggue@loc.gov)



MEXICO/UNITED STATES – Agreement on Arms Trafficking

On June 17, 2005, the governments of the United States and Mexico reached an agreement to strengthen coordination and the exchange of information between law enforcement officials in the two countries, in order to improve mechanisms for tracing the origin and intended destination of seized firearms along the United States – Mexico border. (Official website of the Mexico Ministry of Foreign Affairs, at http://www.sre.gob.mx/comunicados/comunicados/2005/junio/b_conjunto_2.htm (last visited June 28, 2005).)

(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

NORDIC COUNCIL – Extradition Convention

On June 21, 2005, the Nordic Ministers of Justice adopted a convention on the extradition of criminals. The objective of the convention is to increase the flexibility of current legislation so that it is easier and faster to extradite an accused party or suspect to another Nordic country. The convention establishes that if a country requests that a person be extradited in order to be prosecuted or to serve a sentence, this request must be met. Exceptions to this rule exist and will be regulated in the convention. (Nordic Council/Nordic Council of Ministers, *Nordic Extradition Convention*, NORDIC NEWS, June 21, 2005, available at <http://www.norden.org/webb/news/news.asp?id=5201>.)

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

PAKISTAN/U.K. – Agreement to Stop Illegal Immigration

Following threats by the United Kingdom Government that all illegal immigrants of Pakistani origin would be returned and flights of Pakistan International Airlines to the U.K. would be halted, the Government of Pakistan has decided to immediately sign an agreement with the U.K. on readmission of Pakistani immigrants. The agreement seeks to control illegal immigrants entering the U.K. with the help of strong networks of human smugglers, who employ various illegal means for transporting poor Pakistanis at huge costs.

The agreement envisages posting of British liaison officers in the U.K. High Commission in Pakistan. These officers may prosecute individuals or institutions engaged in immigration crimes, including offenses relating to forgery of documents, false identity, human trafficking, illegal entry, and the facilitation of such acts.

Absent any law at present that may enable the U.K. Government to return the thousands of illegal immigrants from Pakistan arriving annually, the U.K. Government proposes to enact a law that would require Pakistan to re-admit illegal immigrants of Pakistani origin returned from the U.K. and to verify their travel documents and nationality within four months of a formal notice by the U.K. In response to the Pakistan Government's request not to apply the law retroactively to Pakistani illegal immigrants already in the U.K., the British government has unequivocally refused to offer any job quotas, but has agreed to adopt a liberal policy of visa issuance. (*Accord to Be Signed with UK on Illegal Immigrants*, THE DAWN, July 6, 2005, <http://www.dawn.com/2005/07/06/top11.htm>.)

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



SHANGHAI COOPERATION ORGANIZATION – Declaration Urges Timetable for Withdrawal from Afghanistan

At a summit meeting in Astana, Kazakhstan, the leaders of the regional anti-terrorist body the Shanghai Cooperation Organization signed seven documents and granted observer status to three new countries, India, Iran, and Pakistan (Mongolia also enjoys observer status). The member states of China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan signed a decision that approves cooperation in fighting terrorism, separatism, and extremism. The document defines the main objectives, principles, guidelines, tasks, and forms of cooperation among the member-states in the anti-terrorism fight as well as the mechanisms for their implementation. (*SCO Adopts 7 Documents, Gives Observer Status to 3 New Countries*, ITAR-TASS, July 5, 2005, Foreign Broadcast Information Service online subscription database; *SCO Member States Pledge Efforts to Deal with New Security Challenges*, XINHUA, July 6, 2005, LEXIS/NEXIS, News Library, 90days File.)

The most controversial document appears to be the member states' joint declaration. In it, they state their support for the international coalition's anti-terrorism campaign in Afghanistan, but urge the United States and its allies to withdraw: in the declaration's words, "to decide on the deadline for the use of the temporary infrastructure and for their military contingents' presence in those countries." This "fresh salvo" in the war of rivalry for influence in Central Asia has been described as the next move by China in particular to take advantage of increased anti-American sentiment among Central Asian leaders to arrange stronger security and energy agreements. According to Alexander Neill, head of the Asia Security Programme at London's Royal United Services Institute for Defence and Security Studies, "when you look at China's multilateral engagement, the SCO is clearly something they're concentrating on in order to compete with American interests in the region ... it's a game of energy strategy more than anything else." (Benjamin Robertson, *US Sidelined as Central Asia's 'Great Game' Intensifies: The SCO Is Taking Steps to Tighten Its Grip on Security and Energy Deals in the Region*, SOUTH CHINA MORNING POST, July 8, 2005, at 18, LEXIS/NEXIS, News Library, 90days File.) In this connection, on July 4, 2005, the presidents of China and Kazakhstan signed a joint statement on establishing a strategic partnership between their two countries and also opened negotiations on studying the possibility of building a gas pipeline connecting China and Kazakhstan; an oil pipeline is scheduled for completion by December. (*Suppression, China, Oil: The Shanghai Co-operation Organisation*, THE ECONOMIST, July 9, 2005, LEXIS/NEXIS, News Library, 90days File.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

UNITED NATIONS – Definition of Terrorism

Following the recent terrorist attacks in Britain and Egypt, the U.N. Secretary General called on the 191 U.N. members to iron out their differences on a number of pending issues and speed up the process of finalizing the twelve conventions against terrorism. A proposed convention consolidates most of the key provisions included in the twelve U.N. conventions against terrorism. One of the issues that has slowed down progress is the definition of terrorism.

