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## Africa

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## Africa

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## I. West Africa

### A. LIBERIA

In 2008, Liberia continued to fight corruption and instill good governance principles. In March 2008, the government amended the Revenue Code to restrict executive budgetary transfers that exceed 20%—an effort to improve fiscal transparency and accountability.<sup>1</sup> In August 2008, the government established an independent Anti-Corruption Commission, reportedly in response to calls by donors to take “tougher measures against graft.”<sup>2</sup> In September 2008, Liberia’s President Ellen Johnson Sirleaf issued a proclamation to implement the Principles and Criteria of the International Extractive Industries Transparency Initiative, which imposes enhanced government oversight and accountability for oil, mining, and logging companies.<sup>3</sup>

Nonetheless, observers recognized that pervasive corruption continued to threaten Liberia’s stability. “Transparency International ranked Liberia 42nd worst . . . of 180 countries on perceived levels of public-sector corruption, an improvement on its 2007 rank of 23rd worst.”<sup>4</sup> The 2008 Ibrahim Index of African Governance listed Liberia as thirty-eighth of forty-eight countries, an improvement over Liberia’s previous ranking of forty-fourth of forty-eight.<sup>5</sup> In the World Bank’s annual Doing Business Report, Liberia ranked 157th of 181 countries, a modest improvement over the previous year.<sup>6</sup> In July 2008, the Liberian parliament censured the national investment agency head “for illegally granting a tax waiver on a \$150 million investment deal.”<sup>7</sup> And an alleged bribery scandal implicating Liberia’s lucrative shipping registry, and involving close confidantes of President Sirleaf, was under investigation as of October 2008.<sup>8</sup> Earlier in the year, President Sirleaf had announced her intention to renegotiate the country’s agreement with the U.S.-based Liberian International Ship and Corporation Registry to promote Liberian involvement with the institution; Liberia’s ship registry is the second largest in the world.<sup>9</sup>

Liberia continued to rebuild its broken economy in 2008. Early in the year, Great Britain contributed twenty million pounds towards an international effort to help Liberia repay part of its outstanding debt to the International Monetary Fund (IMF) and the African Development Bank—a move aimed towards clearing the way for Liberia to qualify for debt relief through the Heavily Indebted Poor Countries (HIPC) initiative.<sup>10</sup> Those efforts succeeded and Liberia’s IMF arrears were cleared in March 2008, allowing the country to normalize its relations with the IMF. In response, the IMF agreed to provide

1. Press Release, Executive Mansion, President Sirleaf Signs New Firestone Agreement (Mar. 31, 2008).

2. Alphonso Toweh, *Liberia Leader Sets up Anti-Corruption Commission*, REUTERS, Aug. 22, 2008 at 1.

3. *Presidential Proclamation on the Principles and Criteria of the International Extractive Industries Transparency Initiative*, Sept. 10, 2008, available at [http://www.eitiliberia.org/leit\\_i\\_proclamation.pdf](http://www.eitiliberia.org/leit_i_proclamation.pdf).

4. Tristan McConnell, *Persistent Corruption Threatens Liberian Stability*, CHRISTIAN SCI. MONITOR, Sept. 25, 2008, <http://www.csmonitor.com/2008/0925/p07s03-woaf.html>

5. See Mo Ibrahim Found., Background Briefing 3, 4 (Oct. 6, 2008), [http://www.moiibrahimfoundation.org/index-2008/pdf/english\\_briefing\\_note.pdf](http://www.moiibrahimfoundation.org/index-2008/pdf/english_briefing_note.pdf).

6. See World Bank Group, *Rankings - Doing Business*, <http://www.doingbusiness.org/economyrankings/>.

7. McConnell, *supra* note 4.

8. *Id.*

9. Press Release, Executive Mansion, Liberia’s Maritime Program Must be in the National Interest-Says President Sirleaf (Feb. 29, 2008).

10. *Britain Helps Liberia Clear Debt Arrears*, REUTERS, Feb. 7, 2008.

\$952 million to Liberia for 2008-2010 and to provide debt relief through the HIPC process to cover \$4.4 billion of the country's \$4.7 billion debt.<sup>11</sup>

Following extensive consultations, in April 2008, the government published the final draft of its Poverty Reduction Strategy, a comprehensive development program geared towards economic growth, national security, rule of law, and infrastructure.<sup>12</sup> In June, the 2008 Liberia Poverty Reduction Forum was held in Berlin, Germany.<sup>13</sup> Development parties confirmed support to Liberia of \$250-300 million over the next year. Approximately \$140 million of that is slated to come from the World Bank and the African Development Bank.

In October 2008, the Overseas Private Investment Corporation and Robert Johnson, a prominent American businessman, announced the establishment of a \$100 million program to promote investment in Liberia. The project, which is the latest collaboration between the Robert Johnson Group of Companies and Liberia, will focus on developing affordable housing.<sup>14</sup> Also in October 2008, the U.S. Peace Corps announced its return to Liberia after a nearly twenty-year absence due to Liberia's war and instability; volunteers will focus on rebuilding Liberia's education sector.<sup>15</sup>

Finally, the year saw the prosecution in the United States of Charles McArthur Emmanuel, the son of Charles Taylor, Liberia's former dictator who remains on trial for war crimes at The Hague.<sup>16</sup> On October 30, 2008, a federal jury in Florida convicted Mr. Emmanuel, a U.S. citizen, of torturing opponents of his father's government in Liberia.<sup>17</sup> In Liberia, Mr. Emmanuel had "commanded a military unit known as the Demon Forces" during his father's rule.<sup>18</sup> The landmark trial was the first prosecution brought pursuant to the 1994 law that makes it a federal crime for U.S. citizens to commit torture outside of the United States.<sup>19</sup>

## B. SIERRA LEONE

On February 19, 2008, Sierra Leone launched the Justice Sector Reform Strategy (JSRS) to promote much-needed institutional reforms in the judicial and related sectors. The JSRS establishes a comprehensive framework to overhaul the country's judicial sys-

11. IMF Survey: *IMF to Back Liberia with Debt Relief, New Financing*, IMF SURVEY MAGAZINE, Mar. 18, 2008, <http://www.imf.org/external/pubs/ft/survey/so/2008/NEW031808A.htm>.

12. Press Release, Executive Mansion, Liberia's Final Poverty Reduction Strategy (PRS) Available Online NOW! (Apr. 24, 2008) available at [http://www.emansion.gov.lr/press.php?news\\_id=698](http://www.emansion.gov.lr/press.php?news_id=698); Press Release, Executive Mansion, Legislative and Executive Branches Hold Consultations on the Poverty Reduction Strategy (Mar. 17, 2008) available at [http://www.emansion.gov.lr/press.php?news\\_id=657](http://www.emansion.gov.lr/press.php?news_id=657).

13. Press Release, Executive Mansion, LPRF Ends with More Support for Liberia's Reconstruction (June 27, 2008) available at [http://www.emansion.gov.lr/press.php?news\\_id=765](http://www.emansion.gov.lr/press.php?news_id=765).

14. Press Release, Executive Mansion, USD\$100 Million Announced For Liberia to Promote Investment (Oct. 7, 2008) available at [http://www.emansion.gov.lr/press.php?news\\_id=903](http://www.emansion.gov.lr/press.php?news_id=903).

15. Todd Pitman, *Peace Corps Returns to Liberia After Long Absence*, ASSOCIATED PRESS, Oct. 22, 2008.

16. Yolanne Almanzar, *Tales of Torture Overseas in a Case Testing U.S. Law*, N.Y. TIMES, Oct. 3, 2008, at A17.

17. Yolanne Almanzar, *Son of Ex-President of Liberia Is Convicted of Torture*, N.Y. TIMES, Oct. 31, 2008, at A16.

18. *Id.*

19. See 18 U.S.C. § 2340A (2000).

tem. A key component of the JSRS is the improvement of access to justice to marginalized members of Sierra Leone's society, especially women and youth.<sup>20</sup>

In September, almost a year after assuming office, President Ernest Bai Koroma signed legislation to bolster the new government's efforts to wipe out corruption.<sup>21</sup> The Anti-Corruption Act, 2008, aims to promote significant reduction in corruption in Sierra Leone's public institutions.<sup>22</sup> The law mandates public disclosure of all assets by public officials, including the president and other top members of the government. The act also enhances prosecution of corruption-related offenses and provides for extradition of offenders pursuant to international cooperation agreements.<sup>23</sup>

#### C. GUINEA

In July, the Government of Guinea enacted Bill No. 2008/040 outlining the Ministry of Justice's responsibility for government policy on judicial affairs, including equal access to justice.<sup>24</sup>

#### D. CÔTE D'IVOIRE

In January 2008, the United Nations Security Council renewed the mandate of the United Nations (U.N.) peacekeeping force, the UNOCI that has been stationed in Côte d'Ivoire since 2005, following the 2002-2003 war that left the country "divided between a government-held south and a rebel-controlled north."<sup>25</sup> The mandate was extended for only six months to encourage national leaders to move the country towards national elections—a principal objective established by the Ouagadougou Peace Agreement signed by President Laurent Gbagbo and ex-Forces Nouvelles rebellion leader Guillaume Soro, now the Prime Minister, in March 2007.<sup>26</sup> To that end, the country's political parties signed a "good conduct code" in April 2008 that committed to the principle of "democratic, free, open[,] and transparent elections," and donors including France, the European Union, and Japan unblocked \$43 million to aid the country in organizing elections.<sup>27</sup> That same month, the International Crisis Group issued a grave warning concerning the government's lack of "decisive progress on two [critical] issues" at the core of Côte d'Ivoire's instability: the "identification of . . . who is a citizen and who may vote," and the

20. See Government of Sierra Leone, *Justice Sector Reform Strategy & Investment Plan, 2008-2010* (2007).

21. *Sierra Leone Tackles Corruption*, TIMES, Sept. 3, 2008, available at <http://www.thetimes.co.za/News/Article.aspx?id=835753>.

22. Anti-Corruption Act of 2008, available at <http://www.sierra-leone.org/Laws/2008-12.pdf>.

23. *Id.* at § 126.

24. Decree No. 2008/040/PRG/SGG, art. 47, July 2008, available at <http://www.guinee.gov.gn/lired decret.php?id=7#dd>.

25. S.C. Res. 1795, ¶ 14, U.N. Doc. S/RES/1795 (Jan. 15, 2008); Patrick Worsnip, *UN Renews Ivory Coast Force Mandate for Six Months*, REUTERS, Jan. 15, 2008.

26. Int'l Crisis Group, *Côte d'Ivoire: Can the Ouagadougou Agreement Bring Peace?* (June 27, 2007), <http://www.crisisgroup.org/home/index.cfm?id=4916>.

27. U.N. Sec. Council *Seventeenth Progress Report of the Secretary-General on the United Nations Operations in Côte d'Ivoire*, ¶ 6, U.N. Doc. S/2008/451 (July 10, 2008) [hereinafter Secretary-General Report]; Loucoumane Coulibaly, *Ivorian Parties Sign Electoral "Good Conduct" Code*, REUTERS, Apr. 24, 2008.

disarmament and reintegration “of former rebels and militias.”<sup>28</sup> Indeed, “the question of whether immigrants qualify as Ivorian citizens was at the heart of the 2002[-2003] armed conflict.”<sup>29</sup> Three months later, the U.N. reported that the country’s “mobile court operations” had made “significant progress . . . issuing 627,923 declaratory judgments in lieu of birth certificates” and providing valid identity papers to over 530,000 Ivorian nationals since September 2007.<sup>30</sup>

In July 2008, with national elections scheduled for November 30, the Security Council extended UNOCI’s mandate through January 2009.<sup>31</sup> But in October 2008, election officials announced that the November poll would be postponed. Officials indicated that “delays in registering voters and problems integrating former fighters into a new army” necessitated the additional delay.<sup>32</sup> Reports indicated that fewer than one million voters have been registered out of an expected nine million voters.<sup>33</sup> At the time of writing, a new date for elections had not yet been set.

Ramifications of Côte d’Ivoire’s 2006 toxic dumping scandal continued to unfold in the courts in 2008. The dispute arises out of the August 2006 dumping of approximately 500 tons of toxic petrochemical waste at fifteen locations in and around Abidjan, the country’s commercial center. At least sixteen deaths are blamed on the dumped waste, and more than 100,000 people have reportedly sought medical treatment as a result.<sup>34</sup> Although a local Ivorian company named Tommy dumped the material, the waste originated with the Dutch multinational company Trafigura, which had chartered the ship that delivered it to Côte d’Ivoire for disposal. Trafigura has repeatedly denied any liability, but in February 2007, agreed to pay the Ivorian government approximately \$200 million to compensate victims of the toxic sludge in exchange for Trafigura’s immunity from suit and the release of Trafigura executives being held in Ivorian custody.<sup>35</sup> “In March 2008, the Ivorian Court of Appeal ruled that there was insufficient evidence to pursue criminal charges against [Trafigura].”<sup>36</sup>

Despite the out-of-court settlement, many victims contend that compensation has been inadequate or nonexistent. In September 2008, lawyers representing a 30,000-member class initiated proceedings against Trafigura in London, with a trial tentatively scheduled for late 2009.<sup>37</sup> Trafigura, which is also being sued in the Netherlands in connection with the dumping scandal, has indicated that it intends to prove that the waste did not cause the

28. Int’l Crisis Group, *Côte d’Ivoire: Ensuring Credible Elections* (Apr. 22, 2008), <http://www.crisisgroup.org/home/index.cfm?id=5400&l=1>.

29. *Ivorian Voter Registration Halted*, BBC NEWS, Oct. 24, 2008, <http://news.bbc.co.uk/1/hi/world/africa/7688367.stm>.

30. Secretary-General Report, *supra* note 27, ¶ 26.

31. S.C. Res. 1826, ¶ 19, U.N. Doc. S/RES/1826 (July 29, 2008).

32. Benoit Hili, *Official: Ivory Coast Election Will Be Postponed*, ASSOCIATED PRESS, Oct. 17, 2008.

33. *Ivorian Voter Registration Halted*, *supra* note 29.

34. John James, *Ivory Coast’s Forgotten Acid Waste*, BBC NEWS, Aug. 19, 2008, <http://news.bbc.co.uk/2/hi/africa/7570269.stm>.

35. See David Lewis, *Trader Faces Damages Case for I. Coast Toxic Waste*, REUTERS NEWS, Sept. 29, 2008; *Ivory Coast Toxic Dumping Case Settled for US\$198 Million*, ENVTL. NEWS SERV., Feb. 15, 2007, <http://www.ens-newswire.com/ens/feb2007/2007-02-15-03.asp>.

36. *Toxic Waste Verdict Disappoints*, BBC NEWS, Oct. 23, 2008, <http://news.bbc.co.uk/2/hi/africa/7687612.stm>.

37. Lewis, *supra* note 35.

plaintiffs' injuries.<sup>38</sup> In addition, Trafigura has launched a libel suit against Leigh, Day and Company, counsel to the Ivorian claimants.<sup>39</sup>

Also in September 2008, in Abidjan, the criminal trial began of several ports and customs officials accused of collaborating in the dumping incident. In mid-October, defense counsel staged a walk-out to protest Trafigura representatives' absence from court.<sup>40</sup> Days later, two of the nine defendants were convicted and seven were acquitted.<sup>41</sup> The head of Tommy received a twenty-year prison sentence.<sup>42</sup> Meanwhile, Ivorian government lawyers indicated that despite the 2007 settlement and the March 2008 ruling, they may yet pursue criminal charges against Trafigura.<sup>43</sup> The tragedy has brought attention to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.<sup>44</sup> Sixty countries have ratified an amendment to the Convention that prohibits the export of hazardous waste for disposal from OECD to non-OECD countries. But the amendment has not yet entered into force.

