

# The Middle East

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The following Middle East country reports on legal developments in that region in 2004 are set forth alphabetically.

## I. Algeria

Algeria continues to struggle with the repercussions from its recent civil war, and with the fact that the largest separatist rebel group remains in the country. The current government has made progress in considering a general amnesty for those “implicated” in the civil strife that swept the country for much of the last decade. The government also continues to fashion laws that take a hard line stance toward extremists while at the same time attempting to secure the modernization of the nation amidst the after-effects of the long running civil strife.

Presidential elections took place on April 8, 2004, resulting in more calls for political candidates to address human rights abuses in Algeria<sup>1</sup> The incumbent Algerian president, Abdelaziz Bouteflika, comfortably obtained 83 percent of the popular vote, even with allegations of fraud by the leading opposition candidate.<sup>2</sup> But international observers praised

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1. Amnesty International, *Algeria: “Disappearances” Must Be on Presidential Election Agenda* (Mar. 11, 2004), available at <http://web.amnesty.org/library/Index/ENGMDE280042004?open&of=ENG-DZA>.

2. BBC News, *Observers Praise Algerian Voting* (Apr. 10, 2004), available at <http://news.bbc.co.uk/1/hi/world/africa/3613805.stm>.

the election results, noting that the Algerian people welcomed the incumbent's role in seeking reconciliation with defeated rebel groups from the country's civil war.<sup>3</sup>

Despite the positive election results, issues surrounding human rights violations linger in Algeria.<sup>4</sup> A continuing issue concerns the fate of the "disappeared" civilians who vanished during Algeria's civil war, presumably at the hands of rebel Islamist or government military forces. But in September 2003, Algeria established a semi-judicial body to address the issue.<sup>5</sup> Its powers, however, are limited to information gathering, and its work is not made public.<sup>6</sup> The re-elected president also vowed to address national reconciliation, including reaching out to the minority Berber population—many of whom boycotted the election—and to address expanding rights for women.<sup>7</sup> Journalists also continue to campaign against press and media restrictions.<sup>8</sup>

Reflecting the influence of its Berber population and its role in Algerian society, Tama-zight—the language spoken by the Berber minority in the country—is listed as an official language in Algeria's government, and the government has authorized the teaching of the language in schools. This is true even though Arabic is the official language of Algeria with French being spoken by many educated citizens.<sup>9</sup> As of the date of this article, however, Arabic continues to be the dominant language in Algeria followed by French.<sup>10</sup>

Although foreign investors appear eager to gain access to Algeria's oil-rich \$60 billion economy, Algeria's government has not responded with equal interest, highlighting internal conflict over needed economic reforms, including whether Algeria should seek membership in the International Monetary Fund (IMF).<sup>11</sup> Such conflict has also been highlighted by the Algerian parliament's recent refusal to lift a ban on imported alcohol, a "rarely served" drink in Algeria.<sup>12</sup>

Algeria's largest and, to the developed world, most valuable resource is its oil and natural gas reserves. Algeria alone has 1 percent of the world's total oil reserves within its borders at eleven billion barrels.<sup>13</sup> In addition, Algeria is also the world's fifth largest gas producer

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3. *Id.*

4. Amnesty International, *Worldwide Appeal, Algeria: Freedom of Expression under Threat*, available at <http://web.amnesty.org/appeals/index/dza-010804-wwa-eng> (last updated Feb. 2005).

5. Human Rights Watch, *Algeria: "Disappearances" Commission Needs Broader Powers* (Dec. 9, 2003), available at <http://www.hrw.org/press/2003/12/algeria120903.htm>.

6. Human Rights Watch, *Truth and Justice on Hold: The New State Commission on "Disappearances"* (Dec. 2003), available at <http://www.hrw.org/reports/2003/algeria1203/>; Amnesty International, *No Truth Yet for Families of Algeria's Thousands of 'Disappeared'* (Sept. 1, 2004), available at <http://web.amnesty.org/wire/September2004/Algeria>.

7. BBC News, *Bouteflika Calls for Berber Talks* (Apr. 19, 2004), available at <http://news.bbc.co.uk/1/hi/world/africa/3639817.stm>.

8. BBC News, *Algerian Press Decries Journalists' Jailing* (June 24, 2004), available at <http://news.bbc.co.uk/1/hi/world/africa/3837039.stm>.

9. République Algérienne Démocratique et Populaire, *Monographie*, at <http://www.el-mouradia.dz/francais/algerie/algerief.htm> (last visited June 27, 2005).

10. BBC News, *Country Profile: Algeria* (Nov. 26, 2004), available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/country\\_profiles/790556.stm](http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/790556.stm).

11. BBC News, *Alcohol Ban Row Rages in Algeria* (Nov. 9, 2004), available at <http://news.bbc.co.uk/1/hi/business/3997067.stm>.

12. *Id.*

13. BBC News, *Irish Firm Wins Algerian Gas Deal* (Sept. 27, 2004), available at <http://news.bbc.co.uk/1/hi/business/3693376.stm>.

and makes up 25 percent of European Union's natural gas imports.<sup>14</sup> To capitalize on these resources, Algeria continues to seek foreign investment such as production-sharing agreements and other licensing agreements with foreign firms.<sup>15</sup> Generally, the oil and gas sector has successfully attracted much foreign investment despite concerns such as the lack of security, as highlighted by a well-publicized car bombing carried out by Islamist militants at one of the main electricity plants in Algiers.<sup>16</sup>

In contrast to the success of the oil and gas sectors, other areas of the Algerian economy have not been as profitable at attracting investment. Attempted privatization of the telecommunications industry was hampered this year when a planned auction failed to yield any bids. The government blamed this on two problems: (1) a lagging infrastructure that will likely require at least \$1 billion of investment upgrades and (2) on an Algerian culture where telephone usage is not high. There are only 2.2 million telephone subscribers in Algeria out of a population of 32 million.<sup>17</sup>

Next, Algeria continues to attempt social reform through revisions of its social code. The latest version was passed in 2004. But actual implementation of the new code remains uncertain because the code contains controversial measures for the largely Muslim population such as state monetary payments to single mothers.<sup>18</sup>

Islamist insurgents also remain, mostly in outlying regions of Algeria, although violence has dropped sharply over the past two years. At least one major militant organization, the Salafist Group for Preaching (GSPC), remains in Algeria and has recently claimed ties to Al-Qaeda.<sup>19</sup> In 2004, Algeria made much progress in further stopping such groups with the arrest or outright killing of leaders of the GSPC.<sup>20</sup> Most notably in 2004, Algeria secured the arrest of a top militant "mastermind" behind the desert kidnappings of thirty-two tourists, mostly Europeans, in the outer regions of the country dominated by the Sahara.<sup>21</sup> Other measures to combat terrorism include an African Union sponsored anti-terrorism center, which opened in the capital, Algiers, this year.<sup>22</sup>

Despite the efforts to combat terrorism, Algeria's government continues to publish anti-western rhetoric including statements purportedly against "neo-colonialism" which "comes on the back of globalization."<sup>23</sup> Finally, Algeria also hopes to galvanize Arab support as it

14. *Id.*

15. *Id.*; see also BBC News, *France Wants Algerian Debt Swap* (June 7, 2004), available at <http://news.bbc.co.uk/1/hi/business/3783023.stm>.

16. BBC News, *Algiers Blast 'was car bombing'* (July 7, 2004), available at <http://news.bbc.co.uk/1/hi/world/africa/3872153.stm>.

17. BBC News, *No Bids for Algeria Phone Permits* (Apr. 29, 2004), available at <http://news.bbc.co.uk/1/hi/business/3670691.stm>.

18. BBC News, *Algerian Single Mothers Get Aid* (Sept. 28, 2004), available at <http://news.bbc.co.uk/1/hi/world/africa/3697836.stm>.

19. Agence France Presse, *Algeria's Deadliest Armed Group Virtually Wiped Out* (Jan. 5, 2005), available at [http://www.dailystar.com.lb/article.asp?edition\\_id=10&categ\\_id=2&article\\_id=11519](http://www.dailystar.com.lb/article.asp?edition_id=10&categ_id=2&article_id=11519); BBC News, *Algeria Says Top Militant Killed* (June 20, 2004), available at <http://news.bbc.co.uk/1/hi/world/africa/3823805.stm>; see also BBC News, *New Chief for Algeria's Islamists* (Sept. 7, 2004), available at <http://news.bbc.co.uk/1/hi/world/africa/3635470.stm> [hereinafter *New Chief*].