Discussions focus on whether the definition should include acts committed by liberation movements, as opposed to terrorist organizations. Arab diplomats would like the definition of terrorism to be rather broad and to include language to the effect that state terrorism differs from the right to self-determination. Thus, they argued that Israel is guilty of state terrorism, whereas Palestinians are freedom fighters. Israel claims the exact opposite. The Organization of Islamic Conferences and the League of



Arab States also argue that those engaged in conflicts against “foreign occupation” should be exempt from the definition of terrorist organizations. (Thalif Deen, *U.N. Member States Struggle to Define Terrorism*, INTER PRESS SERVICE NEWS AGENCY, July 25, 2005, available at <http://ipsnews.net/news.asp?idnews=29633>.)

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

VIETNAM/UNITED STATES – Cooperation in Adoption

On June 21, 2005, Vietnam and the United States signed a cooperation agreement on international adoption. The agreement had been initialed on June 15, 2005, at a meeting in Hanoi, by Vu Duc Long, Head of the Department for International Child Adoption of Vietnam’s Ministry of Justice, and Ambassador Maura Harty, Assistant Secretary of State for Consular Affairs of the U.S. Department of State. The purpose of the agreement is to create favorable conditions for the humanitarian adoption of orphaned children and to protect children from exploitation and other infringements of their rights and interests resulting from adoption abuse. The agreement provides legal grounds for Americans to adopt Vietnamese children, as long as the potential parents are eligible to adopt under the laws of the two countries. The agreement creates a system to monitor the adoption of Vietnamese children through U.S. adoption agencies. (*Vietnam, US Initial Child Adoption Cooperation Agreement*, THAI PRESS REPORTS, June 17, 2005, LEXIS/NEXIS, Asiapc Library, Curnws File.) At the signing ceremony in Washington, Ms. Harty stated:

The agreement we sign today is an important step toward establishing a transparent adoption system between the United States and Vietnam that reflects our abiding commitment to protecting the interests of orphaned children, their birth parents, and prospective adoptive parents in the United States.

(*U.S.-Vietnam Adoption Agreement*, Press Release, June 21, 2005, <http://www.state.gov/r/pa/ei/othertstmy/48530.htm>.)

Families in the United States who are currently hoping to adopt children from Vietnam were reportedly pleased at the news of the agreement. Vietnam has imposed a moratorium on such adoptions since January 2003. (*Families Cheer U.S.-Vietnam Adoption Agreement*, NEWS-LEADER.COM, (Springfield, MO), June 25, 2005, <http://newsleader.com/apps/pbcs.dll/article?AID=/20050625/NEWS07/506250336>.)

(Constance A. Johnson, 7-9829, cojo@loc.gov)



RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

Terrorism Financing

As part of the European Union's comprehensive plan to combat terrorism, the European Commission has recently proposed a regulation designed to put stricter controls on money transfers. Once adopted, the proposal would require that money transfers be accompanied by some vital data, including the name, address, and account number. Under the proposal, banks and other financial institutions are obliged to apply this requirement to money transfers in any currency and in any amount, regardless of how small the amount is. According to the Commission, even small amounts can be used to finance terrorism. The data required for the money transfers will be provided only to the appropriate authorities, for the sole purpose of preventing, investigating, detecting, or prosecuting money laundering or terrorism financing (European Union, Delegation of the European Commission to the USA, *EU Fights Terrorism: New Measures to Cut Terrorism Funding*, July 26, 2005, available at <http://www.eurunion.org/News/press/2005/2005069.htm>.)

Commission Communication on Explosives and Bomb-Making Equipment

On July 19, 2005, the Commission adopted a Communication on Ensuring Greater Security of Explosives, Detonators, Bomb-Making Equipment and Firearms. The Communication proposes a number of measures to be adopted, including:

- Making the purchase of fertilizer subject to an authorization procedure;
- Establishment of a network of EU bomb disposal squads that would share information on emerging threats, such as the use of home-made explosives;
- Regulation of commercial explosives, reporting of suspicious transactions, use of technology to detect and track explosive materials, and imposition of stricter requirements for their storage and transport;
- Bringing together of manufacturers and traders involved in explosives, as well as of Europol experts and national experts, to develop an EU plan to improve the security of explosives and firearms.

(*Communication of the Commission on Ensuring Greater Security of Explosives, Detonators, Bomb-making Equipment, and Firearms*, Press Release IP/05/969, July 19, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/969&format=HTML&aged=0&language=EN&guiLanguage=en>.)