Côte d'Ivoire also made progress in 2008 towards rebuilding its economy, which has not yet returned to pre-conflict levels. In February 2008, Côte d'Ivoire and the IMF agreed on an economic program for the country for 2008.<sup>45</sup> Subsequently, Côte d'Ivoire received \$66 million in April 2008 under the IMF's Emergency Post Conflict Assistance program.<sup>46</sup> Nonetheless, in October 2008, the IMF expressed concern that "budget execution" in 2008 had not conformed to the agreed program, despite higher than expected revenue resulting from high cocoa and oil prices.<sup>47</sup> The IMF indicated that Côte d'Ivoire's eligibility for assistance from the IMF's Poverty Reduction and Growth Facility would depend to some degree on the country's ability to implement the 2008 economic program according to its terms.<sup>48</sup>

38. *Côte d'Ivoire: Who Is to Blame for Dumping Toxic Oil Sludge?*, IRIN AFR., Oct. 1, 2008, <http://www.irin-news.org/Report.aspx?ReportId=80684>.

39. *Id.*

40. *Ivory Coast Pollution Trial Stops*, BBC NEWS, Oct. 9, 2008, <http://news.bbc.co.uk/2/hi/africa/7660419.stm>.

41. *Toxic Waste Verdict Disappoints*, *supra* note 36.

42. *Id.*

43. *Côte d'Ivoire: Toxic Waste Criminal Investigations May Indict Higher-Ups*, IRIN, Oct. 2, 2008, [available at http://www.alertnet.org/thenews/newsdesk/IRIN/16eedbf990aa3c2f0206832d7e3d349a.htm](http://www.alertnet.org/thenews/newsdesk/IRIN/16eedbf990aa3c2f0206832d7e3d349a.htm).

44. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, May 5, 1992, S. Treaty Doc. No. 102-5, 1673 U.N.T.S. 57, [available at http://www.basel.int/text/conc-rev.pdf](http://www.basel.int/text/conc-rev.pdf). Ratifications of the Ban Amendment, <http://www.basel.int/ratif/ban-alpha.htm> (last visited Feb. 13, 2009) (information concerning the ratification status of the Ban Amendment).

45. Press Release, Int'l Monetary Fund, Statement of an IMF Staff Mission at the Conclusion of a Staff Visit to Côte d'Ivoire (Mar. 3, 2008), [available at http://www.imf.org/external/np/sec/pr/2008/pr0839.htm](http://www.imf.org/external/np/sec/pr/2008/pr0839.htm).

46. Press Release, Int'l Monetary Fund, Statement of an IMF Staff Mission at the Conclusion of a Staff Visit to Côte d'Ivoire (June 20, 2008), [available at http://www.imf.org/external/np/sec/pr/2008/pr08144.htm](http://www.imf.org/external/np/sec/pr/2008/pr08144.htm).

47. Press Release, International Monetary Fund, Statement at the Conclusion of an IMF Staff Mission to Côte d'Ivoire (Oct. 9, 2008), [available at http://www.imf.org/external/np/sec/pr/2008/pr08241.htm](http://www.imf.org/external/np/sec/pr/2008/pr08241.htm).

48. *Id.*

## II. Central Africa

### A. DEMOCRATIC REPUBLIC OF CONGO

Legal developments in the Democratic Republic of the Congo (DRC) in 2008 were dominated by the many laws that were enacted as Congolese legislators accelerated the pace of implementing key reforms called for by the Congolese Constitution.<sup>49</sup> On October 7, 2008, the Congolese president signed into law Organic Law No. 08/016, which establishes the principles governing the administration of decentralized entities such as cities, towns, and villages.<sup>50</sup> A key provision of this law provides for the financial autonomy of local governments, in keeping with the requirements of the constitution.<sup>51</sup> A similar law was promulgated earlier in the year expounding upon the constitutional principles<sup>52</sup> of financial and administrative autonomy of the twenty-five provinces (plus the capital city of Kinshasa) vis-à-vis the central government.<sup>53</sup>

Other laws promulgated on July 7, 2008, seek fundamentally to transform, and in some cases privatize, government-owned companies to advance the government's policies of disengaging from commercial and industrial enterprises, of further liberalizing the economy, and of encouraging private investment. Law No. 08/007 enunciates general principles meant to guide the transformation of government-owned companies.<sup>54</sup> Those government-owned companies whose activities are commercial in nature are transformed into commercial corporations (i.e. *société par actions à responsabilité limitée* or *SARL*) subject to rules of corporate law with the state as the sole shareholder;<sup>55</sup> and the state can freely disengage from their operations.<sup>56</sup> Law No. 08/008 guides the disengagement of the government from commercial corporations.<sup>57</sup> The government can disengage by completely or partially selling its shares to private persons, by transferring the management of the enterprise to a private entity, or by entering into other forms of public-private arrangements.<sup>58</sup> Two other laws complement the laws for transforming public companies. Law

49. See generally CONSTITUTION DE LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO DU 18 FÉVRIER 2006 [Constitution] (Dem. Rep. Congo) available at <http://www.glin.gov/view.action?glinID=174855> (only available in French).

50. See Loi Organique n° 08/016 du 07 Octobre portant composition, organisation et fonctionnement des Entités Territoriales Décentralisées et leurs rapports avec l'Etat et les Provinces, JOURNAL OFFICIEL DE LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO, Oct. 10, 2008, No. 08/016 (2008) (Dem. Rep. Congo).

51. See *id.* arts. 104, 105, 115.

52. See CONSTITUTION DE LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO DU 18 FÉVRIER 2006 arts. 3, 195, 201 [Constitution] (Dem. Rep. Congo) available at <http://www.glin.gov/view.action?glinID=174855> (only available in French).

53. See generally Loi n 08/012 du 31 Juillet 2008 Portant Principes Fondamentaux Relatifs à la Libre Administration des Provinces, No. 08/012, JOURNAL OFFICIEL DE LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO, July 31, 2008 (Dem. Rep. Congo).

54. See Loi n 08/007 du 07 Juillet 2008 Portant Dispositions Générales Relatives à la Transformation des Entreprises Publiques, No. 08/007 (2008) (Dem. Rep. Congo).

55. See *id.* art. 5. It is worth remarking that this measure introduces into Congolese corporate law the concept of a corporation having one shareholder (*société unipersonnelle*), contrary to the traditional civil law understanding of a corporation (*société*) as necessitating the accord of at least two persons.

56. See *id.* art. 7 ("The State can disengage from public companies that have been transformed into commercial corporations.").

57. See Loi n 08/008 du 07 Juillet 2008 Portant Dispositions Générales Relatives au Désengagement de l'Etat des Entreprises du Portefeuille, No. 08/008 (2008) (Dem. Rep. Congo).

58. *Id.* arts. 4, 7, 8.

No. 08/009 defines the status of public institutions not engaged in profit-seeking activities, but whose mission is to provide a public service.<sup>59</sup> And Law No. 08/010 lays out the rules for managing the state's portfolio of companies, including conflict of interest checks that must be followed in the course of disengaging the state from its commercial companies.<sup>60</sup>

To fulfill the constitutional mandate of guaranteeing the independence of the judiciary,<sup>61</sup> Organic Law No. 08/013 provides for rules governing the powers and the administration of the *Conseil Supérieur de la Magistrature* (Superior Council of the Magistrature),<sup>62</sup> the institution tasked by the constitution with, *inter alia*, managing the careers of judges and prosecutors and independently setting the operating budget of the entire judiciary.<sup>63</sup> Another notable law, Law No. 08/011, makes it a crime to discriminate against or stigmatize people living with HIV/AIDS or their spouses or their relatives,<sup>64</sup> and a crime to voluntarily transmit HIV/AIDS.<sup>65</sup> The same law also requires the state to provide free treatment and other forms of support to people living with HIV/AIDS.<sup>66</sup>

In 2008, the Congolese legislature made progress toward implementing the constitution's reform provisions. Whether those reforms will be fully implemented will depend on executive branch willingness to follow through and on whether the necessary human, financial, and other resources are available.

## B. CAMEROON

In January, President Paul Biya indicated that he would seek an amendment of the Cameroonian Constitution to eliminate term limits on the presidency amid widespread criticism and opposition.<sup>67</sup>

## C. SÃO TOMÉ E PRÍNCIPE

### 1. *Energy and Environment*

In 2008, the top job at the Ministry of Natural Resources, Energy, and Environment—responsible for regulating exploration and production—switched hands various times as the country looked to regain momentum in the oil and gas exploration and pro-

59. See Loi n 08/009 du 07 Juillet 2008 Portant Dispositions Générales Applicables aux Etablissements Publics, No. 08/009 (2008) (Dem. Rep. Congo).

60. See Loi n 08/010 fixant les règles relatives à l'organisation et à la Gestion du Portefeuille de l'Etat, No. 08/010 (2008) (Dem. Rep. Congo).

61. See Constitution of the DRC art. 149, available at <http://www.glin.gov/view.action?glinID=174855> (only available in French).

62. See Loi Organique n 08/013 du 05 Août 2008 Portant Organisation et Fonctionnement du Conseil Supérieur de la Magistrature, No. 08/013 (2008) (Dem. Rep. Congo).

63. See CONSTITUTION DE LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO DU 18 FÉVRIER 2006 art. 152 [Constitution] (Dem. Rep. Congo), available at <http://www.glin.gov/view.action?glinID=174855> (only available in French).

64. See Loi n 08/011 du 14 Juillet 2008 Portant Protection des Droits des Personnes vivant avec le VIH/SIDA et des Personnes Affectées, No. 08/011, art. 42, (2008) (Dem. Rep. Congo).

65. *Id.* art. 45.

66. *Id.* art. 11.

67. See *Anger at Cameroon Third Term Hint*, BBC NEWS, Jan. 2, 2008, <http://news.bbc.co.uk/2/hi/africa/1168103.stm>.

duction sector. In the midst of these changes, the government approved a new model production sharing agreement by means of Decree No. 11/2008 of May 7, 2008.<sup>68</sup> The model will serve as the basis for future negotiations with oil companies respecting granting exploration and production rights in the country's exclusive economic zone.

Through Presidential Decree No. 9/2008 of May 19, 2008, São Tomé e Príncipe ratified the Kyoto Protocol to the U.N. Convention on Climate Change.<sup>69</sup>

## 2. *Politics and Government*

In June 2008, Mr. Menezes appointed Mr. Joaquim Rafael Branco as Prime Minister of a newly restructured governing comprising thirteen ministries.<sup>70</sup>

## 3. *Telecommunications and Transportation*

In the telecommunications sector, Decree No. 33/2007 of December 7, 2007, granted *Companhia Santomense de Telecomunicações*, the first license to set up and operate a GSM 900 cell phone network.<sup>71</sup> This license is valid for twenty years, ending March 1, 2027, and may be renewed for successive ten-year periods.<sup>72</sup> The license may be revoked if the company does not comply with its duties thereunder.

On the same date, the government enacted Decree 34/2007 approving regulations for the public tender for granting the second GSM 900 license.<sup>73</sup> The regulations set forth the rules on organizing the tender, requirements to be fulfilled by candidates, instructions and deadlines for submitting bids, and rules for proposal validity and license issuance.

In February 2008, the government launched an international public tender to establish and operate a new GSM 900 network.<sup>74</sup>

In the transportation sector, 2007 was marked by the creation of the São Tomé e Príncipe Maritime and Ports Institute.<sup>75</sup> This institute is supervised by the Minister of Public Works and Infrastructure and is responsible for controlling maritime and port activities, for overseeing the safety of vessels, persons and cargo, and for preventing vessels from polluting.

## 4. *Technology*

In 2008, São Tomé e Príncipe took various measures to foster innovation. Decree-Law No. 19/2008 was gazetted on June 16, 2008 to create the Innovation and Knowledge Institute, which is meant to implement the "information and knowledge society" in the country, and to foster scientific research, development, and technological innovation.<sup>76</sup>

68. Decree No. 11/2008 (2008) (São Tomé & Príncipe).

69. Decree No. 9/2008 (2008) (São Tomé & Príncipe).

70. Decree No. 12/2008 (2008) (São Tomé & Príncipe).

71. Decree No. 33/2007 (2007) (São Tomé & Príncipe).

72. *Id.*

73. Decree No. 34/2007 (2007) (São Tomé & Príncipe).

74. Order No. 2/2008 (2008) (São Tomé & Príncipe).

75. Decree-Law No. 32/2007 (2007) (São Tomé & Príncipe).

76. Decree-Law No. 19/2008 (2008) (São Tomé & Príncipe).

As a result of this statute, the Committee for Electronic Governance (created by Decree-Law No. 14/2002 of December 17, 2002) was extinguished.<sup>77</sup>

Decree 7/2008, of May 7, 2008, created the Information Technology (IT) Directorate, which will be responsible for proposing and executing policies regarding IT issues, and for advising all public institutions in this respect.<sup>78</sup>

### 5. *Finance and Banking*

In the public finance sector, Decree 8/2008 of May 7, 2008, created the Public Accounting Directorate and approved its bylaws.<sup>79</sup> This directorate has been entrusted with recording and monitoring budgetary, financial, and economic performance and with drawing up the State's General Account.<sup>80</sup>

Law 3/2008, of June 24, 2008 approved the 2008 General State Budget that foresees revenues and expenditures of \$88,610,305.95.<sup>81</sup>

In the banking sector in 2008, the São Tomé e Príncipe Central Bank approved various Permanent Application Rules (NAP) applicable to financial institutions. Effective March 3, 2008, the Central Bank approved NAPs on the solvency ratio,<sup>82</sup> internal control, auditing and accountancy rules,<sup>83</sup> and submission of regular reports.<sup>84</sup>

### 6. *Employment and Migration*

Law No. 14/2007, of December 4, 2007, established measures to guarantee employee health, safety and hygiene in the work place, and defining employer and employees duties in this respect.<sup>85</sup> This statute applies to all activity in the public, private, cooperative, and social sectors, except the armed forces, police, and civil defense services. The Inspectorate of Labor and the Health Care Directorate will monitor compliance. Offenders will be subject to fines.

On the migration front, Decree-Law no. 5/2008, of February 26, 2008, enacted the new legal regime for ordinary and temporary passports.<sup>86</sup> Ordinary passports are granted to resident and non-resident São Tomé e Príncipe nationals, while the temporary passport is defined as a travel document that allows its holder to enter into and exit national territory for a short period. This statute also calls for the creation of a Passport Database, administered by the Immigration Service, to collect updated information on passport issuances.

77. Decree-Law No. 14/2002 (2002) (São Tomé & Príncipe).

78. Decree No. 7/2008 (2008) (São Tomé & Príncipe).

79. Decree No. 8/2008 (2008) (São Tomé & Príncipe).

80. *Id.*

81. Law No. 3/2008 (2008) (São Tomé & Príncipe).

82. NAP no. 10/07 established a minimum solvency ratio of 12 percent, applicable to all financial institutions authorized to operate in the country, including offshore banks subject to Decree-Law no. 62/95. Permanent Application Rule 10/07 (2008).

83. NAP no. 11/07 sets forth the rules for the implementation of internal control systems in the banks authorized to operate in the country. *Id.*

84. NAP no. 13/07 defined the deadlines for submission of information to the Central Bank by banks authorized to operate in the country. Permanent Application Rule 13/07 (2008).