20. *New Chief*, *supra* note 19.

21. BBC News, *Algeria 'Terror Leader' Arrested* (Oct. 28, 2004), available at <http://news.bbc.co.uk/1/hi/world/africa/3962111.stm>.

22. BBC News, *African Anti-Terror Centre Opens* (Oct. 13, 2004), available at <http://news.bbc.co.uk/1/hi/world/africa/3739754.stm>.

23. Agence France Presse, *Algeria Calls for Revival of Arab Ambitions*, Dec. 26, 2004, available at [www.afp.com](http://www.afp.com).

hosts the next summit of the twenty-two member Arab League scheduled to take place in Algeria in March 2005.<sup>24</sup>

## II. Iran

The Islamic Republic of Iran is a constitutional theocratic state in which Shi'a Muslim clergy dominate. Iran's constitution, which was approved by a national referendum in December 1979, defines the political, economic, and social order of the Islamic Republic. A tri-cameral division of power exists among the executive, legislative, and judicial branches. Iran's Supreme Leader, religious cleric Ayatollah Ali Khamenei, directly controls the armed forces. In addition, he indirectly controls the state's other vital institutions, including the judiciary. The Supreme Leader appoints six of the twelve members of the Guardian Council. This Council, a constitutional watchdog run by conservatives, certifies the competence of candidates for election and reviews all legislation passed by the parliament for adherence to Islamic principles.

President Mohammad Khatami, who won a second four-year term in 2001, heads the executive branch. The legislative branch features a popularly elected 290-seat Majles, or parliament, which held elections in February 2004. These elections resulted in a conservative victory as the Guardian Council had banned over 2,000 reformist candidates from running.

Iran's legal system is a mixture of Islamic law and French Civil Law. Iran has several different court systems. The most active are the traditional courts, which adjudicate civil and criminal offenses, and the Islamic Revolutionary Courts. The Revolutionary Courts try offenses perceived as potentially threatening to the Islamic Republic. But ultimate judicial authority is vested in the Supreme Court and the four-member High Council of the Judiciary. Together, these two institutions are responsible for supervising the enforcement of all laws and for establishing judicial policies.

### A. THE ECONOMY

Iran's economy is dominated by the state. The economic infrastructure is still recovering from the Iran-Iraq war and is in dire need of foreign investment. President Khatami has spent much of his two terms urging the Majles to adopt reforms designed to encourage privatization, foreign investment, and reduction of the country's reliance on oil revenues.<sup>25</sup> Although conservative MPs are reluctant to release any of the government's power, economic realities such as inflation, high unemployment rates, and a bloated and inefficient public sector highlight the need for increased economic liberalization.<sup>26</sup>

Khatami introduced a highly controversial privatization bill in the summer of 2004. Although the Council of Guardians ultimately threw out the original version of the privatization bill,<sup>27</sup> the Majles' positive treatment of the modified version shows that steps are

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24. *Id.*

25. BBC News, *Iranian MPs Back Investment Veto* (Sept. 22, 2004), available at <http://news.bbc.co.uk/1/hi/business/3680056.stm>.

26. BBC News, *Iran's Entrepreneurs See Calm Future* (May 24, 2004), available at <http://news.bbc.co.uk/1/hi/business/3741773.stm>.

27. BBC News, *Iran to Vote on Investment Veto* (Sept. 20, 2004), available at <http://news.bbc.co.uk/1/hi/business/3673398.stm>.

being taken toward privatization. In addition, the government has given Khatami its blessing to sell stakes in sectors protected by the constitution such as energy, transport, telecommunications, and banking.<sup>28</sup>

Next, current economic and political developments in Iraq and Afghanistan present many lucrative opportunities for Iran. For example, Iran recently paid for and completed a \$60 million road connecting major cities in Iran and Afghanistan.<sup>29</sup> The Iranian government hopes that this modern day silk route will link all of Asia's trade markets. Furthermore, Iran's ports on the Persian Gulf, such as Bandar Abbas, provide some of the most convenient trade routes in the region. The importance of Iran's geo-strategic position will continue to grow during the development and reconstruction of its surrounding countries.

## B. HUMAN RIGHTS

In October 2003, Shirin Ebadi, a human rights lawyer and activist, became the first Muslim woman and the first Iranian to win the Nobel Peace Prize. She has steadfastly championed human rights in Iran, especially those of women and of political prisoners. Ms. Ebadi recently defied a summons by the Islamic Revolutionary Court after having been accused of insulting a man. In a rare move, the court confessed "human error" and dismissed the case rather than place Ms. Ebadi under house arrest.<sup>30</sup> Although the judiciary has yet to answer her pleas for the abolition of inhumane treatment of prisoners, such as solitary confinement, the Court's handling of Ebadi's case demonstrates a certain level of retreat on the part of the government.

In addition, the year 2004 proved to be a victorious year for women's rights. The Majles approved a bill that grants equal inheritance rights to women allowing a wife to inherit her husband's estate in its entirety. The prior law stated that a woman could only receive one-half of her husband's estate, while the state took the other half.<sup>31</sup> This legislation follows several other pieces of legislation favoring women's rights, including legislation allowing women, and not just men, to file for divorce.<sup>32</sup>

Internet and Weblog communications have become a common form of communication and protest. As a result, many internet journalists and civil society activists have been arrested and tortured for their views. International human rights groups have shed light on this issue, prompting the Iranian government to form official commissions to investigate the alleged torture.<sup>33</sup>

Thus, the Iranian government continues to make progress toward economic reform through privatization and foreign investment. In addition, the government has made pro-

28. BBC News, *Iran Budget Seeks State Sell-Offs* (Jan. 10, 2005), available at <http://news.bbc.co.uk/1/hi/business/4161247.stm>.

29. BBC News, *Afghan-Iranian Highway Opens* (Jan. 27, 2005), available at [http://news.bbc.co.uk/1/hi/world/south\\_asia/4213531.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4213531.stm).

30. BBC News, *Iran Admits Ebadi Summons 'Error'* (Jan. 18, 2005), available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/4184757.stm](http://news.bbc.co.uk/1/hi/world/middle_east/4184757.stm).

31. BBC News, *Iran MPs Push for Women's Rights* (May 10, 2004), available at [http://news.bbc.co.uk/2/hi/middle\\_east/3701743.stm](http://news.bbc.co.uk/2/hi/middle_east/3701743.stm).

32. BBC News, *Iran Women Get More Divorce Rights* (Dec. 2, 2002), available at [http://news.bbc.co.uk/2/hi/middle\\_east/2534375.stm](http://news.bbc.co.uk/2/hi/middle_east/2534375.stm).

33. Human Rights Watch, *Iran: Judiciary Uses Coercion to Cover Up Torture* (Dec. 20, 2004), available at <http://hrw.org/english/docs/2004/12/17/iran9913.htm>.

gress toward political and social reform by passing laws designed to benefit women and by making inquiries into the alleged torture of journalists. Khatami's two terms as president have been marked by a slow move towards democratization. These reforms, as well as pressure from Iran's democratizing neighbors, will continue to play a decisive role in that important process.<sup>34</sup>

### III. Iraq

#### A. OVERVIEW

The year 2004 saw Iraq transition from a country under occupation by United States-led Coalition forces, administered by the Coalition Provisional Authority (CPA), to a sovereign nation governed by the Iraqi Interim Government (IIG). In the first half of 2004, the CPA was extremely active, promulgating new laws in areas ranging from banking to traffic control. Changes continue to be implemented in many of the new laws in line with CPA Order No. 39, the Foreign Investment Law. The Foreign Investment Law, which was introduced in September 2003, drastically opened Iraq's economy to direct foreign investment. Furthermore, following the hand over of sovereignty, the IIG's legislative agenda was much lighter than that of the CPA as the IIG struggled to cope with domestic security, re-establishing diplomatic relations, and preparing for democratic elections. They left major new legislative and policy initiatives to elected leaders.

#### B. TRANSITIONAL ADMINISTRATIVE LAW AND IRAQI ELECTIONS

Following the handover of Iraqi sovereignty from the CPA to the IIG on June 28, 2004, two days earlier than initially planned, the Iraqi Transitional Administrative Law (TAL) became Iraq's interim constitution. According to the TAL, the two-phase transitional period is expected to end when an elected Iraqi government takes office under a new, permanent constitution, no later than December 31, 2005, unless a constitution-drafting extension is requested by August 1, 2005.

