

# Africa

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This article surveys some of the important legal developments in Africa during 2012.<sup>1</sup>

## I. North Africa

### A. EGYPT<sup>2</sup>

In April 2012, Egypt's Supreme Council of the Armed Forces (SCAF) ratified the Corruption of Political Life Law.<sup>3</sup> The law states that as of February 11, 2011, individuals who have held high ranking positions in the National Democratic Party are prohibited from running for, or holding, public posts for five years.<sup>4</sup> On June 14, the Supreme Constitutional Court ruled that the law was unconstitutional.<sup>5</sup>

Also, in June 2012, the SCAF passed legislation granting itself de facto veto power over the drafting of a new constitution, near total autonomy in military matters, immunity from civilian oversight, and control of the national budget.<sup>6</sup>

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\* An unabridged version of this article with the authors' biographies is available on the Africa Committee website: <http://www.abanet.org/dch/committee.cfm?com=IC805000>.

1. For developments during 2011, see Harriet O. Acheampong et al., *Africa*, 46 INT'L LAW. 463 (2012). For developments during 2010, see Adejoke Babington-Ashaye et al., *Africa*, 45 INT'L LAW. 435 (2011).

2. For additional developments from Egypt, see Anahita Ferasat et al., *Middle East and North Africa*, 47 ABA/SIL YIR (n.s.) 647 (2013).

3. *SCAF Is Committed To 'Disenfranchisement Law,' Tantawi Tells Parliament*, AHARAM ONLINE (Apr. 24, 2012), <http://english.ahram.org.eg/NewsContent/1/64/40077/Egypt/Politics-/SCAF-is-committed-to-Disenfranchisement-Law,-Tanta.aspx>.

4. *Id.*

5. *Egypt MPs React to Constitution Court Rulings with Relief, Dismay*, AHARAM ONLINE (June 14, 2012), <http://english.ahram.org.eg/NewsContent/1/0/44928/Egypt/0/Egypt-MPs-react-to-constitution-court-rulings-with.aspx>.

6. Evan Hill, *Background: SCAF's Last-Minute Power Grab*, AL JAZEERA (June 18, 2012, 1:37 AM), <http://www.aljazeera.com/indepth/spotlight/egypt/2012/06/201261812449990250.html>.

## II. West Africa

### A. CAPE VERDE

#### 1. *Criminal*

Decree-Law No. 9/2012 of March 20, 2012, enacted the new organic structure and respective procedures of the Cape Verdean Financial Information Unit (UIF, in Portuguese), which is responsible for analyzing information about money laundering and terrorism financing.<sup>7</sup>

#### 2. *Immigration*

The National Immigration Strategy law was approved through Resolution No. 3/2012 of January 23, 2012.<sup>8</sup> This statute sets forth the guidelines on centralized border control, regional and international cooperation, citizenship and naturalization, and human trafficking.<sup>9</sup>

#### 3. *Investment*

Law No. 13/VIII/2012 of July 11, 2012 enacted the new Investment Code (IC) to facilitate and expedite the implementation of investment projects in Cape Verde.<sup>10</sup> The IC sets forth the rights, guarantees, and incentives for investments that contribute to the socio-economic development of the country. The IC will enter into force upon the approval of the new Tax Benefits Code, which is currently being prepared.

#### 4. *Labor*

Decree-Law No. 13/2012, of May 4, 2012, establishes the new Statute of the General Labor Inspectorate and replaces the previous regulations from 1997.<sup>11</sup> This statute creates a set of new labor offenses, establishes stiffer fines for their breach, and applies them to both public and private entities.<sup>12</sup>

### B. CÔTE D'IVOIRE

On August 3, 2012, Pre-Trial Chamber I of the International Criminal Court (ICC) indefinitely postponed the confirmation hearing against former Ivorian President, Laurent Gbagbo.<sup>13</sup> Gbagbo has been charged with four counts of crimes against humanity—

7. *Cape Verde Legal News*, MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS, 1 (Feb.-Apr. 2012), [http://www.mirandalawfirm.com/uploadedfiles/20120704\\_50b827.pdf](http://www.mirandalawfirm.com/uploadedfiles/20120704_50b827.pdf).

8. *Cape Verde Legal News*, MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS, 1 (Oct. 2011-Jan. 2012), [www.mirandalawfirm.com/uploadedfiles/20120404\\_3befcf.pdf](http://www.mirandalawfirm.com/uploadedfiles/20120404_3befcf.pdf).

9. *Id.*

10. *Cape Verde Legal News*, MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS (May-July 2012), [http://www.mirandalawfirm.com/uploadedfiles/20120830\\_c1a89a.pdf](http://www.mirandalawfirm.com/uploadedfiles/20120830_c1a89a.pdf).

11. *Id.*

12. *Id.*

13. Sara Webb, *Hague Hearing for Ivory Coast's Gbagbo Postponed*, REUTERS (Aug. 3, 2012, 10:45 AM), <http://uk.reuters.com/article/2012/08/03/uk-icc-gbagbo-hearing-idUKBRE8720DD20120803>.

including, murder, rape and other forms of sexual violence, persecution, and other inhuman acts, all committed between December 16, 2010 and April 12, 2011.<sup>14</sup> In connection with the case, on November 2, 2012, Pre-Trial Chamber I unsealed the warrant of arrest against Simone Gbagbo, the former first lady, for four charges of crimes against humanity.<sup>15</sup> On August 8, 2012, the National Commission of Inquiry delivered its report on the 2010 post-election crisis to President Alassane Ouattara.<sup>16</sup> The Commission's report found that both parties to the conflict committed crimes.

In September 2012, the Ivorian Council of Ministers adopted two bills to facilitate the adoption of the Rome Statute.<sup>17</sup> The first bill revises the 2000 Constitution to allow Côte d'Ivoire to ratify the Rome Statute. The second bill authorizes the President, as Head of State, to ratify the Rome Statute. These two bills were approved by Parliament on December 20, 2012 and subsequently signed into law by President Ouattara, clearing the way for the state to become the 122nd state party of the International Criminal Court.<sup>18</sup>

### C. GHANA

In February 2012, the Ghana Parliament passed the 2012 Local Government (Amendment) Act,<sup>19</sup> which changed the geographic definition of declared municipalities.<sup>20</sup> A mental health bill aimed at increasing access to mental health facilities and preventing abuses against persons with mental disorders passed in March 2012.<sup>21</sup> In June 2012, an amendment to the Immigration Act criminalized the act of "migrant smuggling," ensuring compliance with international standards against money laundering.<sup>22</sup>

In September 2012, Parliament enacted regulations creating new pricing rules for goods and services transferred between multinational enterprises to increase domestic tax revenues from those transactions.<sup>23</sup> In addition, a newly enacted data protection law outlined

14. Prosecutor v. Laurent Gbagbo, Case No. ICC-02/11-01/11, Warrant of Arrest for Laurent Koudou Gbagbo, *passim* (Nov. 21, 2011), <http://www.icc-cpi.int/iccdocs/doc/doc1276751.pdf>.

15. *Id.*; Press Release, Int'l Criminal Court [ICC], ICC Unseals Warrant of Arrest Against Simone Gbagbo (Nov. 22, 2012), [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/pr857.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr857.aspx).

16. *Le Président Ouattara réitère sa volonté de lutter contre l'impunité [President Ouattara Reiterated His Commitment to Fight Against Impunity]*, ABIDJAN.NET (Aug. 9, 2012), <http://news.abidjan.net/h/438618.html>.

17. Press Release, Coalition for the Int'l Criminal Court [CI CPI], Côte d'Ivoire Ratifies the Rome Statute, Joining the International Criminal Court (Feb. 15, 2013), [http://www.coalitionfortheicc.org/documents/CDI\\_ratification\\_Press\\_Release\\_Final.pdf](http://www.coalitionfortheicc.org/documents/CDI_ratification_Press_Release_Final.pdf).

18. *Id.* at 1-2.

19. *Parliament Passes Local Government Amendment Bill*, GHANA NEWS AGENCY (Feb. 9, 2012), <http://www.ghananewsagency.org/details/Social/Parliament-passes-Local-Government-Amendment-Bill-2012/?ci=4&ai=39059#.UI1F-47qmXI>.

20. The amendment provides that a geographic area encompassing a minimum 95,000 people could be declared a municipality, regardless of whether the area constitutes a single compact settlement. *Id.*

21. Daily Graphic, *Parliament Passes Mental Health Bill*, MODERN GHANA (Mar. 3, 2012, 4:32 PM), <http://www.modernghana.com/lifestyle/3068/16/parliament-passes-mental-health-bill.html>.

22. *Ghana Criminalises Migrant Smuggling*, GHANA NEWS AGENCY (July 6, 2012), <http://www.ghananewsagency.org/details/Social/Ghana-criminalises-migrant-smuggling/?ci=4&ai=45908#.UI1KAI7qmXI>.