Prohibition of Tobacco Advertising

The Tobacco Advertising Directive, which was adopted in 2003 and prohibits tobacco advertising in the print media, on radio, and on the Internet, entered into force on July 31, 2005. It also prohibits sponsorship of tobacco during cross border cultural or sporting events. The European Commissioner for Health and Consumer Protection, Marcos Kyprianou, stated, "Banning tobacco advertising is one of the most effective ways of reducing smoking. This Directive will save lives and reduce the number of Europeans who suffer from smoking related illnesses." (*Tobacco Advertising Ban Takes Effect 31 July*, Press Release IP/05/1013, July 27, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1013&format=HTML&aged=0&language=EN&guiLanguage=en>.)



Salaries of Members of European Parliament

A new Statute of the European Parliament, recently approved by the Council, ends the debate surrounding the salaries of the Parliament's members. The Statute will come into force after the next parliamentary elections in 2009. Members of Parliament have been paid by their national governments, a system that allowed great disparities in remuneration among the members. Under the new Statute, the European Union will take over the payment of salaries. The monthly salary is established at 7,000 *euro* (about US\$8,500). Members will be liable to the EU for income tax. Member states retain the right to impose additional taxes in accordance with national rates. Moreover, a new system will be applied to travel expenses. As of 2009, travel expenses will be reimbursed based on actual costs, rather than on a flat rate as they are currently. (U.K. Office of the European Parliament, *EP News*, No.222, EPLONDON PRESS, July 22, 2005, from LondonPress@europarl.eu.int.)



IRAQ: DRAFT OF THE PERMANENT CONSTITUTION
Prepared by Issam Saliba, Foreign Law Specialist, Eastern Law Division

Executive Summary

This report outlines the process of writing the draft of the permanent constitution of Iraq. The committee entrusted with this task and the political leaders who took it over have formulated a final draft and now are preparing for a referendum to be held no later than October 15, 2005.

I. INTRODUCTION

Iraq is in the second phase of the transitional period, which began after the formation of the present Iraqi Transitional Government. This period is supposed to lead to the establishment of a permanent constitution and the formation of a permanent government.¹ In recent days, the drafting of the constitution has become the focus of many politicians, leaders, and institutions here in the United States and in Iraq. The drafting and approval of the constitution is the most important step still remaining before a legitimate permanent government can emerge in Iraq – a country that was for many years under absolute dictatorial rule.

II. DRAFTING AND APPROVAL OF CONSTITUTION

The process of producing a permanent constitution for Iraq requires the completion of several consecutive steps within a specified timeline. The National Assembly bears the responsibility of writing the draft of the permanent constitution, before presenting it to the Iraqi people for approval in a general referendum to be held no later than October 15, 2005.² The National Assembly was supposed to complete the writing of the draft constitution no later than August 15, 2005.³ It could have asked for additional time beyond August 15, 2005, by having its president, with the agreement of a majority of its members, certify to the Presidency Council, no later than August 1, 2005, that it needed more time to complete its work. As a result, the Presidency Council would have been compelled to extend the deadline by six months.⁴ However, the National Assembly did not ask for any such extension.

The National Assembly had appointed a special commission to compose a recommended draft that the National Assembly could adopt. The Commission was unable to finish its work on time and referred controversial issues to the political leaders of the various factions involved, who, in turn, were unable to meet the August 15, 2005 deadline. On that date, the National Assembly met and extended the deadline for completing the draft constitution until August 22, 2005.⁵

¹ LAW OF ADMINISTRATION FOR THE STATE OF IRAQ FOR THE TRANSITIONAL PERIOD [INTERIM CONSTITUTION], art. 2 (B)(2).

² INTERIM CONSTITUTION, art. 61 (B).

³ INTERIM CONSTITUTION, art. 61 (A) (“The National Assembly shall write the draft of the permanent constitution by no later than 15 August 2005.”).

⁴ INTERIM CONSTITUTION, art. 61 (F).

⁵ See Ellen Knickmeyer & Omar Fekeiki, *Iraqis Fail to Meet Constitution Deadline, Lawmakers Approve Seven-Day Extension*, WASH. POST, Aug. 16, 2005, at A1.



On August 22, 2005, Shiite and Kurd leaders submitted a draft constitution to the National Assembly. Instead of acting on whether to accept or reject the proposed draft, the National Assembly, as was widely reported by the media, simply postponed its vote on the draft for three more days.⁶ On the scheduled voting date, the National Assembly announced that it had no plans to meet and no date for a future meeting was set.⁷ Shortly thereafter, an Iraqi government spokesman said that the provisions of the Interim Constitution requiring the National Assembly to complete the draft by a certain date in August had been met and there was no need for the National Assembly to vote on the draft.⁸ On August 28, 2005, a group of Iraqi leaders, boycotted by Sunnis, entered the National Assembly chambers, read the draft constitution and drove to the palace of the president, Jalal Talabani, where they held a ceremony declaring that the constitution is the embodiment of the nation.⁹

If the people of Iraq approve the draft constitution in the upcoming referendum, then it becomes the permanent constitution of Iraq. However, in addition to its possible failure by not getting a simple majority of the total votes, the draft also will fail if it is rejected by two-thirds of the voters from three or more governorates, regardless of the result of the total vote.¹⁰ A failed referendum, like the failure of the National Assembly to complete the writing of the constitution by the specified date, causes the National Assembly to be dissolved, elections for a new Assembly to be held no later than December 15, 2005, and a new Transitional Government to assume office no later than December 31, 2005.¹¹

III. STATUS OF THE DRAFT

On August 22, 2005, as mentioned earlier, the National Assembly postponed voting on the draft constitution for three days. However, no vote has been taken in the National Assembly and the government apparently has moved ahead with the process of putting the draft to a popular referendum without it first being voted on by the National Assembly. Some Sunni leaders maintain that the National Assembly is required to dissolve itself for failing to meet the August 22, 2005 deadline or it should have amended the interim constitution to extend that deadline. But, as of this writing, all Iraqi factions opposed to the draft as written seem to have opted to work on defeating it in the ballot box, rather than focusing on the legality of its completion.