The first phase of the transitional period commenced with the dissolution of the CPA and the handover of sovereignty to the IIG, which was formed through a process of widespread consultation with Iraqis. The second phase of the transitional period will commence with the IIG taking office following elections for the Iraqi Transitional National Assembly (TNA) on January 30, 2005. At the time of writing, the ballots from the January 30 elections were still being counted. But it appears likely that the elections will be won by an alliance of Shiite parties dominated by religious groups with strong ties to Iran. The group lead by IIG Prime Minister Ayad Allawi, a secular Shiite, is also expected to have a strong showing.

The TNA will have 275 seats elected in accordance with an electoral law and a political parties law. These laws aim to achieve the goal of having women constitute no less than one quarter of the seats and give fair representation to all Iraqi communities, subject to restrictions against former high-ranking Ba'ath Party members and others that contributed to persecution under the former regime.

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34. As of this publishing, Tehran's mayor Mahmoud Ahmadinejad has just become Iran's president-elect. Mr. Ahmadinejad's campaign platform focused on domestic issues such as poverty and the distribution of wealth in Iran, and he will be the first non-cleric president Iran has had in over two decades.

The TNA was given the mandate to draft a proposed permanent constitution by August 15, 2005. The proposed permanent constitution is to be put to a national referendum no later than October 15, 2005. If the proposed permanent constitution is adopted, a new round of elections will be held under the guidelines of the new permanent constitution no later than December 31, 2005, replacing the IIG and completing the transitional period.

#### C. IRAQI CUSTOMS SERVICE AND TAXATION

CPA Order No. 54 formally established a new Iraqi Customs Service, effective April 2004. The Iraqi Ministry of the Interior Customs Service imposes a 5 percent reconstruction levy on most goods being imported into Iraq for Iraq reconstruction and improvement projects. Exemptions from the reconstruction levy apply to certain goods and organizations deemed vital to Iraqi reconstruction efforts, including food, medicine and medical equipment, books, clothing, and humanitarian goods. Foreign governments, not-for-profit contractors, sub-contractors, and international contractors are also exempt.

Following CPA Orders No. 37 and 49 regarding Iraqi tax strategies for 2003 and 2004, the CPA recognized the need for a broad review of taxation in Iraq to improve the operation and efficiency of the tax system and to create conditions suited to economic reconstruction. To provide additional time to develop this infrastructure, CPA Order No. 84 suspends the collection of income taxes until an appropriate infrastructure is established. But the Iraqi Companies Registrar is authorized to share company registration information with other government bodies, including tax authorities.

#### D. CENTRAL BANK OF IRAQ

CPA Order No. 56, the Central Bank Law, was issued to reestablish an Independent Central Bank of Iraq in line with current international best practices, replacing Iraq Law No. 64 of 1976. The objectives of the Central Bank are to achieve and maintain domestic price stability while fostering a market-based financial system. The Central Bank will also promote sustainable growth, employment, and prosperity in Iraq's transition from a centrally-planned economy to a market economy.

Keeping with CPA Order No. 18, which suspended the Central Bank's authority to lend to Government Ministries and allowed it to determine monetary policy without Ministry of Finance approval, CPA Order No. 56 maintains the independence of the Central Bank from the Iraqi Government. In particular, the Central Bank may not lend directly or indirectly to the Government but may lend to state-owned commercial banks on the same terms as it lends to private commercial banks. It is remunerated for acting as the Government's banker and fiscal agent on a cost-recovery basis. CPA Order No. 56 also creates a number of criminal offenses related to counterfeiting currency with penalties ranging up to fines of 100 million Iraqi Dinars and ten years imprisonment.

#### E. COMPANY LAW

CPA Order No. 64 amends Iraq Law No. 21 of 1997 (the "Company Law") to permit foreign investment in accordance with CPA Order No. 39, the Foreign Investment Law promulgated in September 2003. Other important changes include:

1. Simplifying procedures and reducing the time required to register companies in conjunction with new Ministerial instructions from the Ministry of Trade;

2. Allowing a single owner to form a limited liability company;
3. Removing the need to conform with state-planning objectives;
4. Permitting companies to merge without the requirement they be engaged in similar activities;
5. Reducing the number of activities that require companies to be organized as joint-stock companies; and
6. Liberalizing requirements to become a member of a Board of Directors.

#### F. SECURITIES MARKETS

Following amendments to the Company Law, CPA Order No. 74 (Interim Securities Markets Law) closes the Baghdad Stock Exchange and establishes a new one known as the Iraq Stock Exchange (ISE). The ISE is not responsible for the obligations of the previous Baghdad Stock Exchange and is independent from the Ministries of Trade and Finance. The ISE is, however, subject to regulatory oversight by the new Iraq Securities and Exchange Commission, which is also responsible for licensing other stock exchanges and organized securities markets in Iraq. But new exchange licenses, if any, are not expected to be issued until April 2005.

#### G. INTELLECTUAL PROPERTY

In April 2004, the CPA promulgated the following orders: (1) CPA Order No. 80, amending the Iraq Trademarks and Descriptions Law; (2) CPA Order No. 81, amending the Iraq Patent and Industrial Designs Law and Regulations; and (3) CPA Order No. 83, amending the Iraq Copyright Law. Under these new orders, Iraqi intellectual property laws were practically re-enacted with major amendments to bring these laws into harmony with international standards and World Trade Organization (WTO) requirements. In particular, substantial changes were made to the enforcement provisions to make these laws compliant with the Agreement on Trade Related Aspects of Intellectual Property Rights and place more severe penalties for violation of trademark rights.

#### H. MONEY LAUNDERING

CPA Order No. 93 (Anti-Money Laundering Law) was promulgated in June 2004 with a deferred implementation date of September 30, 2004. The purpose of the Anti-Money Laundering Law is to secure financial institutions and combat instability by criminalizing the acts of laundering money, financing crime, financing terrorism, and structuring certain transactions. The new law governs financial institutions in connection with money laundering, financing crime, financing terrorism, and the vigilance required of financial institutions in regard to financial transactions. In addition, the new law makes it a crime to launder money, finance crime, finance terrorism, and structure transactions. Finally, the Central Bank is also expected to issue further regulations related to certain aspects under the Anti-Money Laundering Law.

#### I. BANKING

Following CPA Order No. 40, the previous banking law promulgated in September 2003, the CPA acknowledged needs for revision leading to CPA Order No. 94 (New Banking



Law) effective June 2004. The New Banking Law retains the structure and organization of the previous banking law; however, changes in the new Banking Law include:

1. adding a definition for “senior bank official”;<sup>35</sup>
2. consolidating the authority of the Central Bank by providing that actions by government entities, other than the Central Bank, that affect matters subject to the Central Bank’s jurisdiction shall be without legal force;
3. removing a limit on the total number of licenses for banks controlled by foreign persons imposed through 2008;
4. permitting foreigners to hold shares in existing or new domestic banks; and
5. reserving the article that foreign banks shall maintain assets in Iraq in excess of their liabilities to Iraqi residents if required by the Central Bank.

#### J. STATUS OF LAWS AND THE IRAQI INTERIM GOVERNMENT

In anticipation of the handover of sovereignty, the CPA’s final order, CPA Order No. 100 regarding the Transition of Laws, Regulations, Orders, and Directives, entered into force immediately prior to the transfer of sovereignty from the CPA to the IIG. Laws, regulations, orders, memoranda, instructions, and directives of the CPA remain in force in Iraq, unless and until rescinded or amended by legislation duly enacted and having the force of law under the TAL. CPA Order No. 100 makes appropriate revisions to laws, regulations, orders, memoranda, instructions, and directives issued by the CPA to facilitate the orderly transfer of sovereignty while rescinding a number of orders. Such orders include those related to the management of property and assets of the Ba’ath Party, establishment of the Iraqi De-Ba’athification council, and licensing telecommunications service and equipment.

The IIG has established committees within Iraq to review and propose new permanent legislation in a number of areas, including company law and taxation, which are expected in the near future. But the IIG appears to have been reluctant to launch any major new legislative and policy initiatives pending the Iraqi elections. The orders and ministerial instructions issued following the handover of sovereignty tend to relate to domestic security, government administration, and domestic rehabilitation, rather than matters of commercial interest to foreign investors. These include orders related to reactivating the death penalty under the Iraq Penal Code, victims of terrorism, possession of real-estate and housing loans, and ministerial instructions related to judicial pensions, establishing a council for the Boy Scouts, and reorganizing certain departments and offices in Iraqi Governates.