23. Eunice Menka, *Parliament Approves Report on Transfer Pricing Regulations*, GHANA MMA (Sept. 13, 2012, 7:07 AM), <http://www.ghanamma.com/2012/09/parliament-approves-report-on-transfer-pricing-regulations/>; Gilbert Ankrh & Richie Osei, *Parliament Adopts Report on Transfer Pricing Regulations*, GOV'T GHANA (Sept. 12, 2012, 3:57 PM), <http://www.ghana.gov.gh/index.php/news/general-news/16036-parliamen>.

the privacy rights of individuals and standards for fair processing of their personal data.<sup>24</sup> The law established a Data Protection Commission that will make policy and administrative requirements on data protection and investigate complaints related to the misuse of personal data.<sup>25</sup>

## D. GUINEA

### 1. *Charges for Stadium Massacre*

In February 2012, Colonel Moussa Tiegboro Camara, a minister in charge of fighting drug trafficking and organized crime, was charged for his alleged involvement in the September 28, 2009, stadium massacre.<sup>26</sup> On September 13, the government also indicted former Minister of Health, Colonel Abdoulaye Chérif Diaby, for his alleged responsibility for the massacre.<sup>27</sup>

### 2. *Debt Relief*

In September 2012, Guinea met the requirements necessary to complete the Heavily Indebted Poor Countries Initiative and qualified for the Multilateral Debt Relief Initiative.<sup>28</sup> As a result, the IMF and the World Bank's International Development Association decided to relieve US\$2.1 billion in debt, representing a 66 percent reduction of Guinea's future external debt service over a forty-year period.<sup>29</sup>

## E. GUINEA BISSAU

Law No. 14/2010, enacting the statutory regime on Economic Interest Groups (EIGs), took effect in 2012.<sup>30</sup> Under the new statute, an individual or company can set up an EIG with or without its own capital, and it may include as part of its purpose the gain and sharing of profits.<sup>31</sup>

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24. Mawutodzi Abissath & Doreen Buobu, *Ghana's Data Protection Law in the Digital Age*, GOV'T GHANA (July 24, 2012, 12:20 PM), <http://www.ghana.gov.gh/index.php/news/features/14647-ghanas-data-protection-law-in-the-digital-age>.

25. *Id.*

26. *Guinea Stadium Massacre: Col Tiegboro Camara Charged*, BBC NEWS (Feb. 10, 2012, 3:34 AM), <http://www.bbc.co.uk/news/world-africa-16972557>.

27. *Guinea: Indictment of Former Minister on the Eve of the Third Anniversary of 28 September 2009 Massacre*, ALLAFRICA (Sept. 21, 2012), <http://allafrica.com/stories/201209241449.html>.

28. Press Release, International Monetary Fund [IMF], IMF and World Bank Announce US \$2.1 Billion Debt Relief for Guinea (Sept. 26, 2012), <http://www.imf.org/external/np/sec/pr/2012/pr12363.htm>.

29. *Id.*

30. *Guinea-Bissau Legal News*, MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS, 1, [http://www.miranda-lawfirm.com/uploadedfiles/20120831\\_908dcl.pdf](http://www.miranda-lawfirm.com/uploadedfiles/20120831_908dcl.pdf) (last visited Feb. 16, 2013).

31. *Id.*

## F. LIBERIA

On February 4, 2012, President Ellen Johnson Sirleaf signed into law the Children's Law of Liberia,<sup>32</sup> which includes provisions requiring obligatory school attendance and bolsters regulations against child labor and sexual abuse.<sup>33</sup> The law is based on the U.N. Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, both of which have been ratified by Liberia.<sup>34</sup>

In August 2012, the U.N. Office of the High Commissioner for Human Rights condemned a bill proposed in the Liberian Senate to penalize the encouragement and promotion of homosexuality.<sup>35</sup> Under the bill, offenders would face a second-degree felony charge, a fine, and up to five years imprisonment.<sup>36</sup>

## G. MALI

In January 2012, Tuareg rebels, under the authority of the National Movement for the Liberation of Azawad (NMLA), began an insurgency to take over northern Mali and declare an independent Azawad state.<sup>37</sup> The NMLA was joined by the Islamist Ansar Dine intent on imposing Sharia law.<sup>38</sup> On March 21, a military coup ousted President Amadou Toumani Touré, citing his poor handling of the insurgency and the ill-equipped army.<sup>39</sup> On March 22, Captain Amadou Sanogo, head of the National Committee for the Restoration of Democracy and State (CNRDR) suspended the 1992 Constitution until power could be returned to a new democratically elected government;<sup>40</sup> however, he restored the Constitution weeks later.<sup>41</sup>

On April 6, the CNRDR and the Economic Community of West African States (ECOWAS) came to an agreement under which the CNRDR would hand over power to a civilian government in exchange for the end of trade and diplomatic sanctions.<sup>42</sup> Under the agreement, President Touré resigned on April 8, and parliament speaker Diounconda

32. Press Release, U.N. Children's Fund, President Sirleaf Launches Children's Law of Liberia (Feb. 4, 2012), available at [http://www.unicef.org/media/media\\_61579.html](http://www.unicef.org/media/media_61579.html).

33. *Liberian Children To Be Protected by New Law: Sirleaf*, NEW AGE (Feb. 6, 2012, 4:46 PM), <http://www.thenewage.co.za/mobi/Detail.aspx?NewsID=42628&CatID=1019>.

34. President Sirleaf Launches, *supra* note 32.

35. Sung Un Kim, *UN Concerned over Liberia Draft Law Criminalizing Homosexuality*, THE JURIST (Aug. 3, 2012, 3:14 PM), <http://jurist.org/paperchase/2012/08/un-concerned-over-liberia-draft-law-criminalizing-homosexuality.php>

36. *Id.*

37. Andy Morgan, *The Causes of the Uprising in Northern Mali*, THINK AFR. PRESS (Feb. 6, 2012, 1:40 PM), <http://thinkafricapress.com/mali/causes-uprising-northern-mali-tuareg>.

38. *Tuaregs Claim 'Independence' from Mali*, AL JAZEERA (Apr. 6, 2012, 6:07 PM) <http://www.aljazeera.com/news/africa/2012/04/20124644412359539.html>.

39. *Renegade Mali Soldiers Announce Takeover*, BBC NEWS (Mar. 22, 2012, 7:12 AM), <http://www.bbc.co.uk/news/world-africa-17462111>.

40. Bruce Whitehouse, *Captain Amadou Sanogo: Power Is His Middle Name*, THINK AFR. PRESS (Mar. 29, 2012, 3:56 PM), <http://thinkafricapress.com/mali/captain-amadou-sanogo-power-his-middle-name-coup>.

41. *Malian Coup Leaders Restore Constitution*, AL JAZEERA (Apr. 1, 2012, 8:18 PM), <http://www.aljazeera.com/news/africa/2012/04/20124181943166936.html>.

42. CNN Wire Staff, *Mali Coup Leader Agrees to Return Power*, CNN (Apr. 6, 2012), [http://articles.cnn.com/2012-04-06/africa/world\\_africa\\_mali-unrest\\_1\\_mali-coup-leader-captain-amadou-sanogo-african-union?\\_s=PM:AFRICA](http://articles.cnn.com/2012-04-06/africa/world_africa_mali-unrest_1_mali-coup-leader-captain-amadou-sanogo-african-union?_s=PM:AFRICA).

Traoré was sworn in as President on April 12.<sup>43</sup> On August 20, President Traoré established a new unity government.<sup>44</sup> In September, the Malian government agreed to an intervention force in order to re-establish control over the north.<sup>45</sup> In response to Mali's request for international military support, the U.N. Security Council passed Resolution 2071 on October 12, declaring its willingness to respond once it receives a detailed plan for the intervention.<sup>46</sup>

## H. NIGERIA

On September 28, 2012, the Nigerian Senate passed into law the Occupational Safety Bill promoting safety and preventing health risks in the workplace.<sup>47</sup> The law, which repeals the 2004 Factory Act, provides that employers who fail to ensure the safety of their employees risk imprisonment and fines.<sup>48</sup>

A comprehensive Petroleum Industry Bill, pending before the National Assembly, seeks to overhaul the legal framework for the petroleum industry in Nigeria, improving transparency in the oil and gas sector, enhancing domestic gas supplies, and increasing revenue to the Nigerian government while creating a business-friendly environment for petroleum exploration and exploitation.<sup>49</sup> To accomplish these goals, the bill provides for the restructuring of industry-related government institutions and gives the Minister of Petroleum broad supervisory powers over the entire sector.<sup>50</sup>

## I. SÃO TOMÉ E PRÍNCIPE

The Decree-law No. 2/2012 of February 14, 2012, established the Investment and Commerce Promotion Agency, which is “responsible for developing and implementing policies to attract investment, increase exports and stimulate economic activities in general.”<sup>51</sup>

43. CNN Wire Staff, *Mali Swears in New President, Restores Civilian Rule*, CNN (Apr. 12, 2012, 12:34 PM), <http://www.cnn.com/2012/04/12/world/africa/mali-unrest>.