⁶ See Dexter Filkins & James Glanz, *Iraq's Assembly Is Given Charter, Still Unfinished*, N.Y. TIMES, Aug. 23, 2005, www.nytimes.com.

⁷ YAHOO NEWS, Aug. 8, 2005, <http://news.yahoo.com/fc/World/Iraq>. Please note that the Internet address given for this footnote connects to a webpage with daily news updates and several links to online articles.

⁸ *Iraq set formally to adopt constitution draft*, REUTERS, Aug. 25, 2005, <http://today.reuters.co.uk>.

⁹ This narrative was reported by Dexter Filkins in the *New York Times*. See Dexter Filkins, *Leaders in Iraq Sending Charter to Referendum*, N.Y. TIMES, Aug. 29, 2005, at A1.

¹⁰ INTERIM CONSTITUTION, art. 61 (C).

¹¹ INTERIM CONSTITUTION, art. 61 (E), (G).



WOMEN'S RIGHTS UNDER SHARI'AH (ISLAMIC LAW)

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Executive Summary

Women's rights under Islamic law evoke special concerns because women in Muslim countries are suffering disproportionately under their legal systems. Some states consider their oppression of women by calling it "Islam." There is no doubt that Islam, in its purest form, preserves the equal status of women under Islamic law and the rights that they have in the original Shari'ah. In discussing the conflict between the origins of Islam and what is practiced by several Muslim societies, two main issues underlie this report. The first issue is the distinction between religion and the cultural traditions and style of societies. The second issue is the distinction between government rule in the name of Islam and the standards adopted by several Islamic Schools of Law, which apply more appropriate rulings that serve the public welfare. This brief report provides a glimpse into women's rights under Islamic law and discusses reasons for the abuse or mistreatment of those rights in Muslim societies.

I. Introduction to Women's Rights Under Islam

Traditionally speaking, Islamic law sets guidelines for all fields of human life. One of the fundamental principles enshrined in the Constitution in most Muslim countries is that Islamic law (Shari'ah) is the main or one of the main sources for legislation. The Saudi Arabian legal system is based on Islamic law and the law in most Arabian countries unquestionably belongs to the Islamic law tradition, as far as family and inheritance law is concerned. The impact of Islamic law on Muslim women and women's human rights and freedoms, as provided under Shari'ah, largely stems from diverse legal enactments in the various states. Traditional Islam, in the way it was interpreted by the prophet of Islam in the early days of his message, treated woman as an independent entity and a fully responsible human being. Islam addresses women directly and does not approach them through the agency of Muslim males. In the eye of Muslim scholars, the Qur'an and the words and deeds of the Prophet affirm for all, women and men, the rights that existed in the Prophet's day and that still remain today. These religious tenets are genuinely more egalitarian and just than any modern, western concept of human rights.

Scholars in Islamic religion such as Jamal A. Badawi, Mary C. Ali, and others have pointed out that Islam, fourteen centuries ago, made women equally accountable as men in glorifying and worshipping God - setting no limits on their moral progress. Islam established a woman's equality in her humanity with a man.¹ Under Islamic principles, as men and women both come from the same essence, they are equal in their humanity. One gender in Islam cannot be considered superior to the other because this belief would be a contradiction of equality. On the issue of civil rights, a woman, under Islam, has "the basic freedom of choice and expression based on a recognition of her individual

¹ In the Qur'an, in the first verse of the chapter entitled "Women," God says, "O mankind! Be careful of your duty to your Lord Who created you from a single soul and from it its mate and from them both have spread abroad a multitude of men and women. Be careful of your duty toward Allah in Whom you claim (your rights) of one another, and towards the wombs (that bore you). Lo! Allah has been a Watcher over you." Qur'an 4:1.



personality.”² This right encompasses the ability to choose her religion. A woman has not truly accepted the message of Islam unless she does so out of her natural and independent will. Islam acknowledges that acceptance of a faith is entirely a personal matter, as it cannot be adopted by proxy. Accordingly, a woman does not become a Muslim merely because of her relationship to father, husband or any other male.³ Islam encourages women to share their ideas and opinions and participate in Muslim public life. Indeed, women’s opinions and ideas have made a massive contribution to Muslim history. The history of Islam abounds with the names of famous female mystics, saints, and religious scholars, some of which are still held in the highest esteem among the citizenry of Arab countries.⁴ Islam honors women by giving them the right to choose her husband and keep her name after marriage. In legal disputes a woman’s testimony is valid, and her testimony in areas related to a variety of women’s issues is regarded as conclusive.⁵