#### K. HUMAN RIGHTS

The Law of Administration for the State of Iraq for the Transitional Period,<sup>36</sup> enumerated fundamental individual rights for all Iraqis. Incorporating internationally-recognized human rights in the TAL reflected an unprecedented step for Iraqis and for the region at

35. Coalition Provisional Authority Order Number 94, Banking Law of 2004, CPA/ORD/6 June 2004/94, available at [www.iraqcoalition.org/regulations/20040607\\_CPAORD94\\_Banking\\_Law\\_of\\_2004\\_with\\_Annex\\_A.pdf](http://www.iraqcoalition.org/regulations/20040607_CPAORD94_Banking_Law_of_2004_with_Annex_A.pdf).

36. Law of Administration for the State of Iraq for the Transitional Period (March 8, 2004), available at <http://www.cpa-iraq.org/government/TAL.html>.

large. Significantly, consensus on the entrenchment of these rights came with the agreement of the Iraqi Governing Council, which participated in negotiations surrounding the document. Furthermore, while some observers questioned the TAL's validity following the appointment of Prime Minister Iyad Allawi's interim government, statements and legislation passed by that government served to affirm the TAL's status as guiding law during Iraq's transition period.<sup>37</sup>

The TAL's bill of rights is unique to the region for a number of reasons. First, it extends fundamental rights to all the people of Iraq on an individual basis. Second, its human rights guarantees do a good job of mirroring international standards. Third, these rights are backed by the creation of a National Commission for Human Rights and a Human Rights Ombudsman—bodies charged with independent investigatory powers and “established in accordance with the Paris Principles issued by the United Nations.”<sup>38</sup> Finally, these rights are protected and cannot be amended, “except by a three-fourths majority of the members of the National Assembly and the unanimous approval of the Presidency Council.”<sup>39</sup>

A closer look at the drafting history of the TAL reveals that the bill of rights initially did not guarantee the right to freedom of religion or belief for every Iraqi. In fact, a draft of the TAL released by the Arab media indicated that only a limited *group right* to religious worship was to be provided, and for non-Muslims only. Moreover, Islam was named the country's “official religion” and given a privileged position as a source of legislation, while other sources of legislation were not identified.<sup>40</sup> Although the TAL incorporates a progressive bill of rights for all Iraqis, the formulation and scope of these rights will in all likelihood be back on the bargaining table during negotiations over Iraq's permanent constitution in 2005.

According to article 7, the TAL “guarantees the full religious rights of all individuals to freedom of religious belief and practice.”<sup>41</sup> Furthermore, article 13(f) stipulates that “each Iraqi has the right to freedom of thought, conscience, and religious belief and practice. Coercion in such matters shall be prohibited.”<sup>42</sup> This codified recognition of freedom of religion represents a historic step for Iraq and each individual Iraqi. Yet, despite the inclusion of freedom of religion provisions reflecting international standards, article 7 of the TAL nevertheless prohibits the enactment of any law “that contradicts the universally agreed tenets of Islam.”<sup>43</sup> This clause “could potentially be used by judges to abridge the internationally recognized human rights of political and social reformers.”<sup>44</sup> But its actual impact may be tempered by the fact that the drafters also included, in the same section, reference to the principles of democracy and the rights enumerated under the TAL.

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37. These affirmative pronouncements, both verbal and legislative, were being made despite successful Shia pressure to exclude any reference to the TAL from UN Security Resolution 1546. See S. Res. 1546, U.N. SCOR, 4987th meeting, U.N. Doc. S/RES/1546 (2004), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/381/16/PDF/N0438116.pdf?OpenElement>.

38. Law of Administration, *supra* note 36, art. 50.

39. *Id.* art. 3.

40. U.S. Commission on International Religious Freedom, *Annual Report of the United States Commission on International Religious Freedom* (May 2004), at 12, available at <http://www.uscifr.gov/countries/publications/currentreport/2004annualRpt.pdf>.

41. Law of Administration, *supra* note 36, art. 7(a).

42. *Id.* art. 13(f).

43. *Id.* art. 7(a).

44. U.S. Commission on International Religious Freedom, *supra* note 40, at 13.

#### IV. Israel

In 2004, Israel passed two major pieces of law concerning the war against terrorism. These new laws exemplify Israel's attempts to cope with the challenge that faces many democracies—fighting terrorism with one hand tied behind its back. These two laws are (1) The Prohibition of Financing Terrorism Law, 5765–2004, which was approved by the Knesset, the Israeli parliament, in late 2004 and (2) the Regulations and Rules promulgated under the General Security Service Law, 5762–2002.

##### A. THE PROHIBITION OF FINANCING TERRORISM LAW, 5765–2004

The escalation in terrorist attacks throughout the world in recent years has increased the need for more effective methods of combating terrorist organizations. Special emphasis has been put on dealing with the economic aspect of this problem, including the financing of terrorism and the transfer of funds that are used to carry out terrorist attacks. In 1999, the United Nations passed the *International Convention for the Suppression of Financing Terrorism*,<sup>45</sup> which defined the offense of financing terrorism and provided that nations must take measures to identify, discover, freeze, or seize the moneys used or intended for use to finance terrorist attacks. The state of Israel signed and ratified this convention in February 2003.<sup>46</sup>

But it was only following the September 11, 2001 terrorist attacks on American soil that the U.N. Security Council adopted Resolution No. 1373 of September 28, 2001 calling upon the nations of the world to cooperate in the war against terrorism and stressing the need for international cooperation in suppressing the funding of terrorism.<sup>47</sup> Among other things, the resolution provides that states are required to criminalize activities of financing terrorism, to freeze the assets of perpetrators of terrorist attacks or entities intending to conduct terrorist attacks, and to criminalize the holding of assets on behalf of individuals who are connected to terrorist attacks. The resolution also provides for the establishment of the Counter-Terrorism Committee to monitor the implementation of the resolution by all states. The international principles are predicated on the idea that each country should combat the funding of terrorism, even if the act of terrorism is not committed in its territory and even if the fundraising takes the form of legitimate charity funds that are transferred to the hands of the terror organizations.

Like many other countries, Israel enacted a law following the guidelines of the Convention and the resolution.<sup>48</sup> On December 29, 2004, the Knesset approved the Prohibition of Financing Terrorism Law (Anti-Funding Law).<sup>49</sup> This law is a landmark in Israel's joining the international legal effort against the financing of terrorism, including terrorism that is *not aimed at Israel*. Prior to the enactment of the Anti-Funding Law, the legal tools for combating terrorism were rooted in the Defense Regulations (State of Emergency) 1945, in the Prevention of Terrorism Ordinance 5708–1948, and in various provisions of the Penal

45. United Nations, *International Convention for the Suppression of the Financing of Terrorism* (Dec. 9, 1999), available at [http://untreaty.un.org/ENGLISH/Status/Chapter\\_xviii/treaty11.asp](http://untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty11.asp).

46. *Id.*

47. Press Release, Security Council Unanimously Adopts Wide Ranging Anti-Terrorism Resolution (Sept. 28, 2001), available at <http://www.un.org/News/Press/docs/2001/sc7158.doc.htm>.

48. Prohibition on Terrorist Financing Law 5765–2004 (unofficial translation), available at [www.justice.gov.il/NR/rdonlyres/4FE9E898-1264-4561-B7AA-0957F6DEA67A/0/ProhibitionTerroristFinancing.doc](http://www.justice.gov.il/NR/rdonlyres/4FE9E898-1264-4561-B7AA-0957F6DEA67A/0/ProhibitionTerroristFinancing.doc).

49. The law will take effect six months after its publication—January 10, 2005.

Law 5737–1977. These provisions were not intended, originally, to deal with terrorism that is *not* related to Israel. Therefore, the “globalization” of terrorism required Israel to update its legislation.