85. Law No. 14/2007 (2007) (São Tomé & Príncipe).

86. Decree-Law No. 5/2008 (2008) (São Tomé & Príncipe).

## E. EQUATORIAL GUINEA

### 1. *Energy*

In mid-2008, Equatorial Guinea and Angola signed a Cooperation Agreement aimed at developing both countries' oil sector.<sup>87</sup> For five years, these countries will exchange information on policies, legislation, and transfer of technology, develop joint projects, and promote training of experts and know-how sharing, including joint participation in seminars, conferences.<sup>88</sup> The way seems to also be paved for close cooperation between the respective national oil companies—GEPetrol and Sonangol. This Cooperation Agreement may be extended for successive five-year periods.<sup>89</sup>

### 2. *Politics and Political Organization*

Late 2007 saw the creation of five new municipalities: Batete, Moka, Nkumekien, Teguete, and Nzangayong. Malabo and Bata, the country's major cities, were reorganized to include new districts. A few months later, in early 2008, another municipality, Cabo San Juan, was created on the mainland.

Before entering the new year, two new government agencies were created. Decree 69/2007, of October 27, 2007, created *Guinea Ecuatorial de Proyectos* (GE Proyectos), an entity entrusted with planning, developing, and monitoring implementation of all State-funded infrastructure projects.<sup>90</sup> GE Proyectos will also prepare technical specifications for tenders, for model contracts to support projects, and for training nationals. This agency replaces the Geoprojects agency.

The other new agency was *Ente Público de Gestión Inmobiliaria de Guinea Ecuatorial* (ENPIGE), a state agency created by means of Decree 74/2007, of December 3, 2007, to manage all state-owned real estate, including renting and otherwise disposing thereof.<sup>91</sup> The Government appointed a commission to list all real estate property that will be subject to ENPIGE's administration.

The spotlight in early May 2008 was on Parliamentary and local elections. *Partido Democrático de Guinea Ecuatorial* (PDGE), the ruling party of President Obiang, grabbed 99% of the Parliamentary seats (99 out of 100 MPs) and elected 237 of the 244 local administration representatives distributed among the country's thirty municipalities.<sup>92</sup> According to the National Election Commission, 96% of registered voters voted.

Two months later, on July 4, 2008, Equatorial Guinea's Prime-Minister Mangue resigned.<sup>93</sup> Shortly thereafter, President Obiang issued Decrees 42/2008 and 43/2008 ap-

87. *Angola: Government Formalises Petroleum Agreement With Equatorial Guinea*, ALLAFRICA.COM, July 13, 2008. <http://allafrica.com/stories/200807140464.html>.

88. *Id.*

89. *Id.*

90. Decree No. 69/2007 (2007) (Eq. Guinea).

91. Decree No. 74/2007 (2007) (Eq. Guinea).

92. CountryWatch.com, Equatorial Guinea, [http://consultingbase.countrywatch.com/cb\\_topic.asp?vCOUNTRY=055&SECTION=SUB&TOPIC=POPCO&TYPE=TEXT](http://consultingbase.countrywatch.com/cb_topic.asp?vCOUNTRY=055&SECTION=SUB&TOPIC=POPCO&TYPE=TEXT) (last visited Apr. 3, 2009).

93. Bernardino Ndze Biyoa, *New Energy Minister in Revamped Eq. Guinea Cabinet*, REUTERS INDIA, July 15, 2008, <http://in.reuters.com/article/oilRpt/idINL1523269920080715?pageNumber=1&virtualBrandChannel=0>.

pointing a new cabinet.<sup>94</sup> Ignacio Milam Tang, former Ambassador to Spain, was appointed as the new Prime Minister.<sup>95</sup>

### 3. *Civil Liability and Insurance*

Decree 28/2008, of March 31, 2008, enacted insurance regulations on motor vehicles, importation of goods and construction works.<sup>96</sup> This statute comes into force not only to implement the 1995 CIMA Code on Insurance Matters, which contains provisions on insurance for motor vehicles and importation of goods, but also to rule on insurance for construction works, on which Equato-Guinean law was silent.<sup>97</sup> Besides the CIMA Code, issued by the Inter-African Conference on Insurance Matters organization, of which Equatorial Guinea is a member, private insurance in the country was previously only regulated by Law 9/1984, of June 20, 1984, a long outdated statute.<sup>98</sup>

The recent incorporation of GEPETROL Seguros, S.A., comes in furtherance of the coming into force of Decree 56/2007, of September 9, 2007, governing various insurance issues related to petroleum exploration and production in the country.<sup>99</sup> The main purpose of this company is to provide insurance for petroleum activities in Equatorial Guinea.

### 4. *Telecommunications*

Early in 2008, the Ministry of Transport, Technology, Post Offices and Telecommunications and ORTEL (*Oficina Reguladora de Telecomunicaciones*, the sector's regulator), enacted Ministerial Orders 15/2008, of February 2, 2008, and 1/2008, 2/2008, and 3/2008, all dated March 15, 2008, to regulate the General Telecommunications Law approved by Law 7/2005, of November 7, 2005.<sup>100</sup> Now in place are rules on access and interconnection to the public networks and applicable tariffs; the structure, access conditions, financing and tariffs of the universal telecommunication service; protection of telecommunication networks and consumers; and financing and management of the Telecommunications Development Fund, a trust account for the State's investments.

Later in 2008, new regulations on telecommunication prices and tariffs were enacted setting forth fees in connection with telecommunications permits, licenses, and authorizations, providing that the Ministry of Transport, Technology, Post Offices, and Telecommunications will determine maximum benchmark prices and tariffs for fixed, mobile, and internet services.<sup>101</sup>

Finally, regulations on management of radio frequencies on or below 3,000 GHz were approved.<sup>102</sup> These regulations lay down the procedure for obtaining permits on the use

94. Biyoya, New Energy Minister, *supra* note 93.

95. *Id.*

96. Decree No. 28/2008 (2008) (Eq. Guinea).

97. *Id.*

98. Law 9/1984 (1984) (Eq. Guinea).

99. Decree No. 56/2007 (2007) (Eq. Guinea).

100. Ministerial Order No. 15/2008 (2008); Ministerial Order No. 1/2008 (2008); Ministerial Order No. 2/2008 (2008); Ministerial Order No. 3/2008 (2008); Law No. 7/2005 (2005) (Eq. Guinea).

101. Equatorial Guinea, <http://guinea-equatorial.com/news/?NewsID=269> (last visited Apr. 3, 2009).

102. OpenSpectrum.info, <http://www.volweb.cz/horvitz/os-info/footnotes.html> (last visited Apr. 3, 2009).

and allocation of radio frequencies and are applicable to geostationary orbital positions allocated to the country.

### 5. *National Plan*

On February 14, 2008, the Government approved the National Plan for Social and Economic Development for 2008-2020 by means of Decree-Law 2/2008.<sup>103</sup> This plan was discussed and drafted during the Second Conference on Economics held in the city of Bata between November 12th and 14th, 2007 and sets forth a number of objectives, such as: (1) setting up infrastructure to boost productivity and promote development; (2) increasing local levels of education and standards of living; (3) dropping oil and gas dependency; and (4) upgrading the quality of public services. To secure the plan's implementation, the Decree-Law also establishes a Superior Counsel, presided over by President Obiang, a Supervisory and Evaluation Committee and a National Agency.

### 6. *Social Security*

The Ministry of Labor and Social Security determined in mid-2008 that all foreign employees working in the country should make payments to the national Social Security.<sup>104</sup> Order 1/08, which introduced this change, is already being enforced.

## III. East Africa

### A. KENYA

On February 28, 2008, President Mwai Kibaki and now Prime Minister Raila Odinga signed a power-sharing agreement after protracted negotiations convened by the United States and the African Union.<sup>105</sup> In March, the Kenyan Parliament passed the Constitution of Kenya (Amendment) Act, 2008, and the National Accord and Reconciliation Bills to legalize the agreement and facilitate resolution of the electoral dispute. The Amendment provided for the creation of the position of prime minister, which had been abolished since the 1960s.<sup>106</sup> On April 13, President Kibaki named Odinga prime minister in accordance with the February power-sharing agreement. On April 17, Odinga was sworn in as the country's second prime minister since its independence.<sup>107</sup>

103. Decree-Law 2/2008 (2008) (Eq. Guinea).

104. Order No. 1/08 (2008) (Eq. Guinea).

105. Duncan Miriri & Giles Elsgood, *Kenya Rivals Ink Power-Sharing Deal*, MAIL & GUARDIAN, Feb. 28, 2008, <http://www.mg.co.za/printformat/single/2008-02-28-kenya-rivals-ink-powersharing-deal>.

106. KENYA CONST. AMEND. § 15 (2008), available at [http://www.tkenya.org/documents/CONSTITUTION\\_OF\\_KENYA\\_Bill\\_08.pdf](http://www.tkenya.org/documents/CONSTITUTION_OF_KENYA_Bill_08.pdf); see also, PPS, *Kibaki, Raila Hold Talks*, KENYA BROADCASTING CORP., Mar. 17, 2008, available at <http://www.kbc.co.ke/story.asp?ID=48873>.

107. Churchill Otieno, *Kenya: Grand Cabinet Takes Office*, NATION, Apr. 17, 2008, available at <http://allafrica.com/stories/200804170174.html>.

## IV. North Africa

### A. SUDAN

In Sudan in 2008, a major military offensive in west Darfur commenced with attacks in Saraf Jidad, Sirba, Silea, and Abu Suruj killing at least 115 and forcibly displacing more than 30,000.<sup>108</sup> The Darfur Ceasefire Commission determined that the insurgent group Justice and Equality Movement (JEM) violated the 2004 N'Djamena Ceasefire Agreement. But Sudanese Armed Forces and armed militias violated international humanitarian and human rights law as part of a deliberate military strategy that resulted in rapes, and the "pillaging, vandalizing and burning of . . . homes, clinics, community centers, water structures, schools, food storages, milling machines and shops."<sup>109</sup>

What a "United Nations expert [called] 'indiscriminate' and 'disproportionate' bombing of civilians" continued through the first half of the year, and into July when there were twenty-one such bombardments in the first three weeks.<sup>110</sup> The "U.N. found that 300,000 people have died, and more than 2.2 million have fled their homes since the Darfur conflict [began] in 2003."<sup>111</sup> "Sudan says 10,000 have been killed."<sup>112</sup>

Humanitarian aid was hard-hit in 2008, with World Food Program (WFP) saying twenty-two of its vehicles were attacked and stolen in January, including five separate attacks targeting aid workers in Darfur in one day alone.<sup>113</sup> In the first quarter of the year, sixty WFP trucks were taken, twenty-six drivers went missing, and food supplies were cut.<sup>114</sup>

A non-aggression pact brokered by Senegal's President was signed in March between Chad and Sudan. The parties agreed to implement failed peace agreements, but some were skeptical of success and enforceability because rebel groups were not included.<sup>115</sup>

Rebel attacks reached Khartoum on May 10, when "200-300 cars manned with [JEM] fighters and equipped with mounted machine guns and rocket-propelled grenades entered the Omdurman district . . . from the north and west." Government forces defeated the rebels after "over 30 civilians died."<sup>116</sup>

108. U.N. Office of the High Comm'r for Human Rights, *Ninth Periodic Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Sudan: Attacks on Civilians in Saraf Jidad, Sirba, Silea and Abu Suruj in January and February 2008*, 2 (Mar. 20, 2008), available at <http://www2.ohchr.org/SPdocs/Countries/9thOHCHR20mar08.pdf>.

109. *Id.*

110. *UN Rights Envoy Accuses Sudan of Indiscriminate Bombing in Darfur*, SUDAN TRIB., Sept. 11, 2008, available at <http://www.sudantribune.com/spip.php?article28583>; see also, U.N. Human Rights Council, *Human Rights Situations that Require the Council's Attention, Addendum*, at 17, U.N. Doc. A/HRC/9/13/Add.1 (Sept. 2, 2008) (prepared by Sima Samar, Special Rapporteur), available at <http://daccessdds.un.org/doc/UNDOC/GEN/G08/154/14/PDF/G0815414.pdf?OpenElement>.

111. *UN Rights Envoy Accuses Sudan of Indiscriminate Bombing*, *supra* note 110.

112. *Id.*

113. *Darfur Hijackings Hit Food Distribution*, CNN, Jan. 23, 2008, available at <http://www.cnn.com/2008/WORLD/africa/01/23/darfur.hijackings.ap>.

114. *Attacks Force U.N. to cut Darfur Food Relief*, CNN, Apr. 17, 2008, available at <http://www.cnn.com/2008/WORLD/africa/01/23/darfur.hijackings.ap>.

115. *Sudan and Chad Strike Peace Deal*, BBC NEWS, Mar. 14, 2008, <http://news.bbc.co.uk/2/hi/africa/7293933.stm>.

116. U.N. Human Rights Council, *Human Rights Situations that Require the Council's Attention, Addendum*, at 31, U.N. Doc. A/HRC/9/13/Add.1 (Sept. 2, 2008) (prepared by Sima Samar, Special Rapporteur).

On July 14, "three years after the Security Council requested him to investigate in Darfur," International Criminal Court (ICC) Prosecutor Luis Moreno-Ocampo presented evidence to show that Sudan's President, Omar Hassan Ahmad Al Bashir, "bears criminal responsibility in relation to 10 counts of genocide, crimes against humanity and war crimes."<sup>117</sup> Moreno-Ocampo asserted that Al Bashir perpetrated genocide per Rome Statute Article 6 because he intended to bring about the physical destruction "of the Fur, Masalit and Zaghawa ethnic groups", that he perpetrated "crimes against humanity, including acts of (a) murder, (b) extermination, (d) forcible transfer of the population, (f) torture and (g) rapes; and [that he perpetrated] war crimes [including] intentionally directing attacks against the civilian population and pillaging."<sup>118</sup> Judges of the Pre-Trial Chamber I requested the prosecutor to provide additional information, and on November 17, he submitted more than 700 pages of material supporting his application for an arrest warrant.<sup>119</sup>

The Sudanese government expressed anger at the charges against Al Bashir,<sup>120</sup> the African Union (A.U.) said the prosecution "could jeopardise [sic] peace efforts in the region,"<sup>121</sup> and rights activists feared a violent backlash.<sup>122</sup>

Bookended around the indictment request were killings by suspected government-backed fighters of Darfur peacekeepers. "[S]even members of the joint UN-African Union peace mission" were killed July 9 in an ambush where "[t]wenty-two others were injured, seven critically,"<sup>123</sup> and another peacekeeper was shot on July 16.<sup>124</sup>

U.N. Special Rapporteur Sima Samar made her sixth visit to Sudan during the summer,<sup>125</sup> and there were extensive Human Rights Council reviews of Sudan's obligations

117. Press Release, Int'l Crim. Ct., ICC Prosecutor Presents Case Against Sudanese President, Hassan Ahmad Al Bashir, for Genocide, Crimes Against Humanity & War Crimes in Darfur (July 14, 2008), available at <http://www2.icc-cpi.int/Menus/ICC/Press+and+Media/Press+Releases/Press+Releases+%282008%29/a.htm>.