44. Tiemoko Diallo, *Mali Forms New Caretaker Government*, REUTERS (Aug. 21, 2012, 3:40 AM), <http://in.reuters.com/article/2012/08/20/mali-crisis-idINL6E8JKE7Q20120820>.

45. Carey L. Biron, *Mali: UN Takes Up Intervention Plan on Mali*, ALLAFRICA (Sept. 26, 2012), <http://allafrica.com/stories/201209270194.html>.

46. S.C. Res. 2071, ¶ 6-7, U.N. Doc. S/RES/2071 (Oct. 12, 2012).

47. Isiaka Wakili, *Nigeria: Senate Passes Occupational Safety Bill into Law*, DAILY TRUST (Sept. 28, 2012), <http://allafrica.com/stories/201209280547.html>.

48. *Id.*

49. Babatunde Fagbohunlu & Chukwuka Ikwuazom, *Overview of the Nigerian Petroleum Industry Bill*, LEX-LOGY (Sept. 12, 2012), <http://www.lexology.com/library/detail.aspx?g=f4fe5d56-809e-4fc7-945c-924cd35f67ca>.

50. Joe Brock, *Analysis: Nigeria Oil Bill Waters Down Its Reforms*, REUTERS (May 29, 2012, 4:02 AM), <http://www.reuters.com/article/2012/05/29/us-nigeria-oil-law-idUSBRE84S07220120529>.

51. *Sao Tomé & Príncipe Legal News*, MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS, 1 (July 2012), [http://www.mirandalawfirm.com/uploadedfiles/20120830\\_c5c3e6.pdf](http://www.mirandalawfirm.com/uploadedfiles/20120830_c5c3e6.pdf).

## J. SENEGAL

In August 2012, Senegal and the African Union agreed to create a special tribunal in Dakar to try Hissène Habré, former leader of Chad.<sup>52</sup> Senegal had faced growing international pressure to extradite Habré or prosecute him for human rights abuses. Eight months earlier, a Senegalese court had rejected an application to extradite Habré to Belgium due to a procedural error.<sup>53</sup> The International Court of Justice, responding to Belgium's request, issued a decision in July requiring Senegal to prosecute Habré or to extradite him without delay.<sup>54</sup> The special tribunal in Dakar, which could be used to try other African human rights cases, is expected to be operational by the end of 2012.<sup>55</sup>

In September 2012, the Senegalese Parliament voted to eliminate the country's Senate and Vice Presidential post.<sup>56</sup> In doing so, the Parliament hoped to conserve funds to address deadly floods in the country.<sup>57</sup> Although the measure is expected to free up US \$15 million for flood relief,<sup>58</sup> some claim that it is a politically motivated attempt to weaken the opposition party.<sup>59</sup>

## K. SIERRA LEONE

### 1. *Special Court for Sierra Leone*

In April 2012, Charles Taylor, former president of Liberia, was found guilty of supporting the factions that carried out atrocities in Sierra Leone between 1996 and 2002.<sup>60</sup> He was also found guilty of planning the commission of several crimes between December 1998 and February 1999.<sup>61</sup> Mr. Taylor was sentenced to a jail term of fifty years.<sup>62</sup> This year, the Special Court also convicted and sentenced Eric Koi Senessie, former member of

52. *Senegal to Try Ex-Chad Dictator Habre*, NEWS.COM.AU (Aug. 23, 2012, 9:59 PM), <http://www.news.com.au/breaking-news/world/senegal-to-try-ex-chad-dictator-habre/story-e6frfkui-1226457004373>; *Senegal Urged to Act Fast on Habre's Trial*, THE GUARDIAN NIGERIA (Aug. 24, 2012), [http://www.nguardiannews.com/index.php?option=com\\_content&view=article&id=96531:senegal-urged-to-act-fast-on-habres-trial-&catid=98:africa&Itemid=557](http://www.nguardiannews.com/index.php?option=com_content&view=article&id=96531:senegal-urged-to-act-fast-on-habres-trial-&catid=98:africa&Itemid=557).

53. *Senegal Rejects Hissene Habre's Extradition to Belgium*, BBC NEWS (Jan. 12, 2012, 5:14 AM), <http://www.bbc.co.uk/news/world-africa-16526821>.

54. *UN World Court Rules Senegal Must Prosecute Ex-Chadian Leader or Extradite Him*, UN NEWS CENTRE (July 20, 2012), <http://www.un.org/apps/news/story.asp?NewsID=42526&Cr=court+of+justice&Cr1#UGhpyBwvioo>.

55. *Senegal Urged to Act Fast on Habre's Trial*, *supra* note 52.

56. *Senegal Senate Abolished to Pay for Floods*, BBC NEWS (Sept. 19, 2012, 11:03 AM), <http://www.bbc.co.uk/news/world-africa-19652946>.

57. *Id.*

58. *Id.*

59. Ryan Villarreal, *Senegal Abolishes Senate to Divert Funds to Flood Victims*, INT'L BUS. TIMES (Sept. 19, 2012, 5:00 PM), <http://www.ibtimes.com/senegal-abolishes-senate-divert-funds-flood-victims-793478>.

60. Owen Bowcott & Monica Mark, *Charles Taylor Found Guilty of Abetting Sierra Leone War Crimes*, THE GUARDIAN (Apr. 26, 2012, 4:13 PM), <http://www.guardian.co.uk/world/2012/apr/26/charles-taylor-guilty-war-crimes>.

61. *Prosecutor v. Taylor*, Case No. SCSL-03-01-T-1281, Judgement, ¶ 6996 (May 18, 2012), <http://al-lafira.com/download/resource/main/main/idadatcs/00031970:25c837e6e7741724d4193649e21a7a66.pdf>.

62. Alpha Sesay, *Charles Taylor Sentenced to 50 Years in Jail*, CHARLES TAYLOR TRIAL.ORG (May 30, 2012), <http://www.charlestaylortrial.org/2012/05/30/charles-taylor-sentenced-to-50-years-in-jail/>.

the Revolutionary United Front, for contempt of court.<sup>63</sup> Additionally, it found three leaders of the Armed Forces Revolutionary Council guilty of contempt for tampering with a former prosecution witness.<sup>64</sup>

## 2. Domestic Legal Issues

In May 2012, Parliament passed a Legal Aid Bill that creates a body to regulate lawyers and recognizes the role of paralegals in the formal system.<sup>65</sup> Hailed as one of the most progressive legal aid laws on the continent, it provides for a mixed model of criminal and civil legal aid supplied through a public/private partnership.<sup>66</sup>

In August 2012, the Sexual Offences Act was enacted.<sup>67</sup> The Act raises minimum jail sentences for sexual offenses from two years to between five and fifteen years, prohibits forced sex in marital relationships, and aims to protect children—especially girls—from abuse by teachers and religious and traditional leaders.<sup>68</sup>

## III. Central Africa

### A. DEMOCRATIC REPUBLIC OF CONGO (DRC)

The Value Added Tax (VAT) that was instituted in the DRC pursuant to Ordonnance-Loi No. 10/001 of August 20, 2010<sup>69</sup> to replace the sales tax became effective on January 1, 2012, at a flat rate of 16 percent.<sup>70</sup>

On July 13, the DRC ratified the Organization for the Harmonization of Business Law in Africa (OHADA, in French) Treaty, and, in accordance with that Treaty, the various Uniform Acts promulgated by OHADA became applicable in the DRC on September 12, 2012.<sup>71</sup>

63. Press Release, Special Court for Sierra Leone Outreach & Pub. Affairs Office, Eric Koi Senesic Sentenced to Two Years in Prison for Contempt of the Special Court (July 5, 2012), <http://www.sc-sl.org/LinkClick.aspx?fileticket=UQPelGgBKww%3d&tabid=232>.

64. Press Release, Special Court for Sierra Leone Outreach & Pub. Affairs Office, AFRC Leaders Found Guilty of Contempt, Interfering in the Administration of Justice (Sept. 25, 2012), <http://www.sc-sl.org/LinkClick.aspx?fileticket=1WJMqC06SEw%3d&tabid=232>.

65. *Sierra Leone: Serving Justice Outside the Courts*, IRIN (May 31, 2012), <http://www.irinnews.org/report/95565/SIERRA-LEONE-Serving-justice-outside-the-courts>.