The Anti-Funding Law adopts a definition of terrorism. The first part of the definition of “Act of Terrorism” in article 1 states

- (a) an act that constitutes an offence or a threat to commit an act that constitutes an offence that was committed or was planned to be committed in order to influence a matter of policy, ideology or religion if all of the following conditions are fulfilled:
  - (1) it was committed or was planned to be committed with the goal of causing fear or panic among the public or with the goal of coercing a government or another governing authority, including the government or governing authority of a foreign county to take action or to refrain from taking action; for the purpose of this paragraph—foreseeing, as a nearly certain possibility, that the act or the threat will cause fear or panic among the public is equivalent to having a goal to cause fear or panic among the public;
  - (2) the act that was committed or that was planned or the threat included:
    - (a) actual injury to a person’s body or his freedom, or placing a person in danger of death or danger of grievous bodily injury;
    - (b) the creation of actual danger to the health or security of the public;
    - (c) serious damage to property;
    - (d) serious disruption of vital infrastructures, systems, or services[.]<sup>50</sup>

Part (b) of the definition adds that, if such act or threat was committed (or planned to be committed) with the use of a weapon (as defined in the Penal Law), it shall be considered an “Act of Terrorism” even absent the satisfaction of section (1) above; “if it was committed or planned to be committed using chemical, biological or radioactive weapons, that . . . cause actual mass harm.”<sup>51</sup> Under such circumstances it is considered an Act of Terrorism even without the satisfaction of sections (1) and (2).

This definition recognizes the international nature of terrorism by explicitly including an act in respect of which the penal laws of Israel do not apply, as long as the act constitutes an offense under Israeli law as well as an offense pursuant to the laws of the place in which the act was committed or the laws of the state against which or against whose residents or citizens the act was intended.<sup>52</sup>

The Anti-Funding Law provides Israel’s security authorities with additional tools to impede terrorism’s sources of financing. For example, it expressly provides that rewarding an Act of Terrorism (e.g., rewarding the family of suicide bombers) is an offense.<sup>53</sup> It sets a mechanism to declare an organization as a “Terrorist Organization” even when it has no bearing on Israel.<sup>54</sup> The penalty for a terror-funding offense has been raised from three years, under existing legislation, to seven to ten years.<sup>55</sup> In addition, an individual who has been asked to make a “property transaction” in the course of his business or in the line of

50. Prohibition on Terrorist Financing, *supra* note 48, art. 1.

51. *Id.*

52. *Id.*

53. *Id.* art. 8.

54. *Id.* art. 2.

55. *Id.* arts. 8-9.

his duty, and substantial suspicion that the property is involved in terror, is required to report such transaction to the appropriate authority, otherwise such individual is subject to one year imprisonment.<sup>56</sup> Finally, the law authorizes an administrative seizure of money suspected as “terror money.”<sup>57</sup>

It is both interesting and important, that while the Anti-Funding Law is designed to be a tool in the hands of the Israeli authorities to crack down on terrorism, it nevertheless strives to keep in line with the democratic values of the Israeli legal system. Moreover, the Anti-Funding Law maintains a protective attitude with respect to property rights, and the right for dignity of suspects or of third parties, in light of the Basic Law: Human Dignity and Liberty, 5752–1992.<sup>58</sup> Furthermore, although Israel has never adopted a formal constitution, it has embraced a group of some eleven laws, which, under the Israeli legal system, are considered of a supreme normative position, and thus considered constitutional. These are called Basic Laws, and they are “basic” in the sense that they form the predicate for the entire Israeli system of legal values.<sup>59</sup> In the Anti-funding law, such values are embedded in the language of the law. Quintessential examples of pleading rights are: (1) “[t]he Court shall not order the forfeiture of Property<sup>60</sup> under this chapter except after having granted the person claiming a right to the property, if known, an opportunity to raise his claims;”<sup>61</sup> (2) the right to appeal a decision concerning the granting of a forfeiture order;<sup>62</sup> (3) the limitation of ex-parte orders—while the Court may grant an *ex parte* Interim Order if it is aware that there are concerns regarding an immediate Act in Relation to the Property that would prevent the forfeiture thereof, “the validity of a temporary order given *ex parte* shall not exceed ten days and the application shall be heard in the presence all of the parties as soon as possible and within the period of time in which the order is valid;”<sup>63</sup> and (4) the protection of human dignity and rights—under art. 2, if the government has reasonable grounds to assume that a person is engaging in terrorism, the person may be declared a Person who engages in terrorism.<sup>64</sup> Because the consequences of such a declaration are significantly adverse, the law grants the aggrieved person the right to apply for revocation of such declaration.<sup>65</sup> In addition, the law includes a requirement for a periodic review of such declaration,<sup>66</sup> together with a requirement of publication of declarations and revocations in the Official Gazette.<sup>67</sup>

It is expected that the new law will enhance the international cooperation already existing. For example, in December 2004, a German court rendered a decision to ban the operations

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56. *Id.* art. 10.

57. *Id.* arts. 12, 22.

58. The Knesset, *Basic Law: Human Dignity and Liberty*, available at [http://www.knesset.gov.il/laws/special/eng/basic3\\_eng.htm](http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm) (last visited June 25, 2005).

59. Laws are at the top of a concept known as the “pyramid of norms.” The concept was developed by Austrian Hans Kelsen, and holds that the legal system is a hierarchical pyramid of norms where every lower norm derives its validity from the norm above it. The idea of the “pyramid of norms” is very well known in the continental law of Europe, and has been adopted by Israeli law.

60. Capitalized terms are as defined in the Anti-funding law.

61. Prohibition on Terrorist Financing, *supra* note 48, art. 25(c).

62. *Id.* art. 28.

63. *Id.* art. 36.

64. *Id.* art. 2.

65. *Id.* art. 4.

66. *Id.* art. 5.

67. *Id.* art. 7.

of the German branch of the Al Aqsa fund, a fundraising arm of the Hamas.<sup>68</sup> The court held, using documents confiscated by Israel in the territories, that the Al Aqsa fund assisted terrorist activity of the Hamas movement against Israel and that its “social” activity was inseparable from its combative-terrorist activity.

#### B. THE REGULATIONS ENACTED UNDER THE GENERAL SECURITY SERVICE LAW, 5762-2002

On November 15, 2004, the Committee for Foreign Affairs and Security of the Knesset approved the regulations and rules promulgated under the General Security Service Law of 2002<sup>69</sup> (GSS Law). Politicians and the legal circles considered this a major event, marking the end of a prolonged journey, which had started with the founding of the state of Israel.

To begin, the General Security Service (GSS) is the main body responsible for fighting terrorism within the borders of Israel. The GSS was established immediately following the establishment of the state of Israel in 1948, but there has never been a statute regulating its structure, tasks, activity, or the supervision thereof. In 1989, the then Prime Minister Yitzhak Shamir set up a committee charged with drafting a law regulating the activities of the GSS. The committee met for several years to try to formulate a legal framework without success.

In 1999, with the legislative committee still in session, the Supreme Court of Israel was called upon, in a series of cases, to deal with the issue of interrogation practices employed by the GSS. The issue arose in the context of the GSS role to investigate suspects of terrorist activities, for the purpose of gathering information, in order to prevent them from carrying out terrorist attacks. In the process of these interrogations, GSS investigators also made use of physical means, so-called “moderate physical pressure.”<sup>70</sup> In the absence of a law, authorization for these interrogations was granted by directives that regulated interrogation methods. Those directives authorized investigators to apply physical means against suspects, including shaking them, placing them in uncomfortable positions, and depriving them of sleep. Those methods were permitted over the years because they were seen as immediately necessary to save human lives. In *Public Committee Against Torture v. State of Israel*,<sup>71</sup> the court examined whether these interrogation practices are legal, absent a statute authorizing them.

Bearing in mind that the subject is suspected of committing crimes against Israel’s security, the court nevertheless answered in the negative. The court explained that granting GSS investigators the authority to apply physical force during the interrogation of individuals suspected of involvement in hostile terrorist activities, thereby harming the suspect’s dignity and liberty, raises basic questions of law and society, of ethics and policy, and of the rule of law and security. These questions, the court held, must be determined by the leg-

68. Intelligence and Terrorism Information Center, *Special Information Bulletin* (Dec. 2004), available at [http://www.intelligence.org.il/eng/sib/1\\_05/german.htm](http://www.intelligence.org.il/eng/sib/1_05/german.htm).

69. General Security Service Law 5762-2002, available at <http://www.justice.gov.il/NR/rdonlyres/A8D570FD-BDE7-4A19-ADC8-2C1A5FA7F766/0/GeneralSecurityServicesLawedited.doc>.