118. Luis Moreno-Ocampo, Prosecutor, Int'l Crim. Ct., Prosecutor's Statement on the Prosecutor's Application for a Warrant of Arrest Under Article 58 Against Omar Hassan Ahmad Al Bashir 2 (July 14, 2008), available at [http://www.iss.co.za/dynamic/administration/file\\_manager/file\\_links/ICC/BASHIR20081407.pdf?link\\_id=24&slink\\_id=6301&link\\_type=12&slink\\_type=13&tmpl\\_id=3](http://www.iss.co.za/dynamic/administration/file_manager/file_links/ICC/BASHIR20081407.pdf?link_id=24&slink_id=6301&link_type=12&slink_type=13&tmpl_id=3); see also, Int'l Crim. Ct., Office of the Prosecutor, *Situation in Darfur, the Sudan: Summary of the Case: Prosecutor's Application for Warrant of Arrest Under Article 58 Against Omar Hassan Ahmad al Bashir* (July 14, 2008), available at <http://www2.icc-cpi.int/NR/rdonlyres/64FA6B33-05C3-4E9C-A672-3FA2B58CB2C9/277758/ICCOTPSummary20081704ENG.pdf>.

119. Wasil Ali, *ICC Judges Receive 700 Pages of Additional Evidence on Bashir Warrant*, SUDAN TRIB., Nov. 22, 2008, at 1, available at [http://www.sudantribune.com/spip.php?page=imprimable&id\\_article=29352](http://www.sudantribune.com/spip.php?page=imprimable&id_article=29352).

120. *Sudan Angered by Genocide Claims*, BBC NEWS, July 15, 2008, <http://news.bbc.co.uk/2/hi/africa/7506670.stm>.

121. *AU Warning Over Sudan 'Charges'*, BBC NEWS, July 12, 2008, <http://news.bbc.co.uk/2/hi/africa/7503803.stm>.

122. *Rights Group Fears Sudanese Backlash*, CNN, July 15, 2008, <http://www.cnn.com/2008/WORLD/africa/07/15/darfur.charges/index.html>.

123. *UN Fury at Darfur Militia Ambush*, BBC NEWS, July 9, 2008, <http://news.bbc.co.uk/2/hi/africa/7498811.stm>.

124. *U.N. Peacekeeper Slain in Darfur*, CNN, July 16, 2008, <http://www.cnn.com/2008/WORLD/africa/07/16/un.darfur>.

125. Statement from Sima Samar, U.N. Special Rapporteur, U.N. High Comm'r of Human Rights, UN Expert on the Situation of Human Rights in the Sudan Concludes Visit, (July 10, 2008), available at <http://www.unhchr.ch/huricane/hurricane.nsf/0/DBBEAE5C1553065AC1257483002C88F4?opendocument>.

and compliance in March and September.<sup>126</sup> They document what actions have been taken or not taken by the government of Sudan regarding compliance with international human rights laws and U.N. group of expert recommendations.<sup>127</sup>

One of a number of areas where Sudan has fallen disastrously short is controlling gender-based violence, both in the conflict and in camps for displaced persons.<sup>128</sup> Authorities are not responding or reporting properly, and few perpetrators are prosecuted.<sup>129</sup>

In mid-Sudan, disputes over marginalization, lack of representation, and resources were threatening to erupt into conflict.<sup>130</sup> The A.U. “noted with concern . . . that a number of very crucial parts of the [Comprehensive Peace Agreement (CPA) in Southern Sudan] have not been implemented,’ . . . that plans for elections in 2009 [have] not gained momentum, [and that] the preparations for the 2011 referendum on independence . . . ‘ha[ve] not started’.”<sup>131</sup>

The year waned with a glimmer of hope tinged with caution and skepticism: in mid-November, the Sudanese government announced a ceasefire in Darfur.<sup>132</sup> JEM “said it would not accept a ceasefire without” further detail.<sup>133</sup>

## B. EGYPT

In November, an Egyptian court overruled the government’s decision to proceed with the twenty-year political agreement to supply natural gas to Israel under the auspices of the Camp David Accords.<sup>134</sup> A group of lawyers had filed the suit alleging that the agreement allowed Israel to obtain gas at prices well below the international market value. The gas deal, which was consummated in 2005, provided for the supply of 1.7 billion cubic meters of gas per year to Israel for twenty years. In ruling against the government, the court stated that the agreement is constitutionally invalid because it was never submitted to Parliament for approval. The ruling is subject to review by an appellate court.

## C. ALGERIA

In November, amid widespread criticism, the Algerian parliament voted in favor of amending the constitution to extend presidential term limits.<sup>135</sup>

126. U.N. Human Rights Council, *Human Rights Situations that Require the Council’s Attention*, U.N. Doc. A/HRC/9/13 (Sept. 2, 2008) (prepared by Sima Samar) [hereinafter *Human Rights Situations*]; U.N. Human Rights Council, *Situation of Human Rights in Sudan*, U.N. Doc. A/HRC/7/L.38 (Mar. 25, 2008).

127. *Id.* at ¶ 42.

128. *Id.* ¶ 53.

129. *Id.* ¶ 54.

130. *Sudan: Rising Animosity in Central State Could Fuel Conflict*, IRIN NEWS, Nov. 21, 2008, <http://www.irinnews.org/PrintReport.aspx?ReportId=81136>.

131. *AU Urges Sudan’s Rival North-South Groups to Fulfill Peace Deal*, SUDANESE ONLINE, Nov. 25, 2008, [http://www.sudaneseonline.com/en2/publish/Latest\\_News\\_1/AU\\_urgues\\_Sudan\\_s\\_rival\\_north-south\\_groups\\_to\\_fulfil\\_peace\\_deal.shtml](http://www.sudaneseonline.com/en2/publish/Latest_News_1/AU_urgues_Sudan_s_rival_north-south_groups_to_fulfil_peace_deal.shtml).

132. *Sudan: Cautious Optimism Over Darfur Ceasefire Call*, IRINNEWS, Nov. 13, 2008, <http://www.irinnews.org/PrintReport.aspx?ReportId=81443>.

133. *Id.*

134. *Egypt Court Orders Freezes Gas Exports to Israel*, AL ARABIYA NEWS CHANNEL, Nov. 18, 2008, <http://www.alarabiya.net/articles/2008/11/18/60370.html>.

135. Heba Saleh, *Algeria Lifts Presidential Term Limit*, FIN. TIMES, Nov. 13, 2008, at 10.

## V. Southern Africa

### A. SOUTH AFRICA

In December 2007, the African National Congress (ANC) held elections to choose a new party leader.<sup>136</sup> The incumbent ANC President, Thabo Mbeki, was defeated by his rival, Jacob Zuma.<sup>137</sup> Zuma won the party's leadership despite controversy surrounding his recent acquittal in a rape case and his alleged involvement in other criminal activity.<sup>138</sup>

Shortly after Zuma was elected, the National Prosecuting Authority (NPA) filed multiple criminal charges against him, including charges "of corruption, fraud, money laundering, and racketeering."<sup>139</sup> The case was dismissed months later when the court found that the NPA's decision to file the charges was politically motivated.<sup>140</sup> In October 2008, Mbeki filed an *amicus curiae* to join the NPA's appeal challenging the dismissal of the corruption case against Zuma.<sup>141</sup> The South African Constitutional Court refused to hear Mbeki's appeal.<sup>142</sup>

In September 2008, Thabo Mbeki resigned as President of South Africa after ANC party leaders demanded that he step down.<sup>143</sup> Controversy had continued to surround Mbeki after the Constitutional Court threw out Zuma's corruption case and concluded that Zuma had been the victim of political prosecution.<sup>144</sup> Mbeki was also widely criticized at home and abroad for his role in the Zimbabwe political deadlock.<sup>145</sup> Mbeki, who had led efforts to negotiate a solution to Zimbabwe's ongoing crisis, had been accused of taking a weak stance against the Mugabe regime.<sup>146</sup> The ANC chose deputy party leader and Zuma loyalist, Kgalema Motlanthe, to serve as interim President.<sup>147</sup>

The ANC began to split apart after Mbeki stepped down as President.<sup>148</sup> The ANC had been South Africa's main ruling party since the end of apartheid,<sup>149</sup> and its political rule essentially remained unchallenged since then.<sup>150</sup> The situation changed in September

136. See *South Africa Heads into Uncertainty with Zuma as Leader*, REUTERS, Dec. 18, 2007, <http://www.reuters.com/article/worldnews/idUSWEB093420071218>.

137. *Id.*

138. *Id.*

139. *Sth Africa's Zuma Charged with Corruption*, ABC NEWS, Dec. 29, 2007, <http://www.abc.net.au/news/stories/2007/12/29/2128629.htm?section=world>.

140. See *Court Win Opens Way for Zuma Presidency in S.Africa*, INT'L HERALD TRIB., Sept. 12, 2008, <http://www.iht.com/articles/ap/2008/09/12/africa/AF-South-Africa-Zuma.php>.

141. *Mbeki to Join NPA Appeal?* IAFRICA.COM, Nov. 14, 2008, <http://news.iafrica.com/sa/1109458.htm>.

142. *Mbeki Loses Challenge*, IAFRICA.COM, Nov. 12, 2008, <http://news.iafrica.com/sa/1295680.htm>.

143. *South African President Thabo Mbeki Resigns*, AFP, Sept. 21, 2008, [http://afp.google.com/article/ALeqM5i01C90a0XCExtT\\_ejKZ-oT-Reb6A](http://afp.google.com/article/ALeqM5i01C90a0XCExtT_ejKZ-oT-Reb6A).

144. *Id.*

145. See *Zimbabwe: South Africa Withholds Zim Aid*, AFR. NEWS UPDATE, Nov. 20, 2008, <http://www.afrika.no/Detailed/17597.html>.

146. See *id.*

147. *ANC to Nominate Deputy Leader as President*, REUTERS, Sept. 22, 2008, <http://www.reuters.com/article/worldnews/idUSLK53821820080922>.

148. See *id.*

149. *Id.*

150. *Id.*

2008, however, when several of Mbeki's top officials resigned.<sup>151</sup> The officials, dissatisfied with Mbeki's ouster from the party, left to form a new political party.<sup>152</sup>

## B. ZIMBABWE

In 2008, Zimbabwe's political and economic stability continued to deteriorate in the midst of high inflation, deepening poverty, and acute "shortages of food, fuel[,] and other basic" necessities.<sup>153</sup> The 2008 elections were marred with violence, fear, intimidation, and allegations of voting fraud.<sup>154</sup> President Robert Mugabe and his ruling ZANU-PF party received widespread publicity and criticism throughout the year for allegedly committing human rights violations against the people of Zimbabwe.<sup>155</sup>

In January 2008, President Mugabe unilaterally declared that the presidential, parliamentary, and local elections would be held on March 29, 2008.<sup>156</sup> When the election results were released in May 2008, it was determined that Morgan Tsvangirai, leader of the opposition MDC party, defeated Mugabe in the March election.<sup>157</sup> But a run-off election was required because Tsvangirai failed to garner more than 50% of the vote.<sup>158</sup> The Tsvangirai's MDC party also won a majority of the votes in parliamentary elections held on the same day.<sup>159</sup> This historic win disrupted the ruling party's long running dominance in the parliament.<sup>160</sup>

During the months following the March elections, there was an upsurge in violence perpetuated against Zimbabweans in regions throughout the country.<sup>161</sup> Zimbabweans and many others in the international community accused President Mugabe of using his ZANU-PF militias and state security forces to wage a campaign of violence to win the run-off election.<sup>162</sup> Tsvangirai and the MPC leadership accused the ZANU-PF militia of beating, arresting, and torturing MPC leaders, supporters, and campaign workers.<sup>163</sup>

151. See Barry Bearak, *In South Africa, Defectors Seek to Topple a Legacy*, N.Y. TIMES, Nov. 3, 2008, at A11.

152. See *South Africa in Crisis as Cabinet Walks out with Mbeki*, NEWSEUR, Sept. 23, 2008, <http://www.newser.com/story/38169/south-africa-in-crisi-as-cabinet-walks-out-with-mbeki.html>.

153. See *Zimbabwe Closes Door to Carter, U.N.'s Annan*, NEW HAVEN REG., Nov. 23, 2008, <http://nhregister.com/articles/2008/11/23/news/a10-zimbabwe.txt>.

154. See *Zimbabwe: Troops Descend on MDC Supporters*, AFR. NEWS UPDATE, Apr. 25, 2008, [www.afrika.no/Detailed/16587.html](http://www.afrika.no/Detailed/16587.html); see also *Zimbabwe 'Vote Fraud Proof' Emerges*, AL JAZEERA ENGLISH, July 5, 2008, <http://english.aljazeera.net/news/africa/2008/07/20087581218345411.html>.

155. See *World Criticism Mounts Against Mugabe's Plans to Proceed with Election*, VOA NEWS, June 26, 2008; See also *UN 'Regrets' Zimbabwe Election*, BBC NEWS, June 28, 2008, available at <http://news.bbc.co.uk/2/hi/africa/7478757.stm> [hereinafter *UN Regrets*].

156. See *Zimbabwe: MDC Election Tactics Questioned*, AFR. NEWS UPDATE, Feb. 29, 2008, available at <http://www.afrika.no/Detailed/16194.html>.

157. See Tinotenda Kandi, *Zimbabwe: ZANU-PF Violence Has Crippled Our Campaign-MDC*, ZIMONLINE, May 23, 2008, available at <http://www.afrika.no/Detailed/16739.html>.

158. *Id.*

159. See Dumisani Muleya, *Parliament Defeat for Mugabe*, BUS. DAY, Aug. 26, 2008, available at <http://www.afrika.no/Detailed/17032.html>.

160. *Id.*

161. See *Zimbabwe: Troops Descend on MDC Supporters*, *supra* note 154; see also *Mugabe Orders 'Warlike' Campaign*, ZIMB. INDEP., May 22, 2008, available at <http://www.theindependent.co.zw/>.

162. See *Zimbabwe: Troops Descend on MDC Supporters*, *supra* note 154.

163. See Jameson Mombe, *MDC Secretary General to Appear in Court Today*, ZIMONLINE, June 16, 2008, available at <http://www.zimonline.co.za/Article.aspx?ArticleId=3310>.

Tsvangirai was detained on a number of occasions by Mugabe forces while he was on the campaign trail,<sup>164</sup> and fearing assassination attempts, he left the country for over a month.<sup>165</sup> Tendai Biti, Secretary General of the MDC party, was arrested and charged with treason.<sup>166</sup>

The presidential run-off election was held on June 27, 2008.<sup>167</sup> President Mugabe won his sixth term in office after Tsvangirai pulled out of the race one week earlier due to pre-election violence against his supporters.<sup>168</sup> Mugabe retained the presidency despite global criticism accusing him of failing to hold free and fair elections.<sup>169</sup>

On September 15, 2008, the former South African President, Thabo Mbeki, acting on behalf of the Southern African Development Community (SADC), brokered a historic power-sharing deal between Mugabe and the opposition leader, Morgan Tsvangirai.<sup>170</sup> Under the agreement, Mugabe retained his role as President of Zimbabwe while Tsvangirai would serve as Prime Minister.<sup>171</sup> Arthur Muntabara, leader of a smaller opposition party, would serve as Deputy Prime Minister.<sup>172</sup> The agreement allocated fifteen cabinet posts to ZANU-PF, thirteen to the MDC party and three to Muntabara's party.<sup>173</sup>

The power-sharing agreement failed to specify who would fill the various cabinet positions.<sup>174</sup> This failure to fill positions led to intense discourse among the parties, especially in September 2008 when President Mugabe made a unilateral decision to allocate all of the powerful ministries to his own party.<sup>175</sup> His action drew strong criticism from Tsvangirai.<sup>176</sup> The opposition leader threatened to quit the power-sharing deal if Mugabe did not reverse the decision.<sup>177</sup> The agreement eventually fell apart due to the on-going disputes over the assignment of key cabinet posts.<sup>178</sup>

In a historic move, the SADC leaders held a summit in October 2008 in an attempt to resolve the Zimbabwe crisis.<sup>179</sup> During the Summit, the SADC called for the parties to form a unity government and share control of the home ministry that supervises the country's police force.<sup>180</sup> Tsvangirai rejected the SADC decision stating that sharing the min-

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164. *Id.*

165. *Id.*

166. *Id.*

167. See *Zimbabwe Runoff Election 2008*, MAHALO, available at [http://www.mahalo.com/Zimbabwe\\_Runoff\\_Election\\_2008](http://www.mahalo.com/Zimbabwe_Runoff_Election_2008) (last visited Feb. 18, 2009).