In addition, Islam has recognized women’s political rights: the right of election as well as the nomination to political offices, including their right to participate in public affairs. “A right given to Muslim women by God 1400 years ago is the right to vote. On any public matter, a woman may voice her opinion and participate in politics.”⁶ As for economic rights, a Muslim woman “has the privilege and discretion to earn money, to own property, to enter into legal contracts, and to manage all of her assets through any legitimate method. She can run her own business and no other individual has any claim to her earnings, including her husband.”⁷ On a practical level, however, a Muslim woman must obtain the proper education, to perform business activities.⁸

Islam’s emphasis on family strength means it recognizes both male and female rights. This fact can be seen in family law reforms in the areas of marriage, divorce, and inheritance. Quranic injunctions intended to raise women’s status and foster their equality represented some of the most radical departures from customary law in ancient Arabia. As a wife, a female’s rights extend beyond

² Mary C. Ali and Anjum Ali, *Women’s Liberation Through Islam*, <http://www.islamfortoday.com/womensliberation.htm>

³ The Qur’an states: “There is no compulsion in religion. Right has been made distinct from error.” Qur’an 2:256.

⁴ One of the authentic traditions surrounding the Prophet is that he advised his revered Companions to learn about their religion from his youngest wife, “Aisha”. Turning to politics, from the very early days of Islam, women were involved actively, expressing their views and defending their beliefs. There is a famous story about a woman arguing with the Prince of the Faithful, Omar, the second Patriarchal Caliph, on a point of Islamic Law, which ended with the Ruler of the Muslims conceding that the woman had been right, and Omar had been in the wrong. IBN TAYMIYAH, *FATAWA IBN TAYMIYAH*, Vol. 35, pp 385 (Riyad, 1398H corresponding to 1977).

⁵ Mary C. Ali and Anjum Ali, *supra* note 2. See also Jamal A. Badawi, *The Status of Women in Islam*. AL-LTIHAD, Vol. 8, No. 2, (Sept 1971), Islam for Today, <http://www.islamfortoday.com/womensrightsbadawi.htm>.

⁶ One example, narrated in the Qur’an, is that Muhammad is told that when the believing women come to him and swear their allegiance to Islam, he must accept their oath. This established the right of women to select their leader and publicly declare so. See Qur’an 60:12. See Mary C. Ali and Anjum Ali, *supra* note 2.

⁷ The Qur’an states: “Men are the maintainers of women because Allah has made some of them to excel others and because they spend of their wealth (for the support of women).” Qur’an 4:34. See *also id.*

⁸ The Prophet said: “Seeking knowledge is a mandate for every Muslim (male and female).” This includes knowledge of the Qur’an and the Hadith as well as other knowledge. A hasan Hadith (Acceptable Hadith), narrated by Ibn Majah, 1/81, in *SUNAN IBN MAJAH*, al-Muqaddimah, bab Fadl al-’Ulama’ wa’l-hathth ‘ala Talab al-’Ilm.



material needs. She has the right to kind treatment by her husband.⁹ Muslim women enjoy various other rights in relation to marriage. The first of the wife's rights is to receive "mahr," (a gift given by the man to the woman he is about to marry) as a part of the marriage contract. The second right of a wife is maintenance. "Despite any wealth she may have, her husband is obligated to provide her with food, shelter, and clothing...[He is not forced, however] to spend beyond his capability and his wife is not entitled to make unreasonable demands."¹⁰ As a mother, her children are to keep her interests second only to their duties to Allah. Islam orders children to always be respectful of both parents because they suffer and make sacrifices for them throughout their lives.¹¹ Islam also gives women the right to inherit from her relatives.¹²

In short, women, according to Shari'ah, are the counterparts of men. In Islamic jurisprudence there is no separate order of regulations for them. However as Dr. Hassan al-Turabi stated: "There are, a few limited secondary regulations where a distinction is drawn between the two sexes. But these are intended purely to enable both genders to give a genuine expression of their faith, in accordance with their respective human nature."¹³

II. Reasons for Abuse of Women's Rights under Islamic Law

The image provided above challenges the unjust treatment of women in the name of Islamic law in several Muslim societies, especially in forcing women to marry against their will, forbidding them to drive cars, subjecting them to the humiliating process of divorce, killing them in the name of honor and dignity, et cetera. To understand the conflict between the original intent of Islam and what is practiced by several Muslim societies requires a separation of two main ideas: first, the separation of religion from the cultural norms and style of a society and, second, the separation between what is being forced on the people in the name of Islam and what is acknowledged by the majority of Muslim Scholars as the right opinion under Shari'ah. These two complex issues are the main obstacles that provide opportunities for the abuse of women's rights under the guise of Islamic law, in several Muslim societies.

⁹ The Prophet said: "The most perfect believers are the best in conduct. And the best of you are those who are best to their wives." Ibn-Hanbal, No. 7396.

¹⁰ The Qur'an states: "Let the man of means spend according to his means, and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him." Qur'an 65:7. See Mary C. Ali and Anjum Ali, *supra* note 2.