70. Israel Ministry of Foreign Affairs, *Second Period Report of Israel Concerning the Implementation of the Convention Against Torture and Other Cruel-Inhuman or Degrading Treatment or Punishment* (Mar. 1, 1998), available at [www.mfa.gov](http://www.mfa.gov).

71. Jewish Virtual Library, *Text of Supreme Court Decision on GSS Practices*, (Sept. 6, 1999), available at [www.jewishvirtuallibrary.org/jsource/Politics/GSStext.html](http://www.jewishvirtuallibrary.org/jsource/Politics/GSStext.html).

islative branch.<sup>72</sup> The court decided that the aforementioned methods employed by the GSS investigators in investigating suspects are illegal because as they stem from an authorization that is not legal.

In response to this case, the Kneset adopted the GSS Law in 2002 and regulations were approved on November 15, 2004. The regulations have yet to be published. Under art. 22(a) of the GSS Law, the guidelines are not meant to be published. Also pursuant to that same article which provides that “rules, Service directives and Service procedures under this Law need not be published in *Reshumot* or any other public publication,”<sup>73</sup> the Attorney General, Mr. Menny Mazuz, has publicly stated that “there is no authority given—not in the confidential rules nor in the open ones—to employ moderate physical pressure in any form.”<sup>74</sup> But with regard to “ticking bombs,” when the GSS believes that it is necessary to use physical force, a special approval from the Attorney General will be required.<sup>75</sup>

Despite being on the front lines in the war against terrorism, Israel took two significant legal steps in 2004. In the first, the Anti-Funding Law, Israel tried to curb terrorism without compromising human rights. In the second matter, the GSS Law, Israel enacted regulations intended to maintain human rights without compromising the war against terrorism.

## V. Jordan

Jordan continues to play an important role by providing political and economic stability in the Middle East. For example, this year, while many Iraqis living in Jordan voted in the historic Iraqi elections, Jordan has been helping to train the Iraqi police as well as agreeing to sign a free trade agreement (FTA) with Iraq.<sup>76</sup> Agreeing to sign a FTA with Russia as well as Taiwan are just some of the economic policies that Jordan has been undertaking (Jordan already has a FTA with the United States).<sup>77</sup> A World Bank study cited Jordan for having made the most progress, among Middle Eastern and North African countries, in improving its investment climate.<sup>78</sup> Reduced red tape resulting in shorter start-up periods was one of the key factors in the study. Other signs of investor friendliness include the recent announcement, aimed at foreign investors, by the Jordan Investment Board that it will issue investor cards to large investors (over U.S. \$141,200) that will give cardholders preferential treatment at various government offices and departments.<sup>79</sup>

There is much economic potential in Jordan as the total stock market capitalization grew by 66 percent in 2004.<sup>80</sup> The Amman Stock Exchange (ASE) revealed new listing instruc-

72. *Id.* at ¶ 37.

73. General Security Service Law, *supra* note 69. *Reshumot* is The Official Gazette.

74. Reported in the news, see for example <http://news.msn.co.il/news/StatePoliticalMilitary/Military/200411/2004111617500.htm> (on file with author).

75. Press Release, The Israeli Attorney General Promises to Provide Legal Protection from Criminal Liability to GSS Interrogators who use Torture (Feb. 20, 2000), available at [www.pchrgaza.org/files/PressR/English/200/25-2000.htm](http://www.pchrgaza.org/files/PressR/English/200/25-2000.htm).

76. *Jordan, Iraq Discuss Establishment of “Free Trade Area,” Boosting Cooperation*, BBC MONITORING MIDDLE E., Sept. 29, 2004 (on file with author).

77. *Jordan to Continue to Maintain Dinar’s Linkage with US Dollar*, MIDDLE EAST & N. AFRICA THIS WK., Sept. 13, 2004; *Expert Examines Local Investment Climate For Taiwanese Investors*, INFOPROD, Oct. 11, 2004.

78. *WB study: Jordan Improves Business Climate*, MIDDLE E. & N. AFRICA TODAY, Sept. 10, 2004.

79. *Jordan Issues Investor Cards to Large Investors*, MIDDLE E. & N. AFRICA TODAY, Jan. 28, 2005.

80. C.L. Jose, *UAE Companies Should Allow Higher Foreign Ownership*, GULF NEWS, Jan. 5, 2005.

tions dividing the market into two categories: a first and second market.<sup>81</sup> The first market consists of companies that have more than 100 shareholders and more than 5 or 10 percent of its shares available for trading if its total capital is more than fifty million or 100 million Jordanian Dinars respectively. First, market companies must also submit audited financial reports and must have a specialized audit committee. If these requirements are not met, they will be relegated to the second market. One issue that Jordanian financial institutions will have to grapple with is how to disassociate themselves from allegations that they have been financing terrorists, an accusation that was recently highlighted by a lawsuit in the United States by relatives of people killed by suicide bombers in Israel.<sup>82</sup> Furthermore, Sharia (Islamic law) compliant financial institutions are becoming a common feature in the financial landscape as news of their increasing profits has become common.<sup>83</sup> Finally, the Securities Depository Center implemented a new cash settlement system that speeds up and modernizes the settlements of trading contracts on the ASE.<sup>84</sup>

Another bright area in Jordan's legal system is its dedication to the protection of intellectual property. The Business Software Alliance hailed the advances made by Jordan in this area, especially as applied to software.<sup>85</sup> The high number of software developers in Jordan explains these protections. It may also explain the high number of trademarks registered in Jordan.<sup>86</sup> On the path to political accountability, the lower house passed a Financial Disclosure Law that would require all public office holders to declare their financial records upon assuming and leaving their posts, and the bill would apply to members of both houses of parliament.<sup>87</sup>

## VI. Kuwait

Kuwait remains in a stagnant state of affairs as its future remains tied to peace and stability in Iraq. The Kuwaiti economy has seen a boost in 2004 mainly due to the rise in oil and local stock market prices, along with transit trade with Iraq. No major projects were awarded by the state of Kuwait. The main oil project involving technical assistance agreements for the northern fields remain tangled in political and constitutional debates.

### A. RELEVANT LAW PASSED IN 2004

#### 1. *Amendment to the Central Bank Law No. 32 of 1968 as amended by law No. 28 of 2004 (amending articles 56, 57, 59, 68, 78, 82, 84, and 85)*

The thrust of these amendments is to liberalize Kuwaiti law requirements for the entry of foreign banks into the Kuwaiti market so as to be in line with Kuwait's obligations pursuant to the WTO agreements. In addition, it provides for greater control by the Kuwait Central Bank over Kuwaiti bank branches operating abroad. Furthermore, the amendment

81. *ASE Increases Authority as it Reveals New Security Listing Instructions*, INFOPROD, May 19, 2004.

82. *Jordan's Bank Association Pledges Support to Arab Bank*, MIDDLE E. & N. AFRICA TODAY, Jan. 3, 2005.

83. *See Jordanian Islamic Insurance Posts \$601,000 Net Profit H1 2004*, JORDANIAN NEWS DIG., Dec. 29, 2004.

84. *SDC Highlights Successful Implementation of New Procedures for Cash Settlement*, INFOPROD, Jan. 10, 2005.

85. *BSA Hails Jordan Efforts to Protect Intellectual Property Rights of Software Developers*, AL-BAWABA NEWS, May 31, 2004.

86. *11,675 New Trade Marks Registered*, INFOPROD, Nov. 30, 2004.

87. *Lower House Approves Financial Disclosure Law*, InfoProd, Jan. 6, 2005.



imposes limits as to the percentage of equity holding in a given bank by one entity or individual except for the state and its agencies to 5 percent and raise the equity capital requirement from KD30M to KD75M. Finally it provides for confidentiality and for the personal liability of board members for violation of the law by a bank.

2. *Amendment to the Protection of Public Funds Law No. 1 of 1993 as amended by Law No. 31 of 2004*

Law No. 1 of 1993 was promulgated in an attempt to curb corruption and to promote accountability in public funds transaction. Several judgments were obtained pursuant to the provisions of the law. Execution of these judgments has proven to be difficult and time consuming. The amendment is aimed at recognizing these difficulties by extending the statute of limitations in certain cases and suspending it in others.

3. *Establishing a Supreme Planning commission to oversee strategic planning and economic reform. Law No. 33 of 2004.*

This repeals Law No. 78 of 2001 establishing the Supreme Commission for Development and Economic Reform. The Planning Commission assumes the responsibilities of the Economic Reform Commission. The Commission is composed of the Prime Minister and several Cabinet Ministers and experts from the private sector to be appointed by an Amiri Decree.

