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International Legal Updates

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INTERNATIONAL LEGAL UPDATES

CHINA/TIBET

IN FEBRUARY, THE CHINESE GOVERNMENT sentenced three Tibetan monks to twelve years in prison for painting a Tibetan flag and possessing photographs of the Dalai Lama, the exiled spiritual leader of Tibet. The three monks are from the Khangmar Monastery in southwest China's Sichuan province, near the Tibetan border. Human rights groups have identified the three monks as Choedar Dargye, Gedun Thoghphel, and Jampa Choephel. Two other Khangmar monks, Migyur Gyatso and Jamyang Oezer, are awaiting sentencing. Allegations abound that the Chinese government is using these criminal charges to repress political, cultural, and religious expression in Tibetan communities.

Tibet has for generations been ruled by a spiritual and political leader, the Dalai Lama. The current, fourteenth Dalai Lama was sent into exile with 100,000 other Tibetans in 1959. China, which has occupied Tibet since 1950, subsequently abolished the Tibetan government and began reordering Tibetan society without due regard to traditional Tibetan culture, history, language, or religion.

Many Tibetans still display pictures of the Dalai Lama in private, particularly in the Tibetan areas outside the Tibet Autonomous Region, formerly known as Amdo and Kham and now incorporated into the Chinese provinces of Qinghai, Sichuan, Yunnan, and Gansu. Although Chinese government officials claim that Tibetans may legally possess or display pictures of the Dalai Lama, they differentiate between political and religious application of the exiled leader's photograph. Chinese officials assert that while it is acceptable for an individual to possess a photograph of the Dalai Lama to worship him as a religious figure, it is not acceptable to use his photograph "to advocate separatism." The prison sentences of the three monks come in the wake of the highly-publicized death sentence of Lama Tenzin Delek Rinpoche, who the Chinese allege was involved in a bombing incident in April 2002.

IRAN

IN JANUARY 2004, THE IRANIAN COUNCIL of Guardians disqualified over 2,500 predominantly reformist candidates, including

80 sitting ministers, from participating in the parliamentary elections scheduled for February 20. The banned candidates include the president's brother and reformist leader, MP Mohammed Reza Khatami. His party, the Islamic Participation Front, as well as 550 other candidates voluntarily withdrew from the race in protest. Following a sit-in of reformist parliamentarians and protests, the Council of Guardians, consisting of 12 members appointed by Ayatollah Khamenei and who oversee the elections, decided to reinstate only one-third of the candidates. This action prompted over 100 parliamentarians to resign.

According to the Iranian interior ministry, nationwide turnout averaged 50 percent, the lowest voter turnout in any general Iranian election since 1979. In the election, reformist candidates won 40 seats while conservative candidates won 156 seats out of 290 available assembly seats. About 60 of the seats will be decided in a second round of elections. 2003 Nobel Laureate Shirin Ebadi also joined the election boycott.

Iran signed the International Covenant on Civil and Political Rights in 1975, which states (under Article 25), that every citizen shall have the right "to take part in the conduct of public affairs, directly or through freely chosen representatives" and "to have access, on general terms of equality, to public service in his country." The European Union criticized the election as a "setback" for democracy, which could affect the EU trade talks with Iran, according to UK Foreign Secretary Jack Straw.

KENYA

THE ANTI-CORRUPTION TRIBUNAL process began in Nairobi on February 9, 2003 with suspended Court of Appeals Judge Philip Waki's examination. Denying the seven charges of corruption brought against him, Judge Waki is one of eight judges scheduled to appear before the tribunal. The committee bringing the charges of corruption is headed by Justice Aaron Ringera. President Mwai Kibaki set up two tribunals to probe the corruption charges after allegations were brought last year. One of the tribunals will examine corruption charges against six high court judges while the Court of Appeals judges will

appear before the other tribunal. Justice Ringera's committee suspended half of Kenya's most senior judges. The tribunals were originally scheduled to take place in secret, but the suspended judges successfully petitioned to have them held open to the public. Mr. Maina Kiai, the Kenya National Commission on Human Rights (KNCHR) chairman, stated that it was only through fair and open trials that the public would gain confidence to support the government's efforts in the war against corruption. He added that giving the judges the forum they needed would enhance the credibility of the courts.