168. *Id.*

169. See *UN Regrets*, *supra* note 155.

170. See Tonderai Kwidini, *Zimbabwe: Violence Continues as Politician Talk*, INTER PRESS SERV., Oct. 9, 2008, available at <http://www.afrika.no/Detailed/17257.html>.

171. See *Zimbabwe: SADC Troika Expected to Break Impasse*, ZIMONLINE, Oct. 20, 2008, available at <http://www.afrika.no/Detailed/17301.html>.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. See *Zimbabwe: SADC Leaders Decide Against Tsvangirai*, ALLAFRICA.COM, Nov. 10, 2008, available at <http://afrika.no/Detailed/17379.html>.

180. *Id.*

istry could not work.<sup>181</sup> The power-sharing agreement remains in limbo as Zimbabwe's economic and political situation continues to decline.<sup>182</sup>

### C. ZAMBIA

In November 2008, newly elected Zambian President, Rupiah Banda, signed into law a landmark piece of legislation that would enable the prosecution of human traffickers and provide protection services to trafficking victims.<sup>183</sup> The Anti-Human Trafficking Act (No. 11 of 2008) followed findings that Zambia was becoming a recruitment center for human trafficking.<sup>184</sup> Before being passed into law, the Anti-Human Trafficking Bill, which in its final stages was presented before Parliament on August 7, 2008,<sup>185</sup> addressed novel methods of combating human trafficking, including the proscription of certain acts as a crime, the availability of citizen's arrest, and the protection of victims' rights.<sup>186</sup> Once passed, the act established a Committee on Human Trafficking and a Human Trafficking Fund.<sup>187</sup>

### D. ANGOLA

#### 1. *Energy*

In 2007, Petroleum and the National Oil Company, Sonangol, announced a new licensing round for oil and gas exploration blocks.<sup>188</sup> Among the blocks on offer was new acreage in the ultra-deep water that had been eyed by major international players for years, along with onshore acreage (notably in the Kwanza Basin) that is being put to tender for the first time.<sup>189</sup> The offer of this acreage was in part made possible by the enactment of Executive Decrees nos. 2/08 and 3/08, both of January 7, 2008.<sup>190</sup> The licensing round was suspended in March 2008, apparently due to the legislative elections and is expected to resume in early 2009.

181. *Id.*

182. See *UN Cuts Food Rations in Zimbabwe*, BBC NEWS, Nov. 11, 2008, available at <http://newsbbc.co.uk/2/hi/africa/7722631.stm>.

183. See *Zambia Passes New Comprehensive Anti-Human Trafficking Law*, INTERNATIONAL ORGANIZATION FOR MIGRATION, Nov. 28, 2008, <http://www.iom.int/jahia/jahia/pbnAF/cache/offonce?entryId=20365>.

184. *Zambia: Govt Moves in to Check Human Trafficking*, IRIN AFR., Oct. 31, 2006, <http://www.irinnews.org/report.aspx?reportid=61451>.

185. National Assembly of Zambia, *Debates—Thursday 7th, August, 2008*, ZAMBIAN PARLIAMENT ONLINE, Aug. 11, 2008, [http://www.parliament.gov.zm/index.php?option=com\\_content&task=view&id=754&Itemid=86&limit=1&limitstart=4](http://www.parliament.gov.zm/index.php?option=com_content&task=view&id=754&Itemid=86&limit=1&limitstart=4).

186. National Assembly of Zambia, *The Anti-Human Trafficking Bill, 2008*, THE ZAMBIAN PARLIAMENT ONLINE, Sept. 9, 2008, [http://www.parliament.gov.zm/index.php?option=com\\_docman&task=cat\\_view&gid=89&dir=DESC&order=name&limit=5&limitstart=10](http://www.parliament.gov.zm/index.php?option=com_docman&task=cat_view&gid=89&dir=DESC&order=name&limit=5&limitstart=10).

187. *Id.*

188. Press Release, HIS, Angola's Sonangol Announces Bid Round Pre-Qualification Deadline (Nov. 13, 2007), available at <http://energy.ihs.com/News/Press-Releases/2007/Angolas-Sonangol-Announces-Bid-Round-Pre-Qualification-Deadline.htm>.

189. *Id.*

190. These statutes divided the Kwanza Basin into twenty-three onshore blocks, designated Kon 1 through Kon 23, and the Lower Congo Basin into five offshore blocks, designated Blocks 46 through 50. Executive Decree nos. 2/08, 3/08 of Jan. 7, 2008 (Angl.).

Of major importance to Angola's development was approval in October 2007<sup>191</sup> of the Angola LNG Project that aimed to liquefy associated natural gas produced from the main Angolan offshore oilfields, mainly for exportation. Typically, the construction of LNG plants is an incentive to develop petro-chemical facilities, and Sonangol has already shown interest in developing its own petro-chemical park in the Soyo region.

Angola entered into Cooperation Agreements with Equatorial Guinea and the Democratic Republic of Congo.<sup>192</sup> The agreements focused on knowledge sharing and technical cooperation.

By means of Executive Decree no. 56/08, of April 21, 2008, the Minister of Petroleum enacted new regulations on the construction, exploration, and safety of facilities to store and treat petroleum products. Matters now regulated are: (1) the classification of facilities, (2) safety measures, (3) specifications and tests of reservoirs and tanks, (4) the unloading of products, (5) fire prevention, and (6) infractions and fines.

The Minister of Petroleum also enacted regulations governing the technical and safety conditions for overland transport of petroleum products through Executive Decree no. 57/08, of April 22, 2008. Rules set forth in the new regulations include those that control: (1) the vehicle construction, (2) operations and safety, (3) inspections, (4) transport documentation, and (5) infractions and fines.

## 2. *Tax*

Executive Decree no. 74/08, of June 3, 2008, which revoked Executive Decree No. 62/03, of November 7, 2003, adjusted the rates of Personal Income Tax. This change of tax rates stems from the need to adjust the income levels of the tax brackets so that there is a greater balance in distributing the tax burden.

In March 2008, the Angolan government introduced legislation to simplify the collection of Stamp Duty. By means of Joint Executive Decree No. 8/08, of February 1, 2008, the Ministers of Finance and Justice determined that courts, notaries, and registry offices will collect stamp duties by using an impressed stamp, rather than have applicants affix a tax stamp.

## 3. *Customs*

On October 1, 2007, the Angolan Council of Ministers enacted the Customs Strategic Plan for 2007-2012, with these objectives: (1) enacting, by March 31, 2008, a new Customs Employee Statute; (2) implementing the SADC commercial protocol and the approval of single fees schedule by the end of 2008; (3) updating the Customs Tariff Schedule by the middle of 2010; (4) ratifying Angola's adherence to the SADC Customs Union by December 31, 2010; and (5) enacting a new Customs Tariff Schedule by the end of 2011.

In 2008, the Ministry of Finance approved Order no. 45/08, of January 29, 2008, setting forth complementary rules that will govern inspection entities licensed by the National Customs Directorate. This statute is applicable to all inspection activities, notably op-

191. Decree-Law no. 10/07, of Oct. 3 2007 (Angl.).

192. By means, respectively, of Resolution no. 57/08, of July 1, 2008, and Resolution no. 3/08, of Jan. 15 2008 (Angl.).

tional or mandatory pre-shipment inspection, local inspection, and re-inspection of goods exported to Angola, destined for bonded and customs clearance warehouses, customs stores, general duty-free warehouses, duty-free zones, or other warehouses subject to customs control. It sets forth the services that inspection entities should provide and non-compliance penalties.

Decree-Law no. 2/08, of August 4, 2008 created a new Customs Tariff Schedule as part of Angola's overhaul and modernization of its customs system. The statute allows the customs authorities to issue rules, instructions, and procedures for customs activities. New simplified clearance procedures will facilitate international trade, a new tax for luxury products is created, and some fees and allowances are eliminated. The customs authorities conducted an international road show to publicize the changes, visiting centers renowned for commerce with Angola, including Houston, Texas.

#### 4. *Labor and Social Security*

By means of Executive Decree no. 40/08, of March 17, 2008, the Minister of Finance set forth the new daily allowance due to public servants for travel within Angola on official service.

In July, the Council of Ministers approved new regulations on old-age protection,<sup>193</sup> which notably provide for an old-age retirement pension, an early retirement pension, and an old-age subsidy. Although this new statute essentially maintains in force the previous rules on these matters,<sup>194</sup> it also sets forth some technical specifications thereto.

To cover situations that were not yet regulated,<sup>195</sup> the Council of Ministers, through Decrees nos. 41/08 and 42/08, of July 2, and July 3, 2008, respectively, created new social security regimes for (1) members of religious groups lawfully set up in the country who exclusively carry out such religious activities in Angola, and (2) self-employed individuals.

Decree no. 30/08, of May 2, 2008, set the amount of the national minimum salary at Kz. 8,609 (equivalent to roughly \$115), effective April 1, 2008. The statute also sets forth new minimum salaries by business sector. Under the Decree, the minimum salary applicable to the transport, services, and manufacturing sectors was set at Kz. 10,761 (equivalent to roughly \$144), while the minimum wage for the mining industry was set at Kz. 12,914 (equivalent to \$173).

By means of Decree No. 38/08, of June 19, 2008, the Council of Ministers enacted the legal regime governing the adherence and contribution to the Mandatory Social Protection system. This system aims to protect employees who are unable to or have a diminished capacity to work, are pregnant, are old, or are suffering occupational diseases, as well as protect employees from unemployment and the worsening of a household's financial conditions. The statute also reduces the range of employed persons' income subject to Social Security and updates the value of fines for employers and contributors who do not comply with the new statute. Under the statute, the rate of late-payment interest on unpaid contributions to Social Security is set at 2.5% per month.

193. Regulations approved through Decree no. 40/08, of July 2, 2008 (Angl.).

194. Approved by Decree no. 76/05, of Oct. 12, 2005 (Angl.).

195. Although foreseen in the Framework Law on Social Protection.

## 5. *International Treaties and Trade*

From late 2007 through 2008, Angola approved treaties with various States in numerous areas. Angola entered into an Agreement with Israel on Economic and Commercial Cooperation,<sup>196</sup> an Investment Treaty with Portugal,<sup>197</sup> and treaties with the Russian Federation on extradition and transfer of individuals convicted to prison terms.<sup>198</sup>

By means of Resolution No. 5/08, of March 25, 2008, the National Assembly approved for ratification the revised Partnership Agreement between African, Caribbean, and Pacific States (ACP Countries), and the European Union.<sup>199</sup> This Agreement seeks to lend continuity to existing cooperation between the Republic of Angola and the European Union in the context of the New Multiannual Program for 2008-2013 and the Tenth European Development Fund.

## 6. *Transportation*

In January 2008, a new Civil Aviation Law (CAL) came into force in Angola.<sup>200</sup> The CAL outlines principles and rules for air and auxiliary services, aeronautical infrastructure, equipment certification, and aeronautical personnel. The Statute also outlines the Aeronautical Authority's organizational structure and powers respecting civil aviation.

The Minister of Transportation issued Executive Decree No. 26/08, of March 3, 2008, which provides for implementing nineteen Aeronautical Technical Rules (ATR) issued by the National Civil Aviation Institute, standards, and practices recommended by the Chicago Convention on Civil Aviation. Among the referred ATR are rules on registration and certification of aircraft, maintenance organizations, licensing and qualifications of aeronautical personnel, aircraft and air-work operations, and air transportation requirements.

In mid-2008, the Ministries of Finance and Transportation issued Joint Executive Decree No. 159/08, of August 7, 2008, setting forth regulations for assessing fines for CAL breaches. Another joint executive decree by the same ministries<sup>201</sup> fixed the tariffs chargeable by INAVIC for certifications, licensing, homologations, surveys, exams, authorizations, and other services.

The Council of Ministers approved the Road Infrastructure Conservation Program for 2007-2010, by means of Resolution No. 21/08, of March 12, 2008. The primary goals of the program are to increase road infrastructure and to maintain existing roads and their respective surfaces.

## 7. *Commercial Law*

By means of Executive Decree No. 55/08, of April 17, 2008, the Minister of Industry declared that all individuals and State or private companies operating in Angola in the quality control sector, especially those in the business of certification, consultancy, inspection, test laboratories and calibration, need to register for surveying and subsequent ac-

196. Approved by the Council of Ministers through Resolution no. 93/07, of Oct. 17, 2007.

197. Executed on February 22, 2008 in Luanda.

198. Resolution No. 36/07, of Dec. 10, 2007; Resolution No. 37/07, of Dec. 2007.

199. Resolution No. 5/08, of Mar. 25, 2008 (signed June 25, 2005).

200. Law No. 1/08, of Jan. 16, 2008 (came into force on the date of its publication).

201. Joint Executive Decree No. 158/08, of Aug. 6, 2008.

creditation purposes with the Angolan Institute of Normalization and Quality. The Institute will issue the registration certificates (or authorizations to operate) until the national accreditation body is formed.

To reduce signature forgeries, the Minister of Justice, by means of Order No. 169/08, of April 29, 2008, prohibited the rubber-stamping of documents issued by public registries, identification services, or judicial secretaries throughout Angola and made the use of an embossed stamp mandatory in all Ministry of Justice departments.

## 8. *Politics*

On Friday September 5, 2008, Angola organized its second democratic election since independence from Portugal, and the first since the end of the country's civil war. Parliamentary elections ran peacefully, although confusion existed in several of the voting stations due to lack of material and preparation of the officials. The ruling MPLA party won with 81.64% of the votes, and the main opposition party, UNITA, lost with 10.39%.<sup>202</sup> The MPLA secured 191 seats in the National Assembly, UNITA secured sixteen, and three other small parties secured between eight and three seats each.

After the smooth parliamentary elections, the world is expecting the 2009 presidential suffrage to also be smooth.

## E. MOZAMBIQUE

### 1. *Tax*

Laws Nos. 32/2007, 33/2007, and 34/2007, all dated December 31, 2007, approved the new Value Added Tax (VAT), Personal Income Tax (PIT), and Corporate Income Tax (CIT) Codes, respectively.<sup>203</sup> The new framework came into force on January 1, 2008, and is intended to simplify the tax system, to make it fairer, and to expand the base of taxable income.

Decrees Nos. 7/2008, 8/2008, and 9/2008, all of April 16, 2008, were enacted to regulate the above-referred VAT, PIT, and CIT Codes, and are aimed at simplifying the procedures, and methods of applying VAT, PIT, and CIT.<sup>204</sup>

Later in 2008, the Council of Ministers approved the Inheritance and Gift Tax Regulations by means of Decree No. 21/2008, of June 27, 2008, which set forth the rules applicable to taxation of inherited or donated assets.<sup>205</sup>

### 2. *Oil and Gas*

On April 9, 2008, the Council of Ministers enacted the new Petroleum Production Tax Regulations through Decree No. 4/2008.<sup>206</sup> This statute was approved to further reform the fiscal regime for oil and gas exploration and production activities that began in 2007.