## VII. Tunisia

During 2004 in Tunisia, elections were held for both the president and the parliament.<sup>88</sup> Tunisia finalized a FTA with the European Free Trade Association, which is comprised of Iceland, Liechtenstein, Norway, and Switzerland.<sup>89</sup> Additionally, Tunisia agreed to set up a free trade zone with Turkey.<sup>90</sup> Foreign investment is a high priority for the Tunisian government as its Tunisian Foreign Investment Promotion Agency has been luring billions of dollars in foreign investments into the country.<sup>91</sup> Positive aspects of Tunisia's economy include the creation of the first private television station,<sup>92</sup> the socially progressive policies in areas such as education and health care,<sup>93</sup> and the growth of telecommunication and Internet access.<sup>94</sup> Areas requiring some attention are the slow pace of privatization and decentralization, as well as some irregularities, in the banking sector.<sup>95</sup> Some measures have

88. *Tunisia's General Election Campaign Begins*, MIDDLE E. & N. AFRICA TODAY, Oct. 12, 2004.

89. *Tunisia Finalises Free Trade Agreement with European Free Trade Association*, MIDDLE E. & N. AFRICA THIS WK., Dec. 20, 2004.

90. *Tunisia Signs Agreement to Set up Free Trade Zone With Turkey*, MIDDLE E. & N. AFRICA THIS WK., Nov. 29, 2004.

91. *Foreign Investment Promotion Agency Helped to Provide More than 9,000 Jobs*, INFOPROD, Jan. 3, 2005.

92. *Creation of First Private Television Channel*, INFOPROD, Feb. 15, 2004.

93. *Arabias Trends: Tunisia—A place in the Sun*, THE FINANCIAL TIMES LTD. ASIA AFRICA INTELLIGENCE WIRE, July 1, 2004.

94. *2.5 Million Fixed Phone Lines by 2009*, INFOPROD, Jan. 11, 2005; *Tunisia High Speed Internet Access Booming*, AL-BAWABA NEWS; *Information Technology Sector Witnesses Major Development*, INFOPROD, Oct. 19, 2004.

95. *2.5 Million Fixed Phone Lines by 2009*, INFOPROD, Jan. 11, 2005; *Tunisia High Speed Internet Access Booming*, AL-BAWABA NEWS; *Information Technology Sector Witnesses Major Development*, INFOPROD, Oct. 19, 2004.

been enacted to deal with the banking sector such as a law passed monitoring the alliances between banks and insurance companies.<sup>96</sup>

### VIII. Turkey

The year 2004 ended on an optimistic note for Turkey, as it successfully negotiated to secure the start of talks aimed at gaining entry into the European Union. This will have a profound influence on the evolution of Turkish law in the next decade.<sup>97</sup> Most importantly, on December 17, 2004, at a European Union summit in Brussels, Turkey obtained a firm date for beginning accession talks with the European Union.<sup>98</sup> Talks are scheduled to commence October 3, 2005, but entry has not yet been guaranteed and complete accession could take up to fifteen full years to implement.<sup>99</sup>

But much of Europe is proceeding cautiously regarding Turkey's membership. Some EU members have expressed misgivings about Turkey's proposed membership and have raised fears of unsustainable expansion, the cost to existing members of continued expansion, and other similar issues.<sup>100</sup> Although the start of negotiations for entry are no guarantee of admission into the EU, Turkey remains optimistic about its entry chances because no country that has started the negotiation process for EU admission has yet been rejected.<sup>101</sup>

The deal also came despite EU demands that Turkey formally recognize Cyprus.<sup>102</sup> The internationally-recognized southern part of Cyprus is an independent nation and was itself recently admitted into the European Union. Turkey, which occupies northern Cyprus, had previously insisted it would not bow to demands to recognize the non-Turkish controlled part of the country, calling the issue a "red line."<sup>103</sup> Thus, the issue of Cyprus continues to be a sticking point, which will likely play a big role in upcoming entry talks. For instance, part of securing EU membership requires that Turkey recognize all current EU members by amending the Ankara Agreement, its 1963 association agreement with the EU.<sup>104</sup> Since Cyprus is now a member of the EU, securing EU membership would necessarily require including Cyprus as one of the EU's newest member states.<sup>105</sup> But for many Turks such a

96. *Tunisia Enacts Law to Monitor Banks and Insurance Company Relationship*, MIDDLE E. & N. AFRICA TODAY, June 18, 2004 (on file with author).

97. Europa, *Relations with Turkey*, available at <http://europa.eu.int/comm/enlargement/turkey/> (last visited June 25, 2005).

98. BBC News, *EU Opens Door to Turkey* (Dec. 17, 2004), available at <http://news.bbc.co.uk/1/hi/world/europe/4103397.stm>.

99. *Id.*

100. The Economist, *EU Enlargement* (Dec. 3, 2004), available at <http://www.economist.com/research/backgrounders/displaybackgrounder.cfm?bg=871445&CFID=55743771&CFTOKEN=7cefb0-af088fb6-1f85-483c-9510-d0a0bd3a00ef>.

101. BBC News, *Europe's Historic New Step* (Dec. 18, 2004), available at <http://news.bbc.co.uk/1/hi/world/europe/4108463.stm> [hereinafter *Europe's Historic*]; Turkish Daily News, *EU Entry Talks With Turkey: Just The Beginning of a Long, Tough Process* (Dec. 20, 2004), available at <http://www.tusiad-de.org/vot/vote20041223.pdf>.

102. BBC News, *Turkey Deal to Help World Peace* (Dec. 20, 2004), available at [http://news.bbc.co.uk/1/hi/uk\\_politics/4112465.stm](http://news.bbc.co.uk/1/hi/uk_politics/4112465.stm).

103. BBC News, *EU Talks "To Settle" Cyprus Issue* (Dec. 16, 2004), available at <http://news.bbc.co.uk/1/hi/world/europe/4100971>.

104. BBC News, *Q&A: Turkey's EU Entry Deal* (Dec. 18, 2004), available at <http://news.bbc.co.uk/1/hi/world/europe/4107919.stm>.

105. *Id.*

move would amount to a de facto recognition of Cyprus as a nation separate and apart from Turkey, something most Turks are not yet willing to accept.<sup>106</sup>

Complicating the matter further is that Cyprus is a member of the EU, placing it in a position to exercise its EU veto to block Turkey's accession.<sup>107</sup> The issue ultimately concluded in a stalemate, at least for now, with Turkey assuring the EU that it would sign the new protocol recognizing new EU members—which would necessarily include Cyprus—before actual accession negotiations commence in October, 2005.<sup>108</sup> But the European Union did not demand that Turkey assure parliamentary ratification of such a change “before the actual start of accession negotiations,” and since the issue continues to remain politically unpopular amongst most Turks, it remains uncertain if such a measure will pass before entry talks are scheduled to begin in late 2005.<sup>109</sup>

For the first time, and in a concession to objections to Turkey's entry into the EU raised by various current EU members, the EU has set forth a policy enabling it to suspend entry talks “in the case of a serious and persistent breach in a candidate state of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law on which the Union is founded.”<sup>110</sup> Turkey may also be required to accede to migration requirements restricting the movement of labourers into wealthier EU nations.<sup>111</sup> Thus, such policies will shape the evolution of much of the law in Turkey for the next few decades, especially regarding human rights and continued social reform.

Entrance requirements, new to the EU, are also conditions on accession talks and were not imposed on the last round of Eastern European candidates who have just secured entry into the EU.<sup>112</sup> Thus, “[w]hile the objective of the negotiations is accession, they ‘are an open-ended process, the outcome of which cannot be guaranteed beforehand.’”<sup>113</sup>

Continued EU entry negotiations have also focused on further economic reforms and economic transparency in Turkey to bring its economy closer in line with the economies of Europe.<sup>114</sup> Moreover, Turkey is emphasizing its economic strengths, such as focusing on its large population of young people and their rising level of education, amid concerns expressed by current EU members of an influx of uneducated, poor labourers moving west, should Turkey become a member of the European Union.<sup>115</sup>

Importantly, increased economic stability and confidence was reflected in Turkey's re-launching of its currency at the end of 2004, by eliminating six zeroes from its banknotes.<sup>116</sup>

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106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Europe's Historic*, *supra* note 101.