66. Sonkita Conteh & Lotta Teale, *New Legal Aid Law in Sierra Leone Embraces the Role of Paralegals*, OPEN SOC'Y FOUND. (May 11, 2012), <http://www.opensocietyfoundations.org/voices/new-legal-aid-law-sierra-leone-embraces-role-paralegals>.

67. *S. Leone Lawmakers Pass Sexual Offences Act*, AFP (Aug. 24, 2012), <http://www.google.com/hostednews/afp/article/ALeqM5hbQ4oJemCXrhVAYfQnCFW-Dmgsjw>.

68. Sexual Offences Act No. 37 (2012), 143 SIERRA LEONE GAZETTE (Supp.) §§ 3, 5, 19-30, available at <http://sgdatabse.unwomen.org/uploads/Sexual%20Offences%20Bill%20Gazette.pdf>.

69. Ordonnance-Loi n 10/001 du 20 août 2010 Portant Institution de la Taxe sur la Valeur Ajoutée [Ordonnance-Law No. 10/001 of 20 August 2010 Covering Institution of Value Added Tax], available at [http://dgi.gouv.cd/index.php?option=com\\_joomdoc&task=doc\\_download&gid=4&Itemid=](http://dgi.gouv.cd/index.php?option=com_joomdoc&task=doc_download&gid=4&Itemid=)

70. Joseph Yav Katshung, *Understanding How Value Added Tax (VAT) Is Applied in the Democratic Republic of Congo*, YAV & ASSOCIATES (Jan. 11, 2012, 4:44 PM), <http://www.yavassociates.com/blog/2012/01/11/Understanding-how-Value-Added-Tax-VAT-is-applied-in-the-Democratic-Republic-of-Congo.aspx>.

71. Norton Rose Canada LLP, *The Democratic Republic of Congo Joins OHADA*, MARTINDALE-HUBBELL (Aug. 9, 2012), [http://www.martindale.com/corporate-law/article\\_Norton-Rose-Canada-LLP\\_1565578.htm](http://www.martindale.com/corporate-law/article_Norton-Rose-Canada-LLP_1565578.htm).



## B. EQUATORIAL GUINEA

### 1. *Aviation*

Decree No. 26/2012 of February 22 created a new agency, the *Autoridade Aeronáutica de Guinéa Ecuatorial* (AAGE), to regulate and oversee civil aviation in Equatorial Guinea.<sup>72</sup> The AAGE is “responsible for producing technical and safety standards and regulations, managing the use of air space and airports, granting certificates of airworthiness, [and] aircraft registration . . . .”<sup>73</sup>

### 2. *State Administration*

The new Constitution of Equatorial Guinea, approved by a referendum in 2011, was promulgated by the President in February 2012.<sup>74</sup> Under the new Constitution, the President cannot serve more than two terms of seven years each, and the maximum age limit of seventy-five has been removed. The Constitution also created a Vice-President position, a Senate, an ombudsman, and several committees to supervise economic policy and audit functions.<sup>75</sup>

## C. REPUBLIC OF THE CONGO

### 1. *Tax*

The 2012 Tax Act introduced several amendments to the existing statutory framework. The Act lowered the standard corporate income tax rate by one percentage point, making the rate 34 percent.<sup>76</sup> It also sets forth that branches of foreign companies, including branches that benefit from the flat-rate regime, are subject to a 20-percent capital gains tax on 70 percent of their net-profit deemed to have been distributed each taxable year.<sup>77</sup>

### 2. *Finance*

The 2012 Finance Act reinforces the supervision of transfer pricing policies for those companies under the control of, or with control over, companies established outside the Congo.<sup>78</sup> Companies must make various documents available to the tax administration, justifying pricing practices and relations with the companies benefiting from payments within the scope of operations of any nature. In addition, the statute provides that the registration of articles of incorporation is free of cost.<sup>79</sup> The Act establishes the assessment of a single tax payable at the Business Formalities Center one-stop shop and collected by the Public Treasury. Finally, “[p]ersons gainfully employed in the Congo must

72. *Equatorial Guinea Legal News*, MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS, 1 (Jan.-Mar. 2012), [http://www.mirandalawfirm.com/uploadedfiles/20120614\\_55ca34.pdf](http://www.mirandalawfirm.com/uploadedfiles/20120614_55ca34.pdf).

73. *Id.*

74. *Id.*

75. *Id.*

76. *Republic of the Congo Legal News*, MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS (Jan.-Mar. 2012), [http://www.mirandalawfirm.com/uploadedfiles/20120614\\_beb371.pdf](http://www.mirandalawfirm.com/uploadedfiles/20120614_beb371.pdf).

77. *Id.*

78. *Id.*

79. *Id.*

apply for registration with the General Directorate of Taxes and Domains, within fifteen days of commencing the activity, regardless of the expected revenue."<sup>80</sup>

#### IV. Eastern Africa

##### A. KENYA

On April 25-26, 2012, the Kenyan Parliament passed three bills related to land use, management, and ownership: the National Land Commission Act, the Land Registration Act, and the Land Act.<sup>81</sup> The President assented to the bills immediately and the new land laws became effective on May 2, 2012.<sup>82</sup> The Land Registration Act combines all new land-related laws with the intention of consolidating land registrations in Kenya.<sup>83</sup>

##### B. UGANDA

In February 2012, the Ugandan Parliament tabled negotiations over the Petroleum (Exploration, Development and Production) Bill.<sup>84</sup> The Bill includes the controversial provision allowing the appointment of an oil minister by the executive branch, with the freedom to circumvent a public bidding process.<sup>85</sup> If enacted, the law will replace the outdated 1985 Petroleum Act.

In April 2012, the Ugandan Parliament unanimously passed the 2010 Prevention and Prohibition of Torture Bill in response to alarming cases of torture documented by various human rights organizations throughout the country.<sup>86</sup> The new law will criminalize torture and will allow for both reparations and rehabilitation for survivors and victims.<sup>87</sup> Furthermore, the law aims to deter persons from aiding, abetting, or serving as accessories to the crime of torture, and eliminates the defense of superior orders.<sup>88</sup>

The Anti-Homosexuality Bill was reintroduced to the Ugandan Parliament, and a committee of MPs has endorsed the bill—but only after dropping the contentious death penalty provision.<sup>89</sup> The bill proposes longer jail terms for homosexual acts, which are

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80. *Id.*

81. *A Snapshot of the New Land Laws in Kenya*, COULSON HARNEY (May 31, 2012, 4:10 PM), <http://www.coulsonharney.com/News-Blog/Blog/A-snapshot-of-the-new-land-laws>.

82. Mputhia, *Kenya's Land Laws Overhauled!!*, COMMLAWBIZ (May 17, 2012, 12:18 PM), <http://commlawbiz.net/?p=369>.

83. *Id.*

84. Hanibal Goitom, *Uganda: Parliament Considering Petroleum Bill*, LIBR. CONGRESS (Feb. 10, 2012), [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_1205402986\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_1205402986_text).

85. Nicholas Bariyo, *Uganda Executive, Parliament Divided Over Oil Bill*, FOX BUS., <http://markets.m.foxbusiness.com/quickPage.html?page=34647&content=84025028&pageNum=-1> (last visited Feb. 16, 2013).

86. *Parliament Passes the Anti-Torture Bill*, AFR. CENTRE FOR TREATMENT & REHABILITATION TORTURE VICTIMS, <http://www.actvuganda.org/story/parliament-passes-anti-torture-bill> (last visited Feb. 16, 2013).

87. *Id.*

88. *Id.*

89. *Uganda Anti-Homosexuality Bill: MPs Drop Death Penalty*, BBC NEWS (Nov. 23, 2012, 7:19 AM), <http://www.bbc.co.uk/news/world-africa-20463887>.

already illegal in Uganda, including life sentences.<sup>90</sup> Parliament will not discuss the bill again until February 2013, at the earliest.<sup>91</sup>

## V. Southern Africa

### A. ANGOLA

#### 1. *Banking and Finance*

The National Bank of Angola (BNA, in Portuguese)<sup>92</sup> enacted Orders Nos. 15/12 and 16/12 of April 3, 2012,<sup>93</sup> concerning the establishment and operation of factoring companies. BNA Order No. 21/12 of April 25, regulating the duties of non-banking financial institutions under the Anti-Money Laundering and the Financing of Terrorism Law, was also approved.<sup>94</sup>

#### 2. *Commercial and Corporate*

Presidential Decree No. 43/12 of March 13, 2012, approved the Regulations on the general framework for micro, small, and medium-sized companies.<sup>95</sup> Through Law No. 19/12 of June 11, 2012, the statutory framework of sole-shareholder companies in Angola was enacted.<sup>96</sup>

#### 3. *Energy*

Presidential Legislative Decree No. 3/12 of March 16, 2012, provides tax incentives to private and public Angolan oil companies to boost their participation in petroleum operations.<sup>97</sup> Presidential Decree No. 80/12 of May 8, 2012, lays down rules for signature bonuses and contributions for social projects, payable to the National Concessionaire under petroleum exploration and production (E&P) agreements.<sup>98</sup>

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90. *Id.*

91. Rom Bhandari, *Uganda's Anti-Homosexuality Bill*, THINK AFR. PRESS (Dec. 17, 2012), <http://allafrica.com/stories/201212180962.html>. For further discussion of the Uganda Anti-Homosexuality Bill, see David W. Austin, *Sexual Orientation and Gender Identity*, 47 ABA/SIL YIR (n.s.) 469 (2013).