¹¹ The Qur'an states "Your Lord has decreed that you worship none but Him, and that you be kind to parents. Whether one or both of them attain old age in your life, say not to them a word of contempt, nor repel them, but address them in terms of honor. And, out of kindness, lower to them the wing of humility, and say, 'My Lord! Bestow on them Your Mercy, even as they cherished me in childhood'" Qur'an 17:23-24.

¹² The Qur'an states: "For men there is a share in what parents and relatives leave, and for women there is a share of what parents and relatives leave, whether it be little or much - an ordained share." Qur'an 4:7. For the previous summary of women's human rights in Islam see *supra* note 5; Mary C. Ali and Anjum Ali, *supra* note 2; Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics*, (Westview Press: Boulder, 3d ed. 1999).

¹³ Dr. Hassan al-Turabi, *On the Position of Women in Islam and in Islamic Society*, (Originally printed in The American Muslim in the Spring 1993), at <http://www.islamfortoday.com/turabi01.htm>.



Public discourse in the Muslim community reflects a variety of positions, differing from class to class and sector to sector. Due to these contradicting messages, popular traditions include a number of concepts that legitimize systems and values that advocate the suppression of women and minimize their role within the family and the societal framework. At its beginning, Islam was the most revolutionary liberalization of women's rights ever seen in the civilized world. But, afterwards, Muslims became ignorant of women's rights and reverted to customary rules, some of which contradict Islamic principles. Sadly, some of these customary rules (or cultural traditions) dominated the relationship between men and women in many Muslim countries and resulted in abuses of women's rights.¹⁴ The worst of these actions was when some Muslims began to legitimize their abuse and misuse of religion as a cover for female oppression, which is completely contrary to the spirit of Islam.

An example is the problem of "honor killings," which has come under increased global scrutiny. In various countries throughout the world, particularly in the Middle East and parts of South Asia, when women exhibit immoral behavior, especially in cases of "sexual indiscretion," it brings dishonor to their families who then force the women to pay a heavy price at the hand of a family member. In some cases, this action that may result in murder to protect the so called "family honor." Many murders and attempted murders and other forms of punishment have been reported.

It is a well-known fact that Islam maintains the protection of life and does not sanction violence.¹⁵ "Honor killing" is not a recognized concept in Islam. Islam respects life and values every soul and forbids any aggression against it. Under Islam, nobody is allowed to take law into his own hands to administer justice. Like many other religions, Islam strictly prohibits murder and killing without legal justification. "The so-called 'honor killing' is based on ignorance and disregard of morals and laws, which cannot be abolished except by disciplinary punishments."¹⁶ It is the responsibility of the Muslim State and its concerned bodies to enforce justice, security, et cetera, and to prevent disorder from occupying Muslim society.¹⁷

A second major mistreatment of women's rights stems from states adopting Islamic law by implementing principles from different schools of thought, even when those principles contradict the majority opinion of Muslim scholars or contradict the cultural, political, and socio-economic sentiments of a particular country. Adding to this problem is the decision of several scholars to close the door to judicial reasoning (*Ijtihad*) in Islam, which limits discourse from other qualified Muslim scholars regarding legal opinions that may better suit the cultural, political and socio-economic needs of Islamic

¹⁴ See LYNN WELCHMAN ED., WOMEN'S RIGHTS AND ISLAMIC FAMILY LAW: PERSPECTIVES ON REFORM 25-26 (Zed Books 2004).

¹⁵ The Qur'an, says, "Whoso slayeth a believer of set purpose, his reward is Hell for ever. Allah is wroth against him and He hath cursed him and prepared for him an awful doom." Qur'an 4:93. In addition, Abdullah ibn Mas'ud, may Allah be pleased with him, reported that the Messenger of Allah, peace and blessings be upon him, said, "The blood of a Muslim may not be legally spilt other than in one of three [instances]: the married person who commits adultery; a life for a life; and one who forsakes his religion and abandons the community." (Reported by Al-Bukhari and Muslim)

¹⁶ See, e.g., Position Paper on "Honor Killings", Muslim Women's League, April 1999, at <http://www.mwusa.org/publications/positionpapers/hk.html>; E. Nora H. Amrani, *Honor Killings And Women's Rights*, HONOR KILLINGS-VIBRANI, <http://www.vibrani.com/honorkillings.htm> (last visited Aug. 31, 2005); *Case Study: "Honour" Killings and Blood Feuds*, GENDERCIDE WATCH, http://www.gendercide.org/case_honour.html (last visited Aug. 31, 2005); Muslim Women's League, *Position Paper on "Honor Killings"*, <http://www.mwusa.org/publications/positionpapers/hk.html> (Apr. 1999).

¹⁷ *Id.*



society. A further complication is the politics surrounding the passing of Islamic law in several countries, a process that is often based on opinions that reflect political views rather than the cultural and socio-economic realities of the society. An unfortunate consequence has been serious shortcomings in the drafting, content, and implementation of laws, resulting in clear discrimination against women.