112. BBC News, *Deal Struck Over Turkey-EU Talks* (Dec. 17, 2004), available at <http://news.bbc.co.uk/1/hi/world/europe/4103931.stm> [hereinafter *Deal Struck*].

113. BBC News, *Q&A: Turkey's EU Entry Deal* (Dec. 18, 2004), available at <http://newswww.bbc.net.uk/1/hi/world/europe/4107919.stm>.

114. *Deal Struck*, *supra* note 112.

115. BBC News, *Turkey Turns on the Economic Charm* (Dec. 14, 2004), available at <http://news.bbc.co.uk/1/hi/business/4063233.stm>.

116. BBC News, *Turkey Knocks Six Zeros off Lira* (Dec. 31, 2004), available at <http://news.bbc.co.uk/1/hi/business/4137469.stm> [hereinafter *Turkey Knocks Six Zeros*]. See also, The Economist, *Turkey's Economy* (Dec. 16, 2004), available at [www.economist.com/displaystory](http://www.economist.com/displaystory); The Economist, *Country Data: Turkey: Economic Data* (June 20, 2003), available at <http://www.economist.com/countries/Turkey/profile>.

After years of double-digit inflation, as high as 70 percent as recently as 2001, inflation fell below 10 percent for the first time “in decades,” and economic growth remained a “healthy” 7.9 percent.<sup>117</sup> These goals are also reflected in the Turkish Central Bank’s primary stated objective “to achieve and maintain [permanent] [sic] price stability.”<sup>118</sup> In addition, controlling inflation was also one of the primary goals of the Central Bank in 2004.<sup>119</sup> Despite these positive signs, Turkey is struggling to control its rising trade deficit and keep up to the International Monetary Fund’s targeted levels.<sup>120</sup> Thus, inflation along with controlling “public sector indebtedness” remain major concerns for Turkey.<sup>121</sup>

Principal growth areas in Turkey’s economy include the energy and telecommunications sectors. Turkey operates as a major east-west energy link, supplying relatively cheap power to Europe and other parts of the world via several major oil pipelines.<sup>122</sup> Tourism also contributes significantly to Turkey’s economy, as does agriculture, which accounts for about 25 percent of male and 60 percent of female employment.<sup>123</sup> The government, however, has done little to follow through on plans to liberalize and privatize the electricity and natural gas sectors. In 2004, the High Planning Council approved the Electricity Sector Reform Strategy in order to help jumpstart the reform process.<sup>124</sup> Problems relating to the privatization process of the telecommunications industry are also anticipated to result in delays in the process at least through the end of 2004.<sup>125</sup>

Despite its strengths, Turkey also faces “massive” gross public debt hovering around 80 percent of gross domestic product, which is about double that of newly admitted EU members.<sup>126</sup> In line with proposed reforms aimed at pleasing the EU, Turkey is hoping to freeze government spending and cut income along with corporate taxes in order to attract a stated goal of \$15 billion in foreign investment.<sup>127</sup>

In anticipation of securing entry talks with the EU, in March, 2004 the current government announced further reforms to the current constitution that was established in 1982 by the last military regime after seizing power in 1980.<sup>128</sup> Such reforms have also brought human rights into focus. Turkey is still dealing with claims of past abuse, including torture, especially from its Kurdish minority, during its rule by the military regime.<sup>129</sup> The issue

117. *Turkey Knocks Six Zeros*, *supra* note 116.

118. Central Bank of the Republic of Turkey, *CBRT Interest Rates* (retrieved Jan. 30, 2005), available at <http://www.tcmb.gov.tr/yeni/eng/index.html>.

119. Press Release, General Framework of Monetary and Exchange Rate Policy in 2004 (Jan. 2, 2004), available at <http://www.tcmb.gov.tr/yeni/eng/index.html> at Monetary Policy.

120. Turkish Daily News, *Turkish Trade Deficit Rises by 55.7 Percent* (Feb. 2, 2005), available at <http://www.turkishdailynews.com.tr/article>.

121. Department of State, *Background Note: Turkey*, available at <http://www.state.gov/r/pa/ei/bgn/3432.htm> (last visited June 25, 2005) [hereinafter Background Note].

122. *Id.*

123. The Economist Intelligence Unit, *Economic Structure: Turkey* (Nov. 6, 2003), available at <http://www.economist.com/countries/Turkey/profile>.

124. Background Note, *supra* note 121.

125. *Id.*

126. *Id.*

127. *Id.*

128. Library of Congress, *Turkey International Constitutional Law*, available at <http://www.loc.gov/law/guide/turkey.html> (last visited on June 25, 2005).

129. Amnesty International, *Judicial Harassment of Human Rights Defenders Turkey—‘Repeal One Law, Use Another’* (Nov. 1, 2004), available at [http://web.amnesty.org/library/Index;BBC News, Turkish Torture Victim](http://web.amnesty.org/library/Index;BBC%20News%20Turkish%20Torture%20Victim)

has recently come into prominence as the Kurds in northern Iraq, on the border with Turkey, have increased their demands for autonomous power.<sup>130</sup> Turkey will also face pressure to recognize as legitimate claims against them by neighbouring Armenia of genocide.<sup>131</sup> France in particular has insisted on raising the issue of the Armenian genocide in connection with the EU accession process.<sup>132</sup> Furthermore, women's rights continue to remain an issue, including access to education and job training.<sup>133</sup> These issues were highlighted by Ankara's Hacettepe University's poll released this year finding that 39 percent of married women agreed that domestic violence was justified in certain circumstances, with the number rising to well over 50 percent in rural parts of the country.<sup>134</sup>

Despite its focus on the European Union, Turkey is also continuing its involvement in Middle East politics, including securing a role to help shape the Middle East peace process. As part of this objective, Abdullah Gul, Turkey's Foreign Minister visited Israel at the end of 2004 in an attempt to rebuild ties tarnished after a "chill" in relations following Israel's crackdown in Palestinian Gaza.<sup>135</sup> Mr. Gul described the purpose of the meeting to create a "new atmosphere" concerning the stalled Middle East peace process and also stated that, "contributing to this process would be Turkey's greatest duty."<sup>136</sup>

Turkey is also currently engaged in a dispute with Russia over how many ships may use the Bosphorus Straits at any one time.<sup>137</sup> The Straits link the Black Sea with the Mediterranean and are considered to be international waters even though Istanbul is situated at the southern portion of the Straits.<sup>138</sup> Whether the dispute highlights a power struggle over control of the Straits with Russia or concern over public safety is open to debate, with the stated concern of Turkish Maritime Authorities to be "that large tankers carrying oil, gas or chemicals pose a serious danger to the 12 million [sic] or so residents of Istanbul."<sup>139</sup> However, "[s]ome observers believe it to be a ploy to force investment in pipelines across Turkish territory."<sup>140</sup>

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*Speaks Out* (Nov. 30, 2004), available at <http://news.bbc.co.uk/1/hi/world/europe/4056181.stm>; BBC News, *Turkish Human Rights Row Erupts* (Nov. 1, 2004), available at <http://news.bbc.co.uk/1/hi/world/europe/3973447.stm>.

130. Turkish Daily News, *PM Sharpens Iraq Criticisms Against US* (Feb. 2, 2005), available at <http://www.turkishdailynews.com.tr/article>.

131. Turkish Daily News, *Shorts Diplomacy: Armenia Plans to Put Alleged Genocide on UN Agenda* (Dec. 25, 2005), available at <http://www.turkishdailynews.com.tr/article>.

132. Turkish Daily News, *Barnier Says France Will Insist On 'Armenian Genocide' Issue* (Dec. 21, 2004), available at <http://www.turkishdailynews.com.tr/article>.

133. BBC News, *Some Turkish Women 'Back Beating'* (Oct. 22, 2004), available at <http://news.bbc.co.uk/1/hi/world/europe/3944983.stm>.

134. *Id.*

135. BBC News, *Turkey Rebuilds Ties With Israel* (Jan. 4, 2005), available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/4145587.stm](http://news.bbc.co.uk/1/hi/world/middle_east/4145587.stm).

136. *Id.*

137. BBC News, *Turkey in Row over Straits Access* (Dec. 29, 2004), available at <http://news.bbc.co.uk/1/hi/world/europe/4131725.stm>.

138. *Id.*

139. *Id.*

140. *Id.*