92. In Portuguese, Banco Nacional de Angola.

93. Decreto Legislativo Presidencial n. 15/12 de 3 de Abril de 2012, DIÁRIO DA REPÚBLICA [D.R.] (52, série I): 1191 de 3.4.2012 (Angl.); Decreto Legislativo Presidencial n. 16/12 de 3 de Abril de 2012, DIÁRIO DA REPÚBLICA [D.R.] (52, série I): 1191 de 3.4.2012 (Angl.).

94. Lei n. 34/11 de 12 de Dezembro de 2011, DIÁRIO DA REPÚBLICA [D.R.] (86, série I): 2146 de 12.12.2011 (Angl.).

95. Decreto Presidencial n. 43/12 de 13 de Março de 2012, DIÁRIO DA REPÚBLICA [D.R.] (49, série I): 1151 de 13.3.2012 (Angl.).

96. Lei n. 30/11 de 13 de Setembro de 2011, DIÁRIO DA REPÚBLICA [D.R.] (176, série I): 4295 de 13.3.2011 (Angl.).

97. Decreto Legislativo Presidencial n. 3/12 de 16 de Março de 2012, DIÁRIO DA REPÚBLICA [D.R.] (52, série I): 1191 de 16.3.2012 (Angl.). See also Caryl C. Ben Basat et al., *International Energy and Natural Resources Law*, 47 ABA/SIL YIR (n.s.) 295 (2013).

98. Decreto Presidencial n. 80/12 de 8 de Maio de 2012, DIÁRIO DA REPÚBLICA [D.R.] (86, série I): 2146 de 8.5.2012 (Angl.).

#### 4. *Environment*

Presidential Decree No. 141/12 of June 21, 2012, approved the Regulations on the Prevention and Monitoring of Pollution in Angolan Waters, which apply to all vessels and rigs located in Angolan waters, as well as to other industrial facilities.<sup>99</sup>

#### 5. *Tax*

On December 16, 2011, the National Assembly authorized the President to implement a comprehensive reform in 2012 of the Angolan tax system and laws, including the Industrial Tax Code, the Personal Income Tax Code, and the Investment Income Tax Code.<sup>100</sup>

### B. MALAWI

In April 2012, Joyce Banda became Malawi's first female president and Africa's second-ever female head of state.<sup>101</sup>

In November 2012, Malawi suspended laws criminalizing homosexuality.<sup>102</sup> In addition, Parliament passed the Tripartite Elections Bill, which will enable the country to hold three elections in 2014: presidential, parliamentary, and local government.<sup>103</sup> Finally, the government pledged to amend the Marriage Age Bill to increase the legal marriage age from fifteen to as high as twenty-one, to combat Malawi's alarmingly high maternal death rate and protect girls from abuse.<sup>104</sup>

### C. MOZAMBIQUE

#### 1. *Entertainment*

By means of Decree No. 23/2012 of July 9, 2012, the Council of Ministers approved the new Regulations for Public Entertainment Events and Shows, which set out "the overall regulatory framework applicable to producers and promoters of shows and other forms of public entertainment."<sup>105</sup>

99. Decreto Presidencial n. 141/12 de 21 de Junho de 2012, DIÁRIO DA REPÚBLICA [D.R.] (118, série I): 2747 de 21.6.2012 (Angl.).

100. Lei n. 35/11 de 16 de Dezembro de 2011, DIÁRIO DA REPÚBLICA (242, série I): 5870 de 16.12.2011 (Angl.).

101. See Raphael Tenthani, *Joyce Banda: Malawi's First Female President*, BBC NEWS (Apr. 10, 2012, 11:28 AM), <http://www.bbc.co.uk/news/world-africa-17662916>.

102. See Aislinn Laing, *Malawi Suspends Anti-Gay Laws*, CHRISTIAN SCI. MONITOR (Nov. 7, 2012), <http://www.csmonitor.com/World/Africa/2012/1107/Malawi-suspends-anti-gay-laws>.

103. See *Malawi to Hold Three-Tier Polls in 2014: Tripartite Elections Bill Approved*, NYASA TIMES (Nov. 21, 2012), <http://www.nyasatimes.com/malawi/2012/11/21/malawi-to-hold-three-tier-polls-in-2014-tripartite-elections-bill-approved/>.

104. See Aislinn Laing, *Malawi to Increase Legal Age of Marriage to 21*, THE TELEGRAPH (Nov. 7, 2012, 7:39 PM), <http://www.telegraph.co.uk/news/worldnews/africaandindianocan/malawi/9662476/Malawi-to-increase-legal-age-of-marriage-to-21.html>.

105. Decree 23/2012, July 9, 2012 (Mozam.); see *Mozambique Legal News*, MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS (May-June 2012), [http://www.mirandalawfirm.com/uploadedfiles/20120831\\_cb60e0.pdf](http://www.mirandalawfirm.com/uploadedfiles/20120831_cb60e0.pdf).

## 2. *Petroleum and Mining*

Decree No. 63/2011 of November 7, 2011, came into effect in 2012. It sets forth specific rules for “the recruitment of foreign employees by companies holding mineral titles and petroleum concessions, as well as by their respective subcontractors.”<sup>106</sup>

## 3. *Projects and Infrastructure*

Through Decree No. 16/2012 of June 4, 2012, the Council of Ministers approved the Regulations that implement the Law on Public-Private Partnerships (PPP), Large Scale Projects (LSP), and Business Concessions (BC). The new Regulations further detail the procedures for the procurement, implementation, and monitoring of PPP, LSP, and BC projects, and the scope of application of the Mega Projects Law.<sup>107</sup>

## 4. *Labor*

Through Ministerial Statutes dated June 6, 2012, Mozambique set new minimum wage requirements for all sectors of economic activities and backdated the effectiveness of the requirements to April 1, 2012.<sup>108</sup>

## 5. *Tax*

On January 23, 2012, the Mozambique Parliament approved several amendments to the VAT Code. Parliament also introduced several changes to the Corporate Income Tax Code, including those concerning taxable profit assessment and account-keeping rules applicable to mining and petroleum companies.<sup>109</sup>

## D. NAMIBIA

### 1. *Environment*

On February 6, 2012, the Environmental Management Act of 2007<sup>110</sup> became law.<sup>111</sup> It seeks to “promote the sustainable management of the environment and the use of natural resources.”<sup>112</sup>

106. Decree 63/2011, Nov. 7, 2011 (Mozam.); see *Mozambique Legal News*, MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS (Nov. 2011-Jan. 2012), [http://www.mirandalawfirm.com/uploadedfiles/20120404\\_81f2d3.pdf](http://www.mirandalawfirm.com/uploadedfiles/20120404_81f2d3.pdf) (last visited Feb. 5, 2013).

107. Decree 16/2012, June 4, 2011 (Mozam.); Law 15/2011, Aug. 10, 2011 (Mozam.) (commonly referred to as “the Mega Projects Law”).

108. *Mozambique: Govt Approves New Minimum Wages*, ALLAFRICA.COM (Apr. 18, 2012), <http://allafrica.com/stories/201204190233.html>

109. Decree 3/2012, Feb. 24, 2012 (Mozam.); *Mozambique Legal News*, MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS (Feb.-Apr. 2012), [http://www.mirandalawfirm.com/uploadedfiles/20120704\\_16e1cd.pdf](http://www.mirandalawfirm.com/uploadedfiles/20120704_16e1cd.pdf).

110. Commencement of the Environmental Management Act, 2007, 4878 GOVT. GAZETTE 1, No.28 (Feb. 6, 2012) (Namib.), available at [http://www.namibweb.com/Environmental\\_Impact\\_Assessment\\_Regulations\\_2012.pdf](http://www.namibweb.com/Environmental_Impact_Assessment_Regulations_2012.pdf).

111. *Id.*

112. Promulgation of Environmental Management Act, 2007, 3966 GOVT. GAZETTE 1, No. 232 (Dec. 27, 2007) (Namib.), [http://www.saflii.org/na/legis/num\\_act/ema2007240.pdf](http://www.saflii.org/na/legis/num_act/ema2007240.pdf).