202. The statistics of the election can be viewed online at <http://www.cne.ao>.

203. Law No. 32/2007 of Dec. 31, 2007; Law No. 33/2007 of Dec. 31, 2007; Law No. 34/2007 of Dec. 31, 2007.

204. Decree 7/2008 of Apr. 16, 2008; Decree 7/2008 of Apr. 16, 2008; Decree 7/2008 of Apr. 16, 2008.

205. Decree 21/2008 of June 27, 2008.

206. Decree 4/2008 of Apr. 9, 2008.

The statute is also aimed at regulating the Law on the Taxation of Petroleum Activities—Law No. 12/2007 of June 27, 2007.<sup>207</sup> Decree No. 4/2008 sets forth guidelines on assessing taxable income from petroleum production and the rules governing royalty collection and payment.<sup>208</sup>

### 3. *Mining*

The Council of Ministers passed new mining tax regulations through Decree No. 5/2008, of April 9, 2008.<sup>209</sup> These new regulations are part of a reform of the mining sector's fiscal regime initiated in 2007 with the coming into force of Law No. 11/2007, of June 27, 2007—the Law on the Taxation of Mining Activities.<sup>210</sup> Decree No. 5/2008 sets forth the rules applicable to the determination of the tax basis of the mining production tax or royalty, and the procedures and timeline for paying production or royalty and surface tax.<sup>211</sup>

### 4. *Labor*

In 2008, to clarify doubts raised by the coming into force of the new labor law,<sup>212</sup> the Ministry of Labor issued rules that require expatriate directors or company representatives to be subject to the same work permit procedure as foreign employees, and to be considered as such for purposes of labor law expatriate quotas. The guidelines also set procedures for work permit applications.

On May 28, 2008, Ministerial Orders Nos. 47/2008 through 54/2008 approved new minimum wages for various economic sectors such as agriculture, agro industry, cattle breeding, fishing, mineral extraction, manufacturing, production and distribution of electricity, gas and water, construction, and financial services.<sup>213</sup>

### 5. *Social Security*

New regulations on mandatory social security were put into force in late 2007 through Decree No. 53/2007, of December 3, 2007, which set forth the rules and procedures applicable to mandatory social security contributions.<sup>214</sup> This statute is applicable to nationals and expatriate employees working in Mozambique.

### 6. *Energy and Natural Resources*

In October 2007, by means of Decree No. 48/2007, the government approved regulations on permits for electricity infrastructure.<sup>215</sup> This statute sets forth the procedure for granting permits to establish and operate infrastructures for production, transport, trans-

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207. *Id.*

208. *Id.*

209. Decree 5/2008 of Apr. 9, 2008.

210. Law No. 11/2007 of June 27, 2007 (taxation of mining activities).

211. Decree 5/2008 of Apr. 9, 2008.

212. Approved by Law No. 23/2007, of Aug. 1, 2007.

213. Ministerial Order 47-54/2008 of May 28, 2008.

214. Decree 53/2007 of Dec. 3, 2007.

215. Decree 48/2007 of Oct. 30, 2007.

formation, distribution, and use of electricity. Permits already validly granted at the time Decree No. 48/2007 came into force are not subject to its provisions, except in what concerns inspection tariffs and other matters not foreseen in the previous legal regime.

A few days later, Decree No. 43/2007, of October 30, 2007, was enacted to implement regulations on the use of fresh water resources.<sup>216</sup> This statute also sets forth an organized system for issuance of permits and concessions for private use of water in accordance with the water law approved by Law No. 16/91, of August 3, 1991.

### 7. *Financial, Banking, and Securities*

On October 30, 2007, the Council of Ministers approved Decree No. 45/2007, setting forth internal regulations for Mozambique's stock exchange.<sup>217</sup> This statute extinguished the Admissions Committee, previously in charge of assessing which securities should be admitted to the market and monitoring the respective stock market value.

In 2007, regulations came into force for administrative liquidation of credit and financial entities, which were approved in furtherance of the Law on Credit Institutions and Financial Corporations.<sup>218</sup> The new regulations established two procedures: the common procedure, with a maximum term of one year, and the summary procedure, that should not exceed ninety days.

In 2008, Mozambique's central banking authority reduced the rate of mandatory reserves for credit institutions from 10.15% to 9% through Notice 1/GBM/2008 of February 13, 2008.<sup>219</sup>

Law No. 2/2008, dated February 27, 2008, created the National Payment System to endow the financial sector with an efficient, technologically updated, transparent, and safe payment mechanism.<sup>220</sup> This upgrade should allow the financial sector to keep up with the foreseeable increase in payment transactions in the years ahead.

### 8. *Commercial and Investment*

Ministerial Statute No. 117/2007, of September 3, 2007, set forth the criteria for granting the use of the trademark "*Orgulho Moçambicano. MADE IN MOZAMBIQUE*" to local products in order to promote them both domestically and internationally.<sup>221</sup>

On Christmas Eve 2007, Decrees Nos. 74/2007 and 75/2007 were passed to regulate the legal framework of the Special Economic Zones (SEZ) provided for in the investment law.<sup>222</sup> These statutes created the Council of the Special Economic Zones and the Office of the Fast Development Economic Zone (OFDEC), respectively. These councils were charged with promoting, creating, implementing, developing, and managing the SEZs.

216. Decree 43/2007 of Oct. 30, 2007.

217. Decree 45/2007 of Oct. 30, 2007.

218. Law No. 15/99, of Nov. 1, 1999.

219. Banco de Moambique, History, 192, available at [http://www.sadcbankers.org/SADC/SADC.nsf/LADV/EBCD4ED6F7046CD7422575450048B585/\\$File/Mo%C3%A7ambique.pdf](http://www.sadcbankers.org/SADC/SADC.nsf/LADV/EBCD4ED6F7046CD7422575450048B585/$File/Mo%C3%A7ambique.pdf) (last visited Apr. 3, 2009).

220. Law No. 2/2008 of Feb. 27, 2008.

221. Ministerial Statute No. 117/2007 of Sept. 3, 2007.

222. Law No. 3/93, of June 24, 1993.

Further, Decree No. 76/2007, of December 18, 2007, created an SEZ in the Nacala region and entrusted its management to the OFDEC.<sup>223</sup>

The Strategy to Improve the Business Environment of Mozambique was approved on May 29, 2008, through Council of Ministers Resolution No. 3/2008.<sup>224</sup> This strategy is based on four pillars: (1) legal reform; (2) fiscal and financial environment; (3) infrastructures; and (4) governance.

### 9. *Human Trafficking Laws*

In April 2008, the Mozambican Parliament unanimously passed a new anti-human trafficking law designed to punish traffickers and protect victims and witnesses of human trafficking.<sup>225</sup> The act was signed into law by President Armand Guebuze in June 2008.<sup>226</sup> The law received broad support from government officials and NGO stakeholders.<sup>227</sup> Notably, the law applies even in the absence of a complaint from the victim.<sup>228</sup> Anyone violating the act will be subject to a prison term of up to twelve years.<sup>229</sup> Local NGOs engaged in a public awareness campaign to educate Mozambicans about human trafficking.<sup>230</sup>

In 2008, the Mozambican Parliament passed a bill to transfer military judges to civilian courts.<sup>231</sup> The new law fixes a gap created by a constitutional provision approved in 2004.<sup>232</sup> The 2004 Constitution provided that court-martial can only exist in times of war.<sup>233</sup> The provision outlawed military courts and military prosecutions in times of peace.<sup>234</sup> The military system was never dismantled, however, and remained intact until passage of the new law in 2008.<sup>235</sup> The military judges and attorneys continued to receive paychecks during this period even though they were unable to handle cases.<sup>236</sup>

The new law was designed to wind up Mozambique's military court and transfer the judges and their staff to civilian courts and prosecution services.<sup>237</sup> Any judge or staff

223. Decree 76/2007 of Dec. 18, 2007.

224. Resolution No. 3/2008 of May 29, 2008.

225. See *Mozambique: Trafficking in Persons—New Law Punishes Trafficking in Persons*, The Library of Congress, May 2, 2008, available at [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp0\\_469\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp0_469_text) [hereinafter *New Law Punishes Trafficking in Persons*].

226. See *Mozambican Anti-Trafficking Law Welcomed*, MAIL & GUARDIAN, June 21, 2008, <http://www.mg.co.za/article/2008-06-21-mozambican-antitrafficking-laws-welcomed> [hereinafter *Anti-Trafficking Law Welcomed*].

227. See *Case Study: New Law Targets Trafficking in Mozambique*, USAID Women in Development (2008), [http://www.usaid.gov/our\\_work/cross-cutting\\_programs/wid/pubs/CS\\_TraffickingLawMozambique\\_4-30-08.pdf](http://www.usaid.gov/our_work/cross-cutting_programs/wid/pubs/CS_TraffickingLawMozambique_4-30-08.pdf) [hereinafter *New Law Targets Trafficking in Mozambique*].

228. *Id.* *supra* note 227.

229. *Id.*

230. *Id.*; see *Mozambican Anti-Trafficking Law Welcomed*, *supra* note 226.

231. See *Military Judges Transferred to Civilian Courts*, [http://www.clubofmozambique.com/solutions1/law\\_news\\_submit.php?id=news&noticia=35](http://www.clubofmozambique.com/solutions1/law_news_submit.php?id=news&noticia=35) (last visited Feb. 18, 2009).

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

member not qualified to work in the assigned offices was returned to the armed forces.<sup>238</sup> Under the new law, all pending cases would be transferred to the civilian courts.<sup>239</sup> Jurisdiction over cases involving generals charged with crimes was transferred to the Supreme Court.<sup>240</sup> Privates, sergeants, and other low-ranking officers would have their cases presided over by District or Provincial courts.<sup>241</sup> The Higher Courts of Appeal would be responsible for hearing cases involving other high-ranking officers.<sup>242</sup> The law passed unanimously.<sup>243</sup>

#### 10. *Law Altering Statute of Judges*

In 2007, the Mozambican Parliament passed legislation to create three high courts of appeal to cover the southern, central, and northern regions of the country.<sup>244</sup> The courts did not immediately hear cases because they were never staffed with judges.<sup>245</sup> In late 2008, the Parliament addressed this situation by enacting a law to alter the Statute of Judges, which created a new category of appeal judges.<sup>246</sup> The additional courts and judges are expected to speed up the flow of cases through the judicial system and the High Court of Appeal Judges will have the same privileges as the Supreme Court Justices.<sup>247</sup> The new judges will have a rank above the provincial and district judges but beneath that of the justices in the Supreme Court.<sup>248</sup>

#### F. LESOTHO

Of the appeal cases heard by the Lesotho Court of Appeal during its first session of 2008,<sup>249</sup> two will have widespread impact. These cases are: *Minister of Labour and Employment and Others v. Ts'eua*,<sup>250</sup> and *Director of Immigration and Others v. Lekhoaba and Another*.<sup>251</sup> In *Ts'eua*, the Court of Appeal determined the constitutionality of section 38A (4) of the Labour Code (Amendment) Act 3 of 2000. In summary, the act provides for the Labour Appeal Court to be the final and exclusive court of appeal in some labor mat-

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238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. See Club of Mozambique, *Nov. 2008-Law on Statute of Judges Passed*, [http://www.clubofmozambique.com/solutions1/law\\_news\\_submit.php?id=news&noticia=34](http://www.clubofmozambique.com/solutions1/law_news_submit.php?id=news&noticia=34) (last visited Feb. 18, 2009).

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*

249. Lesotho Government Online, *Appeal Court to Hold First Session*, [http://www.lesotho.gov.ls/articles/2008/APPEAL\\_COURT\\_TO\\_HOLD\\_FIRST.php](http://www.lesotho.gov.ls/articles/2008/APPEAL_COURT_TO_HOLD_FIRST.php) (last visited Feb. 18, 2009). For a list of cases heard see: <http://www.saflii.org/ls/cases/LSCA/2008/>

250. Minister of Labour & Employment v. Ts'eua, [2008] LSCA 5 (Apr. 11, 2008), available at <http://www.saflii.org/ls/cases/LSCA/2008/5.rtf>.

251. Dir. of Immigration v. Lekhoaba, (C of A (CIV) No.22/07) [2008] LSCA 4 (Apr. 11, 2008), available at <http://www.saflii.org/ls/cases/LSCA/2008/4.rtf>.

ters.<sup>252</sup> The Labour Appeal Court applies to non-public officers for whom no further rights of appeal are available, while public officers may appeal to the Court of Appeal.<sup>253</sup>

The Court of Appeal decided that while the two-streams of labor law in Lesotho do not automatically indicate inequality before the law, the specific denial to non-public officers of the right of appeal to the Court of Appeal does not afford equal protection of the law to all.<sup>254</sup> The court concluded that section 38A (4) of the Labour Code (Amendment) Act materially infringed fundamental rights protected by the Lesotho Constitution. The court referred to the rights to a fair trial and equality before the law enshrined in sections twelve and nineteen of the Constitution, respectively.<sup>255</sup> The court further held that while an infringement of a protected right is not in itself unconstitutional, the Attorney General failed to justify the infringement arising from section 38A (4) of the Labour Code (Amendment) Act. As such, the provision was held to be unconstitutional and without force or effect.<sup>256</sup>

In *Lekhoaba*, the issue was whether pursuant to section 41(1) of the Constitution, a Lesotho citizen who is also a citizen of another country ceases to be a citizen of Lesotho within five years of attaining the age of twenty one unless he has renounced his citizenship of that other country and has taken the oath of allegiance. The first respondent who held dual citizenship in Lesotho and South Africa argued that section 41 (1) did not apply to those who were Lesotho citizens by birth. As such, a Lesotho citizen by birth may only lose Lesotho citizenship through the voluntary act of renunciation and not automatically by operation of the law.<sup>257</sup> The court held that the Constitution demonstrated that section 41(1) applied to all Lesotho citizens regardless of how their citizenship was obtained.<sup>258</sup> The court therefore held that failure to renounce the acquired citizenship (in this case, South Africa) and pledge allegiance to Lesotho led to the automatic cessation of Lesotho citizenship by the operation of law.<sup>259</sup>

Notwithstanding the decision, the court acknowledged the impact the decision would have on numerous citizens of Lesotho who possess dual citizenship for various reasons. Presiding Judge, L.S. Melunsky, JA stated:

[I]t occurs to us that Parliament should consider enacting legislation to permit citizens of Lesotho who acquire citizenship of South Africa to hold such dual citizenship in certain defined circumstances, e.g. where the person concerned was born in this Kingdom. This suggestion, it would seem, is well worth careful consideration having regard to the geographical situation of Lesotho as an enclave surrounded by South Africa, the economic interdependence of the two countries and because so many

252. Minister of Labour & Employment v. Ts'eua, [2008] LSCA 5, 2 (Apr. 11, 2008), available at <http://www.saflii.org/ls/cases/LSCA/2008/5.rtf>.

253. *Id.* at 5-6.

254. *Id.* at 7.

255. See The Constitution of Lesotho, [http://www.lesotho.gov.ls/documents/Lesotho\\_Constitution.pdf](http://www.lesotho.gov.ls/documents/Lesotho_Constitution.pdf) (last visited Feb. 18, 2009).