To clarify, there are several schools of Muslim legal thought (*fiqh*). The four main Sunni schools that exist today were formed through the personal allegiance of legal scholars or jurists to the founders and namesakes – Hanafi, Maliki, Shafi and Hanbali. Each school was influenced by the specific circumstances of its origin. For instance, as Dr. Ayesha Imam elaborated:

Both Hanafis and Malikis are representatives of the legal traditions of a particular geographical locality – [for the former, this area is in Kufa], or present-day Iraq, and for the latter, [this area is] in the Arabian city of Medina. The two later schools, following Abu Hanifa and Al-Shafi, developed from a controversy in jurisprudence (i.e., human reasoning about law). Consequently each school has variations according to the cultural, political and socio-economic contexts in which they were developed, as well as the philosophy of reasoning that they accepted.¹⁸

Reflecting the various and changing concerns of different societies, Muslim laws are diverse. The variations in Muslim law and reasoning have rather significant effects on women's rights and lives. For instance, with certain conditions, the Hanafi School enables or permits a woman to choose a husband without her father's permission, while the majority (Shafi, Maliki and Hanbali) forbids this practice.¹⁹

The flexibility to apply opinions from different schools of Islamic law should exist when it best serves the public interests. "The very founders of the schools of Shari'ah believed good Muslims questioned and examined teachings and trusted in their own reasoning and beliefs."²⁰ The four scholars whom the Sunni schools of Islamic Law are named after had no intention of making their views and opinions final and binding on all Muslims. Imam Hanbal advised, "Do not imitate me, or Malik, or al-Shafi, or al-Thawri and derive directly from where they themselves derived."²¹ Imam Malik, cautioned that "I am but a human being. I may be wrong and I may be right. So first examine what I say. If it complies with the Book and the Sunnah, then you may accept it. But if it does not comply with them, then you should reject it."²² Thus laws based on the sole opinion of any Islamic School of Law are not unchangeable and other opinions may be adopted if they do not contradict fundamental principles or the direct rules of Islam.²³

¹⁸ See Dr. Ayesha Imam, *Women, Muslim Laws and Human Rights in Nigeria*, Research Presented at the Africa Program (Coordinator, Baobab, A Women's Human Rights Organization in Nigeria) (September 17th, 2003), http://www.wilsoncenter.org/index.cfm?topic_id=1417&fuseaction=topics.documents&doc_id=44657&group_id=44656.

¹⁹ See Dr. Wahbah Al-Zuhaili, *AL-FIQH AL-ISLAMI WA ADILLATAHU [ISLAMIC LAW AND IT'S EVIDENCE]* Vol. 7, p 82-83 (Dar Al-Fikr 1984)

²⁰ Dr. Ayesha Imam, *supra* note 18.

²¹ *Id.*, for similar traditional sayings see Dr. Wahbah Al-Zuhaili, *USOL AL-FIQH AL-ISLAMI [ISLAMIC JURISPRUDENCE]* 1130 (Dar Al-Fikr, 1990).

²² *Id.*

²³ *Id.*



A clear example of an incorrect implementation of Islamic law is the promulgation of the Shari'ah Act in Nigeria law, which has raised serious questions and has been clearly discriminatory against women. As Dr. Ayesha Imam, a leader of Women's Rights for Muslim Women in Nigeria, emphasized:

[T]he law adopted that pregnancy outside marriage is evidence of adultery (Zina) (a minority position in Sharia'h which is not held by the Hanafi, Hanbali and Shafi schools, nor a variant of the Maliki school), women have been held to a different standard of evidence than men. Pregnant women are required to provide evidence to prove their innocence, but men are not. If the prosecution does not provide independent evidence (such as four eye-witnesses), men can simply walk away, unlike such women. And yet, the Qu'ran specifies that whoever brings an allegation of adultery without 4 witnesses will themselves be guilty of false witness and liable for punishment.²⁴

In addition, adultery, which is defined as a heterosexual act must necessarily include at least one man and one woman. Nevertheless, more women than men have been both charged and convicted of adultery. Women were sentenced to death on circumstantial evidence, which can be interpreted in different way depending on the circumstance of the incident. Women have been convicted of adultery and sentenced to death when they were found pregnant without marriage. Such cases show ignorance of one of the opinions of the Maliki School (the school of *fiqh* accepted in Nigeria) such as the doctrine of the "sleeping embryo", "whereby a child born to a woman within a set period after the end of her marriage (in some areas up to seven years), is assumed to be the child of that marriage."²⁵ Such cases also ignore the well-established opinion of the other Sunni Schools of Islamic law. Both Hanafis and Shafis do not rely on circumstantial evidence as evidence of adultery²⁶ instead they follow the Prophet's Hadith that says: "Fend off the hudud by shubuhah [any state of affairs that would cause uncertainty in the complete guilt of perpetrators of serious crimes, for which the punishments have been clearly established by God]."²⁷ Women have also been accused and convicted of adultery, without a confession, a pregnancy, or the testimony of four eyewitnesses as evidence that they willingly engaged in an act of sexual intercourse.²⁸

Another consequence of these factors, as Dr. Ayesha Imam explained, is to deprive women and girls of any protection under Shari'ah from sexual assault or rape. A woman making such a charge would be required to produce male witnesses for evidence. It is doubtful that males of impeccable character would stand by and witness such an act. Furthermore, rapists are unlikely to wait for an audience before sexually assaulting women and girls. Thus, "the victim of abuse is in double jeopardy, likely to find herself convicted of both adultery (having admitted that non-marital sex took place) and false testimony (in being unable to produce the requisite witnesses)."²⁹ This situation is an example of

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Dr. Wahbah Al-Zuhaili, *supra* note 19, Vol. 6, p 47.