## 2. Health

On July 30, 2012, the High Court of Namibia decided a case involving sterilization by medical practitioners at state hospitals.<sup>113</sup> The plaintiffs alleged that they were sterilized without their consent because they were HIV-positive. The High Court ruled that the plaintiffs had not given informed consent to their respective sterilization procedures, but also that the plaintiffs had failed to prove the sterilizations were done as part of an unlawful practice of discrimination against them because of their HIV status.<sup>114</sup> The outcome of the case is of great import to health rights campaigners investigating allegations of coerced sterilizations of HIV-positive women in Kenya, South Africa, and Swaziland.<sup>115</sup>

### E. SOUTH AFRICA

Several legal cases have arisen in the wake of massive mining strikes and police violence in South Africa. In August 2012, police opened fire on striking miners at the Lonmin platinum mine in Marikana, killing thirty-four workers in an incident reminiscent of apartheid-era police brutality.<sup>116</sup> Government prosecutors initially charged 270 striking miners for the murder of their fellow miners.<sup>117</sup> The miners were charged under the legal doctrine of common purpose, used frequently under apartheid to hold crowds of protestors complicit in crimes committed by a few.<sup>118</sup> These charges provoked anger in a country already shocked by the shootings, and prosecutors provisionally withdrew the charges in September 2012.<sup>119</sup> South African President Jacob Zuma has created a judicial committee of inquiry into the shootings.<sup>120</sup>

On October 4, 2012, police allegedly killed a miner at a mine owned by Anglo American Platinum (Amplats), where over 28,000 miners were striking.<sup>121</sup> Amplats fired 12,000 striking miners soon afterward.<sup>122</sup> Representatives of the fired miners say that they will file murder and attempted murder charges against police.<sup>123</sup>

113. *LM & Others v. Gov't of the Republic of Namib.*, Nos. I 1603/2008, I 3518/2008, I 3007/2008, 2012 NAHC 211 (July 30, 2012), available at, <http://www.saflii.org/na/cases/NAHC/2012/211.pdf>.

114. *Id.* at 38-39.

115. See Alex Duval Smith, *Namibia Court Rules HIV-Positive Women Sterilised Without Consent*, THE GUARDIAN (July 30, 2012, 12:47 PM), <http://www.guardian.co.uk/global-development/2012/jul/30/namibia-hiv-women-sterilised-without-consent>.

116. David Smith & Terry Macalister, *South African Police Shoot Dead Striking Miners*, THE GUARDIAN, Aug. 17, 2012, at 20, available at <http://www.guardian.co.uk/world/2012/aug/16/south-african-police-shoot-striking-miners>.

117. See Lydia Polgreen, *South African Miners Face Murder Charges in Unrest*, N.Y. TIMES, Aug. 31, 2012, at A4.

118. See *id.*; Lydia Polgreen, *South Africa Lifts Charges of Murder in Mine Strike*, N.Y. TIMES, Sept. 2, 2012, at A4.

119. Polgreen, *supra* note 117, at A4.

120. See *South Africa Shootings: Marikana Mine Inquiry Begins*, BBC NEWS (Oct. 1, 2012, 9:52 AM), <http://www.bbc.co.uk/news/world-africa-19781993>.

121. See Rupert Neate, *Miner Dies as South African Industrial Unrest Continues*, THE GUARDIAN (Oct. 5, 2012, 4:59 AM), <http://www.guardian.co.uk/business/2012/oct/05/south-africa-miner-dies-anglo-american>.

122. See Milton Nkosi, *Amplats Fires 12,000 Striking South African Miners*, BBC NEWS (Oct. 5, 2012, 5:29 PM), <http://www.bbc.co.uk/news/world-africa-19850617>.

123. See *South African Miners to Lay Murder Charges*, HERALD SUN (Oct. 8, 2012, 9:18 AM), <http://www.heraldsun.com.au/news/breaking-news/safrican-miners-to-lay-murder-charges/story-e6frf7k6-1226490392022>.

## F. ZAMBIA

In April 2012, the Zambian government published a draft Constitution.<sup>124</sup> The minorities' rights of sexual orientation are a controversial issue in the constitutional reform process. Surprisingly, Zambia's Human Rights Commission recommended restricting the language of the draft Constitution's non-discrimination clause to prevent "the handing of certain rights to or inclusion of certain groups that the people of Zambia may not be ready or willing to accept . . . [particularly] members of the [LGBT] community."<sup>125</sup>

## G. ZIMBABWE

In June 2012, Zimbabwe's Ministry of Youth Development, Indigenisation, and Economic Empowerment published General Notice 280/2012, which requires businesses in several sectors to comply with the country's indigenization laws within one year.<sup>126</sup> The Act "empowers the government to secure that at least 51 [percent] of the shares of every public company and any other company are owned by indigenous Zimbabweans."<sup>127</sup> According to the Indigenisation Act, "Indigenous Zimbabweans" are defined as persons who were previously "disadvantaged by unfair discrimination on the grounds of his or her race, and any descendant of such person" before Zimbabwe's independence on April 18, 1980.<sup>128</sup> The law would exclude almost all white Zimbabweans.<sup>129</sup>

## VI. African Institutions

## A. AFRICAN UNION (AU)

## 1. AU Summits

The 18th African Union (AU) Summit, which saw President Thomas Boni Yayi of Benin assume the position of AU chairman, took place during the last week of January 2012.<sup>130</sup> It was the first to be held in the organization's new headquarters in Addis Ababa,

124. See *The 'Universality' of Rights and the Draft Zambian Constitution*, S. AFR. LITIG. CENTRE (Aug. 24, 2012), <http://www.southernafricalitigationcentre.org/2012/08/24/the-universality-of-rights-and-the-draft-zambian-constitution/>.

125. Human Rights Commission [HRC], *The First Draft Constitution: The Human Rights Commission's Submission to The Technical Committee on Drafting the Zambian Constitution*, at 5 (July 2012), available at [http://www.hrc.org.zm/media/hrc\\_submission\\_to\\_technical\\_committee\\_on\\_drafting\\_zambian\\_constitution.pdf](http://www.hrc.org.zm/media/hrc_submission_to_technical_committee_on_drafting_zambian_constitution.pdf).

126. See Kurai Prosper Masenyama, *Indigenisation Now on Home Stretch*, HERALD ONLINE (July 17, 2012, 9:50 AM), [http://www.herald.co.zw/index.php?option=com\\_content&view=article&id=47293:indigenisation-now-on-home-stretch&catid=39:opinion-a-analysis&Itemid=132](http://www.herald.co.zw/index.php?option=com_content&view=article&id=47293:indigenisation-now-on-home-stretch&catid=39:opinion-a-analysis&Itemid=132).

127. See Safiyya Patel, *Indigenisation Law to Affect More Sectors in Zimbabwe*, HOW WE MADE IT IN AFR. (Aug. 10, 2012, 1:13 PM), <http://www.howwemadeitinafrica.com/indigenisation-law-to-affect-more-sectors-in-zimbabwe/19150/>.

128. *Id.*

129. See Derreck Matyszak, *Everything You Ever Wanted to Know (and Then Some) About Zimbabwe's Indigenisation and Economic Empowerment Legislation But (Quite Rightly) Were Too Afraid to Ask*, IDASA (May 19, 2010), available at <http://www.idasa.org/media/uploads/outputs/files/indigenisation%20report.pdf>.

130. See *18th AU Summit Concludes with Package of Agreements*, SHANGHAI DAILY (Jan. 31, 2012), [http://www.shanghaidaily.com/article/article\\_xinhua.asp?id=48440](http://www.shanghaidaily.com/article/article_xinhua.asp?id=48440).

Ethiopia, a US \$200 million complex funded entirely by the Chinese government.<sup>131</sup> Among other developments at the meeting in Addis Ababa, the AU drafted policy goals relating to infrastructure development and created a roadmap for establishing a continent-wide free trade area by 2017.<sup>132</sup>

The 19th AU Summit in July 2012 was again held at the AU headquarters in Addis Ababa after the meeting's original host nation, Malawi, announced that Sudan's president, Omar al-Bashir, who is under indictment for war crimes before the International Criminal Court, would be barred from attendance.<sup>133</sup> At the summit itself, the heated contest between Mr. Jean Ping of Gabon and Ms. Nkosazana Dlamini-Zuma of South Africa for the presidency of the AU Commission took center stage.<sup>134</sup> Dlamini-Zuma emerged victorious to become the first woman to hold the AU's top executive role.<sup>135</sup> Delegates to the summit also filled three judicial slots on the African Court on Human and Peoples' Rights.<sup>136</sup> Finally, during sideline talks, the leaders of Rwanda and the DRC signed a pact calling for a multinational force to stamp out rebel groups operating in the eastern region of the latter state.<sup>137</sup>

## 2. Member State Relations

During the first week of 2012, the Peace and Security Council of the AU announced that its peacekeeping force, African Union Mission in Somalia (AMISOM), would take over areas of Somalia that had come under control of neighboring Ethiopia, whose military forces had followed al-Shabab militants into the beleaguered East African nation in October 2011.<sup>138</sup>

Following a military coup in March that removed Mali's president Amadou Toumani Touré from power weeks before a national election to determine his successor, the AU suspended the West African country's membership, reflecting regional and international opprobrium over Touré's ouster.<sup>139</sup>

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131. See *African Union Opens Chinese-Funded HQ in Ethiopia*, BBC NEWS (Jan. 28, 2012, 10:55 AM), <http://www.bbc.co.uk/news/world-africa-16770932>.