256. Minister of Labour and Employment v. Ts'eua, C of A (CIV) [2008] LSCA 5, 17 (Lesotho), available at <http://www.saflii.org/ls/cases/LSCA/2008/5.pdf>.

257. Dir. of Immigration and Others v Lekhoaba and Another, CIV No.22-07 [2008] LSCA 4, 9-11, available at <http://www.saflii.org/ls/cases/LSCA/2008/4.html>.

258. *Id.* ¶¶ 11-14.

259. *Id.* ¶ 15.

Lesotho citizens seek employment in South Africa and apparently acquire citizenship of that country.<sup>260</sup>

In October 2008, Prime Minister Mr. Pakalitha Mosisili stated that on the matter of dual citizenship "the Ministry in charge will take the necessary measures if there is a need to do so."<sup>261</sup>

## VI. African Institutions

### A. THE AFRICAN UNION

In early January, U.S. and A.U. officials convened talks in Kenya to forge a power-sharing agreement between incumbent President Mwai Kibaki, who was declared victor of Kenya's presidential election despite allegations of widespread voting irregularities, and opposition leader Raila Odinga, whose loss triggered massive protests that spiraled into bouts of ethnic violence.<sup>262</sup> Kibaki and Odinga failed to reach a consensus, leading A.U. chairman John Kufuor to announce that a new round of talks would be administered under Kofi Annan, the former Secretary-General of the U.N.<sup>263</sup> Negotiations reconvened and by February 2008, Kibaki and Odinga signed a power-sharing agreement that created the prime minister position now held by Odinga.

The Tenth A.U. Summit was held from January 31 to February 2 in Addis Ababa and opened with Tanzanian president Jakaya Kikwete succeeding Kufuor as A.U. chairman.<sup>264</sup> The chairmanship of the A.U. Commission (AUC or Commission) in turn went to the foreign minister of Gabon, Jean Ping, who took over from Oumar Konaré, the former president of Mali who had led the AUC since 2003.<sup>265</sup>

On the eve of the summit, Libyan leader Muammar Gaddafi intimated that Libya could pull \$5 billion of investments from the African continent to the benefit of countries bordering the Mediterranean if his calls for stronger regional integration went unheeded.<sup>266</sup> Gaddafi favors a federal African government and has expressed concern over a growing rift between predominantly Arab North Africa and its black neighbors living in the continent's Sub-Saharan expanses.<sup>267</sup>

The ongoing political crisis in Kenya, along with breaking news that rebel forces were streaming into the Chadian capital of N'Djamena from across the Sudanese border, domi-

260. *Id.* ¶ 17.

261. *Lesotho Watching with Keen SA Current Political Changes-PM*, LESOTHO GOV'T ONLINE, Oct. 27, 2008, [http://www.lesotho.gov.ls/articles/2008/LESOTHO\\_WATCHING\\_WITH\\_KEEN.php](http://www.lesotho.gov.ls/articles/2008/LESOTHO_WATCHING_WITH_KEEN.php)

262. Edmund Sanders, *Envoys Unsuccessful in Kenya*, L.A. TIMES, Jan. 11, 2008, at A9.

263. *Id.*

264. See *Tanzania's Kikwete Becomes African Union Chairman*, REUTERS, Jan. 31, 2008, <http://africa.reuters.com/top/news/usnBAN124189.html>; African Union Summit (2008), <http://www.africa-union.org/root/AU/Conferences/2008/january/summit/10thsummit.htm>.

265. Tsegaye Tadesse, *Gabon's Ping Elected Chairman of AU Commission*, REUTERS, Feb. 1, 2008, <http://africa.reuters.com/top/news/usnBAN233967.html>.

266. *Libya's Gaddafi Says May Pull Africa Investments*, REUTERS, Jan. 30, 2008, <http://africa.reuters.com/top/news/usnBAN124642.html>.

267. *Id.*

nated the discourse at the January summit.<sup>268</sup> Kibaki delivered remarks indicating unwillingness to compromise with Odinga that cast doubts on the efficacy of the mediation led by Annan.<sup>269</sup> Kikwete warned that Chad would face expulsion from the A.U. should its president, Idriss Deby, be toppled in a coup.<sup>270</sup>

President Ahmed Abdallah Mohamed Sambi of Comoros addressed his own local political crisis at the A.U. summit by expressing impatience with the sanctions that the A.U. had been levying on the breakaway island of Anjouan since October 2007.<sup>271</sup> In particular, Sambi foreclosed possibilities of further discussion of the Anjouan problem and announced that the national government of Comoros would be pursuing its own course of action.<sup>272</sup> As Sambi prepared federal troops to stage an invasion of Anjouan during February, Ping voiced disappointment at the inefficacy of A.U. sanctions and concluded that Anjouan's rebel government, led by the island's self-declared President Mohammed Bacar, was to blame for the standoff.<sup>273</sup> In late March, a joint A.U.-Comoros assault force seized Anjouan's capital,<sup>274</sup> and Bacar then fled to the French-administered island of Mayotte where his arrival triggered riots and prompted local authorities to transfer the deposed colonel to Réunion.<sup>275</sup>

In April, South African President Thabo Mbeki presided over a special session of the U.N. Security Council dedicated to increasing cooperation between the Security Council and the A.U., including shifting primary responsibility to the A.U. to respond to regional conflicts.<sup>276</sup> While U.N. Secretary-General Ban Ki-moon called for a continental standby force buttressed with mediators and an international trust fund, the United States and Sudan emphasized conflict prevention to limit peacekeeping costs.<sup>277</sup> The meeting was also marked by tensions regarding the controversial Zimbabwean presidential election held in March.<sup>278</sup> United Kingdom Prime Minister Gordon Brown, for one, derided

268. Daniel Wallis & Barry Moody, *African Summit Blighted by Violence in Chad, Kenya*, REUTERS, Feb. 2, 2008, <http://africa.reuters.com/top/news/usnBAN252684.html>.

269. *Id.*

270. *Id.*

271. *Comoros Says Will Take Action Against Rebel Island*, REUTERS, Feb. 1, 2008, <http://africa.reuters.com/top/news/usnBAN234039.html>.

272. *Id.*

273. Wangui Kanina, *AU Blames Rebel Islanders for Comoros Crisis*, REUTERS, Feb. 22, 2008, <http://africa.reuters.com/top/news/usnBAN242554.html>; Ahmed Ali Amir, *Residents Report Military Build-up on Comoros*, REUTERS, Feb. 6, 2008, <http://africa.reuters.com/top/news/usnBAN646113.html>.

274. AHMED ALI AMIR, *Comoros Says Troops Have Taken Anjouan Capital*, MAIL & GUARDIAN ONLINE (Johannesburg), Mar. 25, 2008, <http://www.mg.co.za/article/2008-03-25-comoros-says-troops-have-taken-anjouan-capital; Rebel Capital Captured in Assault, Comoros Government Says>, ASSOCIATED PRESS, Mar. 25, 2008, available at <http://www.iht.com/articles/2008/03/25/africa/comoros.php>.

275. In Reunion, Bacar was briefly jailed on charges that he had illegally entered and imported weapons into French territory. After the charges were dropped, Bacar was placed under house arrest as he initiated a petition for asylum that was ultimately rejected. Bacar and his companions were finally expelled from Reunion in July and now reside in Benin. *France Releases Comoros Rebel, to Stay on Island*, REUTERS, Apr. 18, 2008, <http://africa.reuters.com/top/news/usnBAN853631.html>; *Reunion Expels Rebel Comoros Leader*, AGENCE FRANCE-PRESS, July 19, 2008, available at [http://afp.google.com/article/ALeqM5hZUvb60OTSZYLq2xV1-7S8fv\\_N8w](http://afp.google.com/article/ALeqM5hZUvb60OTSZYLq2xV1-7S8fv_N8w).

276. Saeed Shabazz, *African Leaders to UN: We Didn't Come with Our Hands Out*, N.Y. AMSTERDAM NEWS, Apr. 24, 2008, at 2.

277. Maggie Farley, *U.N. Discusses Zimbabwe*, L.A. TIMES, Apr. 17, 2008, at A4.

278. *Id.*

Robert Mugabe's victory as fraudulent, even as Mbeki, a Mugabe supporter whose government had blocked discussion of the issue before the Security Council, downplayed the notion that Zimbabwe was undergoing an electoral crisis.<sup>279</sup>

In the wake of political violence prefacing the Zimbabwean presidential runoff election of June 27, from which opposition leader Morgan Tsvangirai withdrew out of concern that his supporters were being subjected to violence and other voter intimidation, Ping acknowledged the gravity of the situation and began consulting Kikwete and Mbeki about how to assist Zimbabwe's divided electorate.<sup>280</sup> With regard to the polling, A.U. observers proclaimed that widespread irregularities required a new round of voting and recommended a power-sharing agreement between Tsvangirai's party, Movement for Democratic Change, and Mugabe's camp, ZANU-PF.<sup>281</sup>

Unsurprisingly, the deadlock dominated the proceedings at the Eleventh A.U. summit held in Sharm El-Sheikh from June 24 to July 1.<sup>282</sup> Although the delegates passed a resolution that expressed concern over the situation and that contained an unspecific recommendation to set up a unity government in Zimbabwe,<sup>283</sup> another motion censuring Mugabe failed to receive enough votes for ratification.<sup>284</sup> Indeed, Mugabe himself attended the summit and boldly urged his colleagues to reject criticisms of his government by Western nations as unwarranted foreign interference in local affairs.<sup>285</sup> Mugabe also rebuffed the A.U.'s call to share power with Tsvangirai and dismissed his rival's request that additional A.U. mediators be allowed to participate in the negotiations brokered by Mbeki.<sup>286</sup> In late July, however, Mbeki extracted a tentative power-sharing accord between Mugabe and Tsvangirai, although questions over which faction would be allowed to control various cabinet positions would impede the transition process in the months to follow.<sup>287</sup>

During the first week of August, the A.U. announced that it would suspend Mauritania's membership following the ouster of Sidi Mohamed Ould Cheikh Abdallahi in a military coup spearheaded by the chief of the West African nation's presidential guard.<sup>288</sup> Although the rebel leadership promised that new elections would be held, it also downplayed the significance of the A.U. suspension, which had been predicated on Mauritania's

279. *Id.*

280. Tsegaye Tadesse, *African Union Says Zimbabwe "of Grave Concern"*, REUTERS, June 23, 2008, <http://africa.reuters.com/top/news/usnBAN332682.html>.

281. Margaret Coker, *Mugabe's Win Poses Problems for African Union*, WALL ST. J., June 30, 2008, at A6.

282. Kennedy Abwao & Alan Cowell, *African Union Calls for Unity Government in Zimbabwe*, N.Y. TIMES, July 2, 2008, at A11; Kennedy Abwao & Alan Cowell, *Undeterred by Criticism, Mugabe Joins Peers at African Union Meeting*, N.Y. TIMES, July 1, 2008, at A6.

283. Kennedy Abwao & Alan Cowell, *Mugabe Rejects Calls for His Ouster, African Leaders Press for Creation of Unity Government in Zimbabwe*, PITT. POST-GAZETTE, July 2, 2008, at A3.

284. Sonia Verma, *African Union Resolution Fails to Censure Mugabe*, GLOBE & MAIL, July 1, 2008, available at <http://www.theglobeandmail.com/servlet/story/RTGAM.20080701.wzimbabwe02/BNStory/International>.

285. Abwao & Cowell, *supra* note 285.

286. *Id.*

287. Leslie Wroughton, *AU Dismisses Worry over Zimbabwe with Mbeki Gone*, REUTERS, Sept. 23, 2008, <http://africa.reuters.com/top/news/usnJOE48N00K.html>; Craig Timberg, *Zimbabwean Rivals Agree to Negotiations*, WASH. POST, July 22, 2008, at A8.

288. George Obulutsa, *African Union Will Suspend Mauritania - AU chair*, REUTERS, Aug. 9, 2008, <http://africa.reuters.com/top/news/usnBAN941941.html>.

adoption of a number of A.U. conventions banning unconstitutional changes in government.<sup>289</sup>

Later in the month, the U.N. Security Council extended the deployment of an A.U. "peacekeeping force in Somalia for an additional six months" following the signing of peace accords between the national government and several opposition groups.<sup>290</sup> On the ground, however, the beleaguered and understaffed A.U. mission that is composed mainly of Ugandan troops assisted by a smaller contingent of soldiers from Burundi, emerged as a principal target for Islamist insurgent forces bent on dissuading outside parties from further intervening in Somalia's bloody political landscape.<sup>291</sup>

In early October, military commanders from thirteen East African nations met in Nairobi to iron out a plan establishing an A.U.-sponsored regional rapid-response force.<sup>292</sup> The so-called Rapid Deployment Unit, which will begin operation in 2009, would be called on to tamp down violent conflicts within two weeks after they break out and is expected to form part of a larger East African Stand-by Brigade of "35,000 soldiers, 1000 police officers[,] and 1000 civilian peacekeepers."<sup>293</sup> The East African brigade is one of five proposed regional peacekeeping contingents, and on October 18, further discussions regarding the administration of these brigades on a continent-wide scale were held in Algiers.<sup>294</sup>

Overall, the situation in 2008 looked grim for the joint U.N.-A.U. peacekeeping operation in Darfur, a mission that was intended to replace a previously all-A.U. military force but which continued to be staffed primarily by members of the old force due to the international community's significant delays in delivering equipment and personnel.<sup>295</sup> In early July, the U.N. and the A.U. appointed Burkina Faso's foreign minister, Djibril Bassole as peace envoy in negotiations between the Sudanese government and Darfur rebel leaders.<sup>296</sup> Acting in his capacity as A.U. chairman, Kikwete announced on September 8 that the A.U. would join the Arab League in urging that any indictments against Sudanese president Omar Hassan al-Bashir for Darfur-related war crimes be deferred in the interest of facilitating ongoing peace talks.<sup>297</sup>

## B. THE EAST AFRICAN COMMUNITY

The East African Community (EAC or Community) was re-established and went into force July 2000 with the signing of the Treaty for the establishment of the East African

289. *Id.*

290. *African Union Force Extended in Somalia*, N.Y. TIMES, Aug. 20, 2008, at A8.

291. See Abdi Sheikh & Abdi Mohamed, *Somali Insurgency Escalates, 15 Civilians Die*, REUTERS, Sept. 24, 2008, <http://africa.reuters.com/top/news/usn4E371FAA-8A1F-11DD-9AD8-5E4DA0527F83.html>; *AU Peacekeepers Mired in Somalia*, BBC NEWS, Sept. 24, 2008, <http://news.bbc.co.uk/2/hi/africa/7633625.stm>.

292. Fred Mukinda, *East Africa: United Force to Quell Conflicts*, NATION (Nairobi), Oct. 8, 2008, <http://al-lafica.com/stories/200810090474.html>.

293. *Id.*

294. *Id.*; *Algiers Meeting Reactivates the Five African Standby Force Project*, EL KHABAR, Oct. 19, 2008.

295. Stephanie McCrummen, *Peacekeepers in Darfur Hobbled by Need; U.N.-African Union Force Short of Funds, Soldiers, Equipment*, WASH. POST, July 4, 2008, at A1.

296. *UN and AU Appoint Bassole to Get Results*, NEW NATION, July 7, 2008, at 11.

297. *AU Chairman Backs Sudan's Bashir Over Court*, REUTERS ALERTNET, Sept. 8, 2008, available at <http://www.alertnet.org/thenews/newsdesk/L8239.htm>.