The charges against Judge Waki are based on the allegations of a single man, Ahmed Khurshid Bhutt, a Mombasa businessman. The charges allege that Judge Waki visited the Akasha family, alleged drug barons, while members of the family appeared as a party in a trial before the judge. One of the witnesses who formulated the charge, lawyer Mohammed Akram Khan, denied in front of the tribunal on February 20, 2004 that he previously stated that Judge Waki had been partial and favored the Akasha family. Mr. Khan went on to say that he believed Judge Waki was a fair and impartial judge. Statements that the remaining charges are "weak and frivolous" brought into question the validity of the charges against Judge Waki.

Unfortunately, the tribunal process has added to the stress of the already taxed Kenyan judiciary. The judges sitting on the tribunals are also expected to continue hearing cases in their official capacities. Yet, not only is the judiciary expected to pick up the load of the tribunals, there is also a shortage of judges due to the suspension of those accused of corruption.

MOROCCO

IN JANUARY 2004, BOTH HOUSES of the Moroccan parliament unanimously adopted a revised version of the Moroccan Family Code formerly known as the *Mudawwana*, which includes significant changes to the rights of women in marriage, divorce, and child custody. The new family code raises the legal minimum age of marriage for girls from 15 to 18 years old and grants wives "joint responsibility" with their husbands over family matters.

Revised provisions restricting polygamy grant a woman the right to draft a pre-nuptial agreement requiring monogamy. The provisions also require a judge to authorize a man's marriage to a second wife by determining that the man has the ability to equitably provide for both wives. According to Justice Minister Mohammed Buzuba, "Ruling out polygamy is the principle, its authorization an exception." Additionally, a woman may request a divorce on the grounds of "wrongs suffered" if her husband takes a second wife.

King Mohammed VI proposed the family code reforms in October 2003 in a royal directive during an address to the opening session of Parliament. The General Secretariat formed the provisions into a bill followed by its adoption by the Council of Ministers. In November 2003, a parliamentary commission discussed the bill and studied numerous amendments before submitting the draft code to the House of Advisors and the House of Representatives for a plenary vote.

Regarding divorce, the new code adopts the principle of divorce by mutual consent, which subjects repudiation of a marriage by either spouse to a court ruling and invalidates verbal repudiation by the husband. The previous family code granted husbands the exclusive right of divorce. The new code also requires a husband to pay in full all money owed to his wife and children before registration of the divorce. Prior to marriage, a husband and wife may draft a separate contract stipulating joint management of their assets during marriage. In the event of a divorce, judicial arbitration may determine the division of assets based on the household contribution of each spouse in fructifying the family's assets.

The new family code also changes certain limitations on child custody and child rights. The code recognizes the right of a woman to have custody of her children even if she remarries, relocates from where her husband resides, or if the reason for her loss of custody ceases. Previously, a woman would permanently lose her custody rights in these circumstances. A woman's children may now inherit from their maternal grandfather just as children of the grandfather's son may. The code acknowledges the right of children born out of wedlock to trace their biological fathers by permitting the submission of broader evidence to a judge.

To implement the revised family code, specialized family courts will operate within the Moroccan court system. Under the new code, a public prosecutor must be a party to every legal action entailing the enforcement of the

code provisions. The new family code also calls on courts to take emergency cases during recesses. The code reaffirms that the Hebraic Moroccan Family Law will apply to the Moroccan Jewish community. In addition, the code also changes the administrative procedure to facilitate marriage and recognize divorce of Moroccans living abroad.

The new legislation stems from a decade of work to reform the *Mudawwana*. In 1990, the Union for Feminine Action, a Moroccan based group of professional women, petitioned for reform of the *Mudawwana*. In 1992, the late King Hassan II, stated that the government would begin to reform the *Mudawwana*, and presented proposed reforms to an all male council of *ulama*. The jurists approved several changes, including the requirements that a wife approve of a religious judge for divorce and consent to her husband's marriage to other wives. The campaign to reform the *Mudawwana* continued, and in 1999 King Mohammad VI adopted a Plan of Action to integrate women into the economy. Government consultations on the issue of the *Mudawwana* have continued over the past three years.