132. See *18th AU Summit Concludes*, *supra* note 130.

133. See *Ethiopia to Host Africa Union Summit After Omar al-Bashir Malawi Row*, BBC NEWS (June 12, 2012, 4:41 AM), <http://www.bbc.co.uk/news/world-africa-18407396>; *African Union Pulls Summit from Malawi in Row over Sudan's President*, THE GUARDIAN (June 8, 2012, 11:47 AM), <http://www.guardian.co.uk/world/2012/jun/08/african-union-malawi-summit-sudan>.

134. See, e.g., Elissa Jobson, *Bitter African Union Leadership Contest Casts Shadow on Ethiopia Summit*, THE GUARDIAN (July 13, 2012, 10:29 AM), <http://www.guardian.co.uk/global-development/2012/jul/13/african-union-leadership-contest-ethiopia>.

135. Press Release, African Union [AU], The African Union Has a New Commission (July 18, 2012), <http://au.int/en/content/african-union-has-new-commission>.

136. Press Release, AU, The Assembly of the Union Selects Three Judges of the African Court on Human and Peoples' Rights and a Judge for the Administrative Ad Hoc Tribunal of the AU (July 18, 2012), <http://au.int/en/content/assembly-union-elects-three-judges-african-court-human-and-peoples-rights-and-judge-administ>.

137. *DR Congo, Rwanda Leaders Meet on Neutral Force*, AFP (July 8, 2012), [http://article.wn.com/view/2012/08/07/DR Congo\\_Rwanda\\_leaders\\_meet\\_on\\_neutral\\_force/](http://article.wn.com/view/2012/08/07/DR Congo_Rwanda_leaders_meet_on_neutral_force/).

138. *Somalia: Ethiopian Troops 'to Hand Over to AU Force'*, BBC NEWS (Jan. 6, 2012, 6:49 AM), <http://www.bbc.co.uk/news/world-africa-16441240>.

139. See Celeste Hicks, *Mali Suspended from African Union*, THE GUARDIAN (Mar. 23, 2012, 2:30 AM), <http://www.guardian.co.uk/world/2012/mar/23/mali-suspended-african-union-coup>.



In April 2012, Guinea-Bissau was suspended from the AU after its military seized power in a coup launched in response to the government's plan to shrink the size of its armed forces.<sup>140</sup>

AU-brokered talks seeking to settle the ongoing economic and political disputes between Sudan and South Sudan<sup>141</sup> gave way to an agreement in September 2012 that reinstated oil exports from South Sudan to its northern neighbor and created a demilitarized zone along the border between the two countries, leaving unresolved the status of the contested region of Abyei.<sup>142</sup>

## B. AFRICAN DEVELOPMENT BANK

To comply with the Inter-American Development Bank's Agreement for Mutual Enforcement of Debarment Decisions,<sup>143</sup> the African Development Bank (AfDB) implemented several reforms to its anti-corruption rules and procedures in July 2012. First, it established a two-tier sanction process that includes a Sanctions Office and a Sanctions Appeal Board.<sup>144</sup> Second, AfDB revised its procurement rules to include obstructive practices as a sanctionable offense.<sup>145</sup> Finally, it expanded its range of sanctions to include reprimand, conditional non-debarment, debarment, and restitution.<sup>146</sup>

## C. AFRICAN EXPORT-IMPORT BANK

In 2012, the African Export-Import Bank (AFREXIM) continued its efforts to forge financial partnerships with both regional and international entities. In May 2012, AFREXIM signed a partnership agreement with the African Capacity Building Foundation.<sup>147</sup> This collaboration is aimed at fostering economic integration, strengthening institutional capacity for export development, enhancing research capacity, and mitigating country risks within African governments. The two institutions will also support economic policies and development initiatives that create trade alliances and economic interdependence throughout the region.<sup>148</sup>

Several of AFREXIM's policies and initiatives for 2012, such as its efforts to strengthen its relationships with African, U.S., and European financial institutions, were typical of

140. See *African Union Suspends Guinea-Bissau over Coup*, BBC NEWS (Apr. 17, 2012, 8:43 AM), <http://www.bbc.co.uk/news/world-17742420>.

141. See *South Sudan Accepts African Union Proposal over Abyei with Mixed Reactions*, SUDAN TRIB. (Sept. 23, 2012), <http://www.sudantribune.com/spip.php?article43988>; Luka Biong Deng, *Salva-Bashir Summit: The Final Round of the AU Roadmap*, SUDAN TRIB. (Sept. 22, 2012), <http://www.sudantribune.com/spip.php?article43974>.

142. See David McKenzie, *Sudan and South Sudan Sign Partial Agreement*, CNN (Sept. 27, 2012, 8:26 PM), <http://www.cnn.com/2012/09/27/world/africa/sudan-south-sudan-deal/index.html>.

143. Agreement for Mutual Enforcement of Debarment Decisions, INTER-AM. DEV. BANK (Apr. 9, 2010), available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35138561>.

144. See *AfDB Strengthens Its Anti-Corruption Agenda and Procurement Rules*, AFR. DEV. BANK GROUP (July 5, 2012), <http://www.afdb.org/en/news-and-events/article/afdb-strengthens-its-anti-corruption-agenda-and-procurement-rules-9463/>.

145. *Id.*

146. *Id.*

147. *ACBF Signs Partnership Agreement with AfrExim Bank*, ALLAFRICA (May 31 2012), <http://allafrica.com/stories/201205311462.html>.

148. *Id.*

how the Bank has operated since its inception in 1993. Other actions, however, highlighted AFREXIM's desire to solidify trade relations with China as a priority.<sup>149</sup> AFREXIM's selection of China as the first non-African host for its July 10 general meeting was indicative of this goal.<sup>150</sup> This event, organized by China Exim Bank, not only commemorated China's role as an AFREXIM shareholder but also coincided with China's emergence this year as Africa's largest trade partner<sup>151</sup> and the country's pledge of US \$20 billion in credit to Africa.<sup>152</sup>

## D. COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)

### 1. *Climate Change Initiative*

In February 2012, representatives from the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), and the Southern African Development Community (SADC) met to discuss the COMESA-EAC-SADC Programme on Climate Change Adaption and Mitigation.<sup>153</sup> The Climate Change initiative is intended to promote harmonized climate change policy and the development of climate-resilient agricultural practices within the region.<sup>154</sup> Although COMESA officials initially planned to create a COMESA Carbon Fund to access markets for carbon credits, that proposal was scaled down in favor of the current initiative.<sup>155</sup> The Climate Change Initiative is scheduled to run from April 2012 until March 2015 and has received funding from the governments of Norway, Britain, and the European Union.<sup>156</sup>

### 2. *COMESA-India Free Trade*

In July 2012, representatives from India and COMESA met to discuss the creation of a free trade area.<sup>157</sup> At present, India and COMESA operate under a long-standing Memo-

149. See Zhang Zhou, *Conference Special: African Bank Meeting Brings Opportunity to China*, CHINA DAILY (July 9, 2012, 7:56 AM), [http://www.chinadaily.com.cn/cndy/2012-07/09/content\\_15559701.htm](http://www.chinadaily.com.cn/cndy/2012-07/09/content_15559701.htm).

150. *Id.*

151. *Crucial China Role for African Export-Import Bank*, CHINA DAILY (July 10, 2012), [http://www.chinadaily.com.cn/cndy/2012-07/10/content\\_15563262.htm](http://www.chinadaily.com.cn/cndy/2012-07/10/content_15563262.htm).

152. See *China Pledges \$20bn in Credit for Africa at Summit*, BBC NEWS (July 19, 2012, 2:03 AM), <http://www.bbc.co.uk/news/world-asia-china-18897451>.

153. *COMESA-EAC-SADC Strategize on Climate Change Programme Implementation*, COMESA, [http://www.comesa.int/index.php?option=com\\_content&view=article&id=66:comesa-eac-sadc-strategize-on-climate-change-programme-implementation&catid=5:latest-news&Itemid=41](http://www.comesa.int/index.php?option=com_content&view=article&id=66:comesa-eac-sadc-strategize-on-climate-change-programme-implementation&catid=5:latest-news&Itemid=41) (last visited Feb. 16, 2013).

