

# International Employment

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## I. Suing in America: Overseas Workers Sue Foreign Companies and Governments in the United States

A moribund, 200-year-old statute has been resuscitated by U.S. courts in a string of cases brought under the Alien Tort Claims Act (ATCA).<sup>1</sup> The year 2000 heralded a record number of cases brought or decided under the ATCA, firmly cementing a trend that began in 1984 with the class action litigation brought in the Union Carbide/Bhopal industrial disaster. This article provides an overview of ATCA cases for the year 2000, both in the employment context as well as ATCA's expansion to the broader, human rights arena.

The Alien Tort Claims Act, originally fashioned to permit prosecution of international pirates, is opening America's courthouses to foreigners who are suing for violations of international law. Class actions in the employment context are being initiated in American courts even when all the injuries were suffered abroad by non-Americans whose only link to the United States is that their employer's parent company is located in the United States. This is particularly ironic given America's employer-friendly employment laws, at least when judged by global standards. What explains this paradox? Personal injury law. Although these claims arise in the employment context, the legal theories underlying them have nothing to do with employment law and everything to do with personal injury law.

The United States' personal injury laws are very similar to their counterparts overseas, especially in Europe, Japan, Australia, and in places with European-derived legal systems, such as India and Latin America. The key differences are procedural. The United States offers juries, class action certification, the "American rule" on attorney fees, and the world's

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1. 28 U.S.C. § 1350 (2000). See *Filartiga v. Pëna-Irala*, 630 F.2d 876 (2d Cir. 1980) (stating the court identified only two previous cases that had relied upon the Alien Tort Claims Act for jurisdiction).

highest potential money damages. And significantly, the United States offers a critical jurisdictional advantage: the Alien Tort Claims Act.

#### A. *BANO V. UNION CARBIDE*<sup>2</sup>

The ancestor of all foreign employment-context personal injury class actions is the Union Carbide lawsuit over the 1984 factory explosion in Bhopal, India, which killed 2,100 and injured 2,000. One court described the catastrophe as “the most tragic industrial disaster in history.”<sup>3</sup> Even though the Bhopal victim/employees worked for Union Carbide India Ltd., of which New York-based Union Carbide Corporation owned 50.9 percent, a trail-blazing American lawyer representing explosion victims sued in a New York federal district court. The court dismissed the case on the ground of forum non conveniens in 1987. According to the judge, to have tried the Bhopal case before a New York jury “would [have been] yet another example of imperialism, another situation in which an established sovereign inflicted its rules, its standards and values on a developing nation.”<sup>4</sup>

#### B. POST-UNION CARBIDE LITIGATION

This sentiment was not long held, however. In 1997, thousands of banana-pickers from a dozen countries in Africa, Asia, and Latin America sued their employers—Chiquita, Dole and Del Monte—in a Texas court claiming that a banana-harvesting chemical had rendered them sterile. In that same year, Burmese workers sued California-based Unocal Corporation in a California court.<sup>5</sup> The workers claimed that Unocal, in its venture with the Myanmar (Burmese) government to extract natural gas, tolerated the torture and slavery of local pipeline employees, who worked not for Unocal, but for the military government. Recently, Holocaust survivors filed multibillion-dollar lawsuits in U.S. courts against German and American companies, such as Bayer and Ford, alleging that the companies used concentration camp prisoners as slave labor during World War II.

#### C. YEAR 2000 LITIGATION UNDER THE ALIEN TORT CLAIMS ACT

In August 2000, some of the same lawyers who brought the German slave labor suits relied on their own precedent to sue two Japanese companies, Mitsubishi Corporation and Mitsui & Co., in Los Angeles Superior Court for using thousands of slaves in China during World War II. Neither the statute of limitations nor the fact that Japanese citizens wholly owned the companies precluded the attorneys from seeking class status.

The Myanmar workers who had filed suit against Unocal in 1997 found their hopes of success dashed in 2000 when the federal district court granted the defendant’s summary judgment motion.<sup>6</sup> The court framed the issue, as whether the conduct of the Myanmar military violated international law, and if so, whether Unocal was liable for such violations.

2. See *Bano v. Union Carbide Corp.*, No. 99 Civ. 11329, 2000 U.S. Dist. LEXIS 12326 (S.D.N.Y. Aug. 28, 2000).

3. *In re Union Carbide Corp. Gas Plant Disaster*, 634 F. Supp. 842, 844 (S.D.N.Y. 1986).

4. *Id.* at 867.

5. See *Doe v. Unocal Corp.*, 963 F. Supp. 880 (C.D. Cal. 1997). See also *Doe v. Unocal Corp.*, 110 F. Supp. 2d 1294 (C.D. Cal. 2000).