²⁷ Musnad Abi Hanifah, "Musnad Ikrimah wa Muqsim", p. 186.

²⁸ The Qur'an states: "and those who launch a charge against chaste women, and produce not four witnesses (to support their allegations),- flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors." Quran, 24:4

²⁹ Dr. Ayesha Imam, *supra* note 18.



the misuse of Islamic law and a reflection of a problem that may exist in several Muslim countries in different areas where Islamic law is implemented as the main source of family law. Many respected Islamic scholars have touched on this problem by stating that some of these rules that have been forced on the people in Nigeria sometimes embody the weakest ideas from the Shari'ah, reflecting the opinion of other Islamic schools of law.³⁰

General principles of Shari'ah govern such matters as marriage, divorce, maintenance, paternity, and custody of children for more than a billion Muslims around the world. The family laws of Saudi Arabia, Yemen, Libya, Sudan, and most Arab Gulf States are derived solely from Shari'ah. Other countries such as Egypt, Kuwait, Morocco, Jordan, Iraq, and Syria have family law legislation known as "personal status codes" that are based largely on Shari'ah.³¹ This fact does not mean that identical principles apply everywhere or in the same manner. Variations are to be expected, not only because of significant theological, legal, and other differences among and within Muslim societies and communities, but also because Shari'ah principles as practiced are modified by customary practices or as a matter of state policy. The current practices of Muslim family law in several Muslim countries are not supportive of woman and have had adverse effects on women especially in marriage; polygamy; divorce; financial provision; and children. In some countries, such as Malaysia, Indonesia, Singapore and the Philippines, adverse treatment extends to guardianship and custody.³²

III. Conclusion

Many women cannot exercise their rights under Muslim laws because they do not know them. On the other hand, there also is a need to educate men about women's rights. Making this information available to women (and men) through legal literacy leaflets and activities, training workshops, paralegal support, and so forth is crucial in strengthening women's rights under Islamic law. Muslims, like people of other faiths, have twisted "their religion to suit the needs of the more powerful classes in their societies by generalizing specific rules...and limiting general rules, as they find convenient."³³ Religious innovations that suit the local culture add further to the problem and create a new version of Muslim law that does not represent the original.

As the influence of Islamic extremism spreads, more and more women are fleeing its repressive laws. Many scholars have pointed out that Islamic extremists have interpreted most of the Islamic texts to serve their hard-line approach of Islam. The underlying issue is that extremism uses Islam as a "billy club".³⁴ They use cultural tradition as a vehicle to implement their interpretation of an Islamic way of life and, through the political process, they force their will and enact laws that contradict with the true message of Islam. Moreover, the proper implementation of Shari'ah law is meant to create a

³⁰ *Sharia Law: What do you think?*, BBC News, Sept. 2, 2002), http://news.bbc.co.uk/1/hi/talking_point/debates/african/2203988.stm.

³¹ JAMAL J. NASIR, *THE ISLAMIC LAW OF PERSONAL STATUS* 30-35 (London: Graham and Trotman, 2d ed. 1990).

³² See HJH. NIK NORIANI NIK BADLISHAH ED., *ISLAMIC FAMILY LAW AND JUSTICE FOR MUSLIM WOMEN* 22-34 (2003).

³³ Tyseer Aboulnasr, *Women and Islam*, (Sprig 1996) at http://www.lkic.org/pdf/anthology_women_islaam.pdf.

³⁴ Ann Louise Bardach, *In the name of Islam - Women are being abused, even mutilated*, (Readers' Digest, March 1994), at http://www.themodernreligion.com/ugly/ugly_women.htm.



just society where the law and people live in harmony. It is time for the Muslim society to confront the problem of the abuse of women's rights. However, as the Muslim Women's League Asserted:

Confronting the problem of the abuse of women's rights requires a change in attitude that pervades all levels of society where such attacks occur. Reform should emerge within Islamic societies and communities to facilitate debate and deliberation from different perspectives about issues of women's treatment in Islamic society. Muslim leaders can provide an important example to their followers by taking an unequivocal stand against behavior that is in direct violation of women's rights under Islamic law. In addition, legal reform must occur with the intention to protect victims and punish perpetrators, which is totally possible within a legitimate Islamic legal framework. Concomitant attention must be paid to meeting basic human needs and solving problems stemming from poverty and illiteracy that are often at the root of disturbing social trends that seek out the disenfranchised to serve as scapegoats.³⁵

Abuse of women rights is ongoing problem that is ignored by several Muslims societies. Such ignorance has created a great contradiction between the true image of women in Islam and what actually happens in practice in these societies. It is time for Muslims to take responsibility for their own acts and present the true image of Islam and of Islamic civilization.

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³⁵ *Position Paper on "Honor Killings", supra note 16.*