154. *Id.*; *COMESA and DFID Sign 38 Million Pounds Grant Agreement to Support COMESA-EAC-SADC Tripartite Climate Change Programme*, COMESA, [http://www.comesa.int/index.php?option=com\\_content&view=article&id=131:comesa-and-dfid-sign-38-million-pounds-grant-agreement-to-support-comesa-eac-sadc-tripartite-climate-change-programme&catid=5:latest-news&Itemid=41](http://www.comesa.int/index.php?option=com_content&view=article&id=131:comesa-and-dfid-sign-38-million-pounds-grant-agreement-to-support-comesa-eac-sadc-tripartite-climate-change-programme&catid=5:latest-news&Itemid=41) (last visited Feb. 16, 2013).

155. See David Musyoka, *COMESA Opts for Expanded Climate Change Plan*, SHANGHAI DAILY (Aug. 28, 2012), [http://www.shanghaidaily.com/article/article\\_xinhua.asp?id=91527](http://www.shanghaidaily.com/article/article_xinhua.asp?id=91527); Lauren van der Westhuizen, *COMESA to Create Fund to Support Smaller African Carbon Trade Projects*, BLOOMBERG (Aug. 27, 2010, 10:22 AM), <http://www.bloomberg.com/news/2010-08-27/comesa-to-create-fund-to-support-smaller-african-carbon-trade-projects.html>.

156. *COMESA and DFID Sign*, *supra* note 154; *COMESA-EAC-SADC Strategize*, *supra* note 153.

157. *India and COMESA Discuss a Possible FTA*, COMESA, [http://www.comesa.int/index.php?option=com\\_content&view=article&id=326:india-and-comesa-discuss-a-possible-fta&catid=5:latest-news&Itemid=41](http://www.comesa.int/index.php?option=com_content&view=article&id=326:india-and-comesa-discuss-a-possible-fta&catid=5:latest-news&Itemid=41) (last visited Feb. 16, 2013).

randum of Understanding, which sets forth technical, as well as other assistance programs.<sup>158</sup>

#### E. EAST AFRICAN COMMUNITY (EAC)

In 2012, key stakeholders helped finalize the development and 2013 launch of the EAC Scorecard Initiative, which will highlight legal compliance to, and harmonization with, the Common Market Protocol throughout the region in an effort to increase international investment and regional competitiveness.<sup>159</sup>

In March 2012, the East African Court of Justice struck down Tanzania's appeal against the Court's decision to prevent construction of an 800-kilometer road across the Serengeti National Park.<sup>160</sup> Environmentalists and conservationists have argued that the road would threaten the fragile ecosystem, especially because it cuts across the annual wildebeest migration path from Tanzania to Kenya.<sup>161</sup>

In June 2012, Rt. Honorable Margaret Nantongo Zziwa was elected as the first female speaker of East African Legislative Assembly (EALA).<sup>162</sup> In November the EALA approved a bill to harmonize and standardize university education systems throughout the EAC.<sup>163</sup>

#### F. ECONOMIC COMMISSION FOR AFRICA (ECA)

On June 22, 2012, over eighty experts from Eastern, Southern, and Northern Africa concluded a three-day workshop that resulted in the adoption of the Addis Ababa Declaration on Harmonization of Cyber Legislation in Africa.<sup>164</sup>

On August 29, 2012, the ECA bid farewell to Abdoulie Janneh, Under Secretary-General and Executive Secretary of the United Nations Economic Commission for Africa, after seven years of service.<sup>165</sup> Janneh will be remembered for being instrumental in "strategically re-positioning the organization to better support Africa's development agenda."<sup>166</sup>

158. *Id.*

159. See *EAC Development Strategy to Enhance Competitiveness*, JUMUIYA NEWS, Jan.-Mar.2012, at 7, available at [http://www.meac.go.ke/index.php?option=com\\_docman&Itemid=136](http://www.meac.go.ke/index.php?option=com_docman&Itemid=136).

160. See Press Release, E. African Court of Justice, Regional Court Says Can Hear Serengeti Case, Dismisses Tanzania Appeal (Mar.16, 2012), [http://www.news.eac.int/index.php?option=com\\_content&view=article&id=649:court-says-can-hear-serengeti-case&catid=48:eac-latest&Itemid=69](http://www.news.eac.int/index.php?option=com_content&view=article&id=649:court-says-can-hear-serengeti-case&catid=48:eac-latest&Itemid=69).

161. George Okore, *Serengeti: East African Court slaps Tanzania*, AFR. NEWS (Sept. 5, 2011, 10:46 AM), [http://www.africanews.com/site/Serengeti\\_East\\_African\\_court\\_slams\\_Tanzania/list\\_messages/39667](http://www.africanews.com/site/Serengeti_East_African_court_slams_Tanzania/list_messages/39667).

162. See Press Release, E. African Legislative Assembly, Margaret Zziwa is Elected Speaker of EALA (June 5, 2012), <http://www.eala.org/media-centre/press-releases/368-margaret-zziwa-is-elected-speaker-of-eala.html>.

163. Gilbert Nganga, *East Africa Ministers Approve HE Harmonisation Law*, U. WORLD NEWS (Nov. 25, 2012), <http://www.universityworldnews.com/article.php?story=20121123125255406>.

164. Press Release, U.N. Econ. Comm'n for Afr., Experts Adopt Declaration of Addis Ababa on Harmonization of Cyber Legislation (June 22, 2012).

165. Press Release, U.N. Econ. Comm'n for Afr., ECA Bids Farewell to Abdoulie Janneh, Promises to Build on his Legacy (Aug. 29, 2012).

166. *Id.*

### G. INTER-GOVERNMENTAL AUTHORITY ON DEVELOPMENT (IGAD)

The role of the Inter-Governmental Authority on Development (IGAD) in 2012 continued to be somewhat ambiguous in relationship to EAC, which includes IGAD members Kenya and Uganda, and other regional intergovernmental organizations. Nevertheless, IGAD members are working toward a 2013 revised treaty that is intended to clarify IGAD's role in the region.<sup>167</sup>

In February 2012, the IGAD Secretariat issued a legal opinion challenging the decision of the Kenyan High Court to issue an arrest warrant against Sudanese president Omar al-Bashir.<sup>168</sup>

### H. SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

In August 2012, during the 32nd Southern African Development Community (SADC) Summit of Heads of State and Government, member states resolved to limit the jurisdiction of the SADC Tribunal to disputes between member states, thereby eliminating the existing opportunity for individuals or organizations to bring cases.<sup>169</sup> The decision was met with discontent by regional civil society organizations, and was made "despite vigorous campaigning from citizens in the region to revive the Tribunal immediately."<sup>170</sup>

In November 2012, the Pan African Lawyers Union and the Southern Africa Litigation Centre requested the African Court on Human and People's Rights to use its advisory powers to determine the legality of the SADC Tribunal.<sup>171</sup>

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167. See Intergovernmental Auth. on Dev. [IGAD], *Communique of the 45th Ordinary Session of the IGAD Council of Ministers* (July 11, 2012), [http://igad.int/index.php?option=com\\_content&view=article&id=477:communique-of-the-45th-igad-council-of-minister&catid=47:communique&Itemid=149](http://igad.int/index.php?option=com_content&view=article&id=477:communique-of-the-45th-igad-council-of-minister&catid=47:communique&Itemid=149).

168. See IGAD, *IGAD Statement on Warranty of Arrest Against Sudanese President By Kenyan High Court* (Feb. 12, 2012), [http://igad.int/index.php?option=com\\_content&view=article&id=401:igad-statement-on-warranty-of-arrest-against-sudanese-president-by-the-kenyan-high-court&catid=46:executive-secretary&Itemid=123](http://igad.int/index.php?option=com_content&view=article&id=401:igad-statement-on-warranty-of-arrest-against-sudanese-president-by-the-kenyan-high-court&catid=46:executive-secretary&Itemid=123).

169. Gillian Higgins, *SADC Summit Seeks to Redefine Tribunal's Jurisdiction*, ARC PROJECT (Aug. 20, 2012), <http://arcproject.co.uk/?p=541>.

170. See Catherine Sasman, *SADC Leaders Neuter Tribunal*, THE NAMIBIAN (Aug. 21, 2012), <http://www.namibian.com.na/news-articles/national/full-story/archive/2012/august/article/sadc-leaders-neuter-tribunal/>.

171. See Richard Lee, *African Court Asked to Rule on SADC Tribunal*, OSISA (Nov. 26, 2012), <http://www.osisa.org/law/regional/african-court-asked-rule-sadc-tribunal>.