RWANDA

AS THE UNITED NATIONS International Criminal Tribunal for Rwanda (ICTR) continues to try alleged criminals in connection with the 1994 Rwandan genocide, challenges still remain. Witnesses must travel to Tanzania to testify before the tribunals, and they allege that they are not afforded adequate protection to do so. Defense attorneys went on strike in January for two days claiming that the accused were denied the right to a fair trial because the tribunal did not allow an independent defense. The ICTR, faced with these challenges, is seeking solutions for the effective continuation of its work. The ICTR announced that it is considering moving some of the tribunals to Kigali to decrease the distance the witnesses must travel.

Prior to the Rwandan genocide, the ruling Hutu party in 1994 created a frenzy of ethnic hatred among a majority of the Hutu people. This presents another challenge for the International Criminal Tribunal for Rwanda. With reconciliation in mind, the current government enacted a new law that allows for reduced punishments of those who confess and express remorse for their participation in the killings. These reduced sentences often result in their immediate release from prison and sometimes a period of community service. A release of tens of thousands of prisoners is set

to occur in April 2004, the month of the tenth anniversary of the genocide. It is unclear whether this release is done in the name of judicial expediency, as Spokesperson for the Ministry of Justice Fidele Masengo stated, or for the promotion of reconciliation.

SRI LANKA

PRIME MINISTER RANIL Wickramasinghe and President Chandrika Kumaratunga have been embroiled in a harsh power struggle since November of last year. Prime Minister Wickramasinghe and President Kumaratunga are the national leaders of the two dominant political parties in Sri Lanka, the United National Party and the People's Alliance, respectively.

On February 11, President Kumaratunga dismissed 39 ministers from the prime minister's cabinet. The dismissal came after the president dissolved the parliament on February 7. Allegedly, the president dismissed the ministers in order to prevent misuse of government funds for the upcoming April 2nd parliamentary elections. The last parliamentary elections in December 2001 were marred by hundreds of incidents of violence. Although the president is constitutionally authorized to dismiss cabinet ministers, the prime minister complained that the president's actions were politically motivated. The prime minister also stated that the president's actions were undemocratic, since the prime minister's party held the majority of the seats in the dissolved parliament.

The current political deadlock began last November when the president took over three of the prime minister's top ministries, claiming that the government jeopardized national security and accusing the prime minister of making too many concessions to the Tamil Tigers during peace negotiations. The president also suspended the parliament at that time for a brief period by declaring a state of emergency.

The Tamil Tigers are a rebel separatist group that has fought for 20 years for independence from Sri Lanka. The rebels argue that the Tamil population in the north and east is discriminated against by the majority Sinhalese population. The civil war has killed approximately 64,000 people, displaced one million, and held back the country's growth and economic development. The president and prime minister's political disagreements constitute a serious bulwark to the resumption of peace negotiations between the Tamil rebels and the government, which have been suspended since April 2003.

ZIMBABWE

PRESIDENT ROBERT MUGABE amended the Zimbabwe Criminal Procedure and Evidence Act under Section 32 of the Presidential Power (Temporary Measures) Regulations 2004, on February 13, 2004. The amendment allegedly was made in order to allow police and other law enforcement officials to better control the rampant problems of corruption, money laundering, gold trading, and externalization of foreign currency. Zimbabwe's inflation rate is among the world's worst, and the government warned that the inflation rate could hit 700 percent by the middle of the year. Corruption worsened as the inflation rates sky-rocketed and the externalization of foreign currency became illegal.

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The amendment to the Criminal Procedure and Evidence Act allows the police to detain an accused person for seven days without bail before presenting prima facie evidence. The Zimbabwe Constitution allows a 24 hour period. Under the new law, once prima facie evidence is presented, the court can either issue a warrant or allow the police to hold the accused for another 21 days without bail. Additionally, the amendment states that the accused is presumed guilty until proven innocent. The Human Rights Trust noted that many of the provisions directly contradict the Zimbabwean Constitution; however, President Mugabe and his government maintain that the Act is a temporary emergency procedure necessary for dealing with corruption.

Though the amendment was allegedly made in order to combat corruption, the amendment also applies to cases involving charges of conspiracy, incitement, or attempt to commit treason. The breadth of the application of the amendment exceeds its purported intent for enactment.

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