Community (Treaty).<sup>298</sup> Kenya, Tanzania, and Uganda, after twenty-three years of the collapse of the first Community, re-integrated economic and trade infrastructures with the objective to “foster regional peace and security, while providing an appropriate response for economic development and competitiveness in light of globalization of trade and transnational corporations.”<sup>299</sup>

The 2000 Treaty established a new judicial framework different from the earlier Community’s Court of Appeal. The Court of Appeal jurisdiction was for appeals from civil and criminal decisions of National courts. In Contrast, the 2000 Treaty provides for the East African Court of Justice (Court) to operate as an international court.

The court is composed of two judges from each Partner State, the Registrar, and support staff.<sup>300</sup> The judges are selected from the Partner State’s national courts of judicature or jurists of recognized competence. The Registrar is appointed by the Council of Ministers. The court is temporarily seated in Arusha, Tanzania and operates on an ad hoc basis during the transitional period.

Articles 27, 28, 29, and 30 provide for the court’s jurisdiction over disputes that arise under the Treaty.<sup>301</sup> The Council of Ministers may expand the court’s jurisdiction to matters in human rights, appellate or other original/jurisdiction as required. The court is authorized to hear disputes between the Community and its employees, and to arbitrate if jurisdiction is conferred within contracts or agreements. Also, it has the authority to issue advisory opinions.

Decisions of the court follow the rules of procedure of the country where the order is to be executed. The Partner State and Council are obligated to impose non-pecuniary judgment without delay. The Rules of Procedure of the Partner State govern executing pecuniary judgments. The court rendered its first case in 2006. Since, there have been five rulings and five judgments from the court. In 2008, the court presided over a challenge by the five East African law society organizations of the legality, constitutionality, and legal effect of amendments to the Treaty without public input against the three Attorney Generals of the Partner States and Secretary General of the East African Community.<sup>302</sup> The applicants in the case declared infringement of the Treaty due to lack of participation by civil society in promulgating amendments as provided in Article 38(2) of the Treaty.<sup>303</sup> The court found infringement. But, because the “the text of the Treaty [was] not explicit on the requirement of people’s involvement in its amendment,” the infringement did not have a significant effect on the Community, it was not done consciously, and it was likely

298. Treaty for the Establishment of the East African Community (as amended on Dec. 14, 2006 and Aug. 20, 2007), [http://www.eac.int/index.php/downloads/doc\\_view/158-amended-treaty-for-the-establishment-of-east-african-community.raw?tmpl=component](http://www.eac.int/index.php/downloads/doc_view/158-amended-treaty-for-the-establishment-of-east-african-community.raw?tmpl=component).

299. East African Court of Justice, <http://www.eac.int/index.php/eacj.html> (last visited Feb. 27, 2009).

300. For an outline of the court’s litigation process, see Dr. John Eudes Ruhangiza, *Litigation in the East African Court of Justice Part 1 and Part 2*, AFRICAN EXECUTIVE (2006), <http://www.africanexecutive.com/modules/magazine/articles.php?article=794>. The Treaty, the court’s rulings and judgments and other documents are available on East African Community’s website: East African Court of Justice, <http://www.eac.int/index.php/eacj.html>.

301. East Africa Community, <http://www.eac.int> (last visited Feb. 27, 2009).

302. *E. Afr. Law Soc’y v. Attorney Gen. of the Republic of Kenya*, Reference No. 3 of 2007 (2008), available at <http://www.saflii.org/ea/cases/EACJ/2008/1.htm>.

303. *Id.* at 43.

not to recur, the court did not invalidate the amendments.<sup>304</sup> It invoked the doctrine of prospective annulment to uphold its decision.<sup>305</sup> The doctrine was “beneficial for our stage of developing integration and the emerging Community jurisprudence.”<sup>306</sup>

In October 2008, Uganda hosted the historic East Africa Community-Southern Africa Development Community-Common Market of East and Southern Africa (COMESA) Tripartite Summit. As an outcome of the Summit, the Regional Economic Communities agreed to fast track the formation of a Single Free Trade Area and merge their respective regional blocs into the Africa Economic Community.<sup>307</sup>

## C. SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

### 1. SADC Summit

The 28th summit of the Southern African Development Community (SADC) concluded in Sandton, South Africa on August 17, 2008, with the launch of the Free Trade Area (FTA).<sup>308</sup> As from January 2009, 85 percent of goods will become exempt from tax within the SADC region; the goal being to fully liberalize the region by 2012.<sup>309</sup> The summit also marked the return of Seychelles who left the SADC in July 2003.<sup>310</sup>

### 2. SADC Extraordinary Summit on Zimbabwe

On October 28, 2008, members of the SADC agreed to hold an extraordinary summit to try to resolve the power-sharing stalemate in Zimbabwe.<sup>311</sup> This summit followed the deadlock<sup>312</sup> in implementing of the power-sharing agreement signed on the 15th of September 2008 by ZANU-PF, President Robert Mugabe's party, Morgan Tsvangirai's Movement for Democratic Change (MDC), and a breakaway faction of the MDC, led by

304. *Id.*

305. *Id.* at 44.

306. *Id.*

307. Grace Matsiko, *Uganda: Experts Commend Tripartite Summit*, MONITOR, Oct. 25, 2008, available at <http://allafrica.com/stories/200810270266.html>.

308. Southern African Development Community, *Final Communiqué of the 28th Summit of SADC Heads of State and Government*, Aug. 17, 2008, <http://www.sadc.int/index/browse/page/203>.

309. Itayi Garande, *SADC Now a Free Trade Area*, ZIMB. GUARDIAN, Aug. 19, 2008, available at <http://www.talkzimbabwe.com/news/117/ARTICLE/3195/2008-08-19.html>.

310. *See Seychelles to Rejoin SADC*, AFROL NEWS, Dec. 2, 2006, available at <http://www.afrol.com/articles/17519>.

311. Mark Tran, *Tsvangirai Granted Wish for Summit in bid to Break Zimbabwe Deadlock*, GUARDIAN UK, Oct. 28, 2008, available at <http://www.guardian.co.uk/world/2008/oct/28/zimbabwe-south-africa-mugabe-tsvangirai>.

312. Kitsepele Nyathi, *Deadlock Driving Zimbabwe into Violence, Says Opposition*, SATURDAY NATION (Afr.), Oct. 31, 2008, available at <http://www.nation.co.ke/News/africa/-/1066/485770/-/14886m4z/-/>; *Tsvangirai Says Failed Zimbabwe Cabinet Talks “a Monologue”*, AFP, Oct. 18, 2008, available at <http://afp.google.com/article/ALeqM5hiaswt5sh9m-CyRHQ38yIPaxENFA>; Dumisani Muleya, *Zimbabwe: MDC Quits Unity Talks over Deadlock*, BUS. DAY, Oct. 8, 2008, available at <http://allafrica.com/stories/200810080007.html>; Celia W. Dugger, *Zimbabwe Power-Sharing Deal Deadlocks*, N.Y. TIMES, Sept. 18, 2008, <http://www.nytimes.com/2008/09/19/world/africa/19zimbabwe.html?partner=rssnyt&emc=rss>; *Zimbabwe Cabinet Talks ‘Deadlock’*, BBC NEWS, Sept. 18, 2008, available at <http://news.bbc.co.uk/2/hi/africa/7623619.stm>.

Arthur Mutambara.<sup>313</sup> The power-sharing agreement, which was brokered by former South African president, Thabo Mbeki,<sup>314</sup> stalled over how to share government ministries, with Mugabe refusing to relinquish key cabinet positions.<sup>315</sup>

Officials of the fourteen-member Southern African Development Community (SADC) said the summit could be convened without delay in an attempt to persuade President Robert Mugabe's ruling ZANU-PF party and opposition factions to implement the accord.<sup>316</sup>

In October 2008, the SADC acknowledged that the power-sharing deal signed on September 15, 2008, was fraudulently altered before the signing ceremony and different from the one that the parties had agreed to, days earlier.<sup>317</sup>

#### D. THE AFRICAN DEVELOPMENT BANK (ADB)

On October 22, 2008, three of Africa's largest trading blocs met in Kampala, Uganda and agreed to create a Free Trade Area encompassing twenty-six countries with 527 million people with an estimated GDP of \$624 billion.<sup>318</sup> The agreement is a step towards the eventual creation of a United States of Africa, as envisioned by Ghana's first President Kwame Nkrumah.<sup>319</sup> For now, it will remove trade barriers and increase trade among the participants in the hopes of spurring economic growth.

The three trading blocs participating in the agreement are the Common Market for Eastern and Southern Africa, the South African Development Commission, and the East African Community.<sup>320</sup> The agreement lays the groundwork for the creation of a Free Trade Area to be drawn up in the next six months.<sup>321</sup>

313. *Zimbabwe Rivals in Historic Pact*, BBC NEWS, Sept. 15 2008, <http://news.bbc.co.uk/1/hi/world/africa/7615906.stm>; Sebastien Berger, *Zimbabwe: Robert Mugabe and Morgan Tsvangirai Sign Historic Power-Sharing Deal*, TELEGRAPH, Sept. 15, 2008, available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/zimbabwe/2964007/Zimbabwe-Robert-Mugabe-and-Morgan-Tsvangirai-sign-historic-power-sharing-deal.html>; *Zimbabwe Tests a Recipe for Gridlock*, FIN. TIMES, Sept. 15, 2008, <http://www.ft.com/cms/s/0/fc5f800-8352-11dd-907e-000077b07658.html>.

314. Karin Bruilliard, *Power-Sharing Deal is Signed in Zimbabwe*, WASH. POST, Sept. 16, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/15/AR2008091500504.html>.

315. Cris Chinaka, *Zimbabwe Cabinet Talks Deadlock*, INT'L HERALD TRIB., Oct. 16, 2008, available at <http://www.iht.com/articles/reuters/2008/10/16/europe/OUKWD-UK-ZIMBABWE-POLITICS.php>; Cris Chinaka, *Zimbabwe Cabinet Talks 'Deadlock'*, BBC NEWS, Sept. 18, 2008, available at <http://news.bbc.co.uk/2/hi/africa/7623619.stm>.

316. Mabasa Sasa, *Zimbabwe: Troika Fails to Break Impasse*, HERALD (Zimb.), Oct. 28, 2008, available at <http://allafrica.com/stories/200810280010.html>.

317. Lance Guma, *SADC Admit Power Sharing document was fraudulently altered*, SW RADIO AFR., Oct. 31, 2008, available at <http://www.swradioafrica.com/news311008/sadc311008.htm>.

318. *African Leaders Agree to Form Single Market*, AFP, Oct. 22, 2008, available at <http://afp.google.com/article/ALeqM5i0GmLiOhihzyOZ4WZrjTghlGPosQ>.

319. *Cape to Cairo Unity Was 'Over Due'*, BBC NEWS, Oct. 23, 2008, <http://news.bbc.co.uk/go/pr/fr/-/2/africa/7686959.stm>.

320. *Id.*

321. *Id.*

## E. BENEFITS AND GOALS

The Free Trade Area seeks to emulate the success of the European Union's economic model.<sup>322</sup> A Free Trade Area will remove trade tariffs, quotas, and preferences among the participants. The next immediate step will be the creation of a customs union, which will create a standard policy for the trade groups in trading with non-member states.<sup>323</sup>

The benefits for the member states include reduced costs of trade and the opening up of their economies to create jobs and stimulate growth. The trade group will likely lead to a single trade administration to settle trade disputes, act as a large negotiator with other trade partners, such as the European Union and the United States, and eliminate inefficiencies and corruption at lower levels within the community.

Ultimately, the goal is to create a common market, a common currency, and a continent-wide government for all African countries. The continent-wide government would include a parliament and an executive position.<sup>324</sup> These assimilations are likely to include common courts and laws similar to the European Union.

## F. BARRIERS AND HISTORY

The largest barriers to implementing and sustaining a trade group are Africa's long history of corruption, political instability, and poor infrastructure. These problems persist.

Africa has an unsuccessful history with economic communities such as the original East African Community that disbanded in 1977 due to infighting over representation and how to deal with Ugandan dictator Idi Amin.<sup>325</sup>

For the trade group to achieve its goals, there must be a willingness among its members to share power; a rarity in African politics. Further, member states must move towards or continue their democracies. A dictator in the group could derail the process.

# VII. Inter Government Authority on Development

## A. ADDRESSING THE POLITICAL SITUATION IN SOMALIA

On November 18, 2008, the Council of Ministers of the Inter-Government Authority on Development (IGAD) convened in Addis Ababa, Ethiopia, to address Somalia's political situation.<sup>326</sup> The session followed-up the Thirteenth Extraordinary session held by the Assembly of Heads of States and Government on October 29, 2008,<sup>327</sup> during which

322. Joachim Buwembo, *Fragmenting But Yet Seeking Bigger Markets*, DAILY MONITOR, Oct. 24, 2008, available at [http://www.monitor.co.ug/artman/publish/opinions/Fragmenting\\_but\\_yet\\_seeking\\_bigger\\_markets\\_73583.shtml](http://www.monitor.co.ug/artman/publish/opinions/Fragmenting_but_yet_seeking_bigger_markets_73583.shtml).

323. See Alfred Wandera & Gerald Bareebe, *Tripartite to Compensate Poor Members Countries*, Oct. 24, 2008, DAILY MONITOR, [http://www.monitor.co.ug/artman/publish/news/Tripartite\\_to\\_compensate\\_poor\\_member\\_countries\\_73612.shtml](http://www.monitor.co.ug/artman/publish/news/Tripartite_to_compensate_poor_member_countries_73612.shtml).

324. Treaty Establishing the African Economic Community art. 6, June 3, 1991, available at <http://www.uneca.org/itca/ariportal/abuja.htm>.

325. Joachim Buwembo, *supra* note 322.

326. IGAD, *Communiqué of the 30th Extra-Ordinary Session of the IGAD Council of Ministers on Somalia*, Nov. 19, 2008, [http://www.igad.org/index.php?option=com\\_content&task=view&id=197&Itemid=96](http://www.igad.org/index.php?option=com_content&task=view&id=197&Itemid=96).

327. *See id.*

the Assembly called upon the Somali transitional government to complete a constitution within six months.<sup>328</sup> The transitional government was also called upon to appoint a new cabinet within fifteen days or face the possibility of sanctions.<sup>329</sup> The transitional government has not completed a constitution or appointed a new cabinet.<sup>330</sup> The Council of Ministers expressed disappointment at the transitional government's failure to constitute a new cabinet, and decided to impose targeted sanctions including "travel bans, freezing of assets among others, against all those in and outside Somalia who have become obstacles to the achievement of peace in Somali."<sup>331</sup> The Council urged the A.U. and the U.N. Security Council to do the same.<sup>332</sup>

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328. Allaftrica.com, *Somalia: Many Lawmakers Displeased with IGAD Conference*, Nov. 4, 2008, <http://allafrica.com/stories/200811050583.html>.

329. Daniel Ooko, *Somali PM pledges to Implement IGAD Conditions*, Oct. 31, 2008, [http://news.xinhuanet.com/english/2008-10/31/content\\_10288484.htm](http://news.xinhuanet.com/english/2008-10/31/content_10288484.htm).

330. *Id.*; IGAD, *Communiqué of the 30th Extra-Ordinary Session of the IGAD Council of Ministers on Somalia*, Nov.19, 2008, [http://www.igad.org/index.php?option=com\\_content&task=view&id=197&Itemid=96](http://www.igad.org/index.php?option=com_content&task=view&id=197&Itemid=96) [hereinafter *Communiqué*].

331. *Id.*

332. *Id.*