6. See *Unocal Corp.*, 110 F. Supp. 2d at 1294.

It found no evidence that Unocal participated in, influenced, or controlled the military's actions. The court did find evidence existed that "suggest[ed]" Unocal knew that forced labor was being utilized and that its joint venture with the military government benefited from the practice.<sup>7</sup> But, it ruled that this was insufficient to establish liability under international law.<sup>8</sup>

One clear trend in 2000 has been the steady erosion of any link between the United States and the company or government charged with the international law abuses. While some of the cases alleged tenuous connections with the United States, others identified no link whatsoever.

For example, in one case brought by Nicaraguan nationals and former union organizers against a Taiwanese company, the company's California distributor provided the nexus to the United States. The lawsuit, brought in a California federal district court, charged the Taiwanese company, Nien Hsing, with firing, beating, blacklisting and causing criminal charges to be brought against the plaintiffs in an effort to prevent them from forming and maintaining a union.<sup>9</sup> According to the complaint, the claims arose from the actions of employees at Nien Hsing's Managua, Nicaragua factory, which produced blue jeans. Defendant C&Y Sportswear was its (relatively small) distributor located in California.

In another case brought in the federal district court for the District of Columbia, a very flimsy connection was alleged to exist between the defendant Chinese government and defendant U.S. company.<sup>10</sup> Chinese citizens sued the Chinese government and American athletic apparel-maker Adidas, alleging that the Chinese government had imprisoned the litigants without due process and forced them to engage in prison labor, including the sewing of soccer balls. The court, which dismissed the lawsuit, found the only connection between Adidas and the forced labor camps was that, while incarcerated, some of the plaintiffs stitched soccer balls bearing the Adidas logo.<sup>11</sup>

While the Chinese prison labor case featured a foreign government as a defendant, foreign governments were also involved in bringing employment class action litigation. For example, the Mexican government sued an egg farm in Maine on behalf of Mexican migrant workers, alleging civil rights violations.<sup>12</sup> In 1999, the federal district court for the District of Maine had dismissed Mexico as a plaintiff on the ground that, as a foreign nation, it lacked standing.<sup>13</sup> The First Circuit affirmed.<sup>14</sup> The Court of Appeals framed the issue as whether a foreign nation that asserts only quasi-sovereign interests and not its own proprietary interests should be afforded standing as *parens patriae*. It held that Mexico did not have standing, concluding that the federalism justifications for allowing states to assert the *parens patriae* doctrine did not exist because Mexico had not given up any sovereignty to the United States and it had no recognized role as a litigant against the individual states.<sup>15</sup>

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7. See *id.* at 1310.

8. See *id.* at 1312.

9. See *Tercero v. C&Y Sportswear, Inc.*, No. 2:00CV12715 (C.D. Cal. filed Dec. 5, 2000).

10. See *Ge v. Peng*, Civ. No. 98-1986, 1999 U.S. LEXIS 10834 (D.D.C. 1999).

11. See *Ge v. Peng*, Civ. No. 98-1986, 2000 U.S. Dist. LEXIS 12711 (D.D.C. 2000).

12. See *Estados Unidos Mexicanos v. DeCoster*, 59 F. Supp. 2d 120 (D. Me. 1999), *aff'd* 229 F.3d 332 (1st Cir. 2000).

13. See *id.*

14. See *Estados Unidos Mexicanos v. DeCoster*, 229 F.3d 332 (1st Cir. 2000).

15. See *id.*

The ATCA has also given governments one more weapon to utilize in their attempts to exert pressure on perceived rogue companies. For example, while no government filed the lawsuit against Nien Hsing, a coalition of U.S. legislators were involved in the court action, according to published reports.<sup>16</sup>

#### D. BEYOND EMPLOYMENT-RELATED LITIGATION

The trend toward utilizing the Alien Tort Claims Act to bring massive employment-related class actions in the United States undeniably has moved beyond the employment arena. The year 2000 witnessed the further development of utilization of the ATCA as a mechanism for remedying a variety of international human rights abuses.<sup>17</sup> Litigation brought by so-called comfort women is a case in point.

In September 2000, fifteen "comfort women" of Korean, Chinese, Taiwanese, and Filipino descent brought a class action lawsuit against the Japanese government claiming the Japanese government forced them to serve as sex slaves for the Japanese military during and before World War II.<sup>18</sup> The suit, filed in the federal district court for the District of Columbia, seeks compensation for suffering as a result of years of sexual slavery. The complaint also seeks to establish jurisdiction under the ATCA, asserting that the Japanese government's conduct amounts to a violation of international law.

Also in September, a federal appeals court revived a lawsuit brought by Nigerian émigrés against Royal Dutch and Shell Oil Companies.<sup>19</sup> The lawsuit, brought under the ATCA, alleged that the oil companies recruited the Nigerian military to torture and kill plaintiffs and their next of kin.

The court articulated one of the strongest statements to date concerning the role of U.S. courts in vindicating the rights of international citizens with respect to claims of torture and other human rights violations. It found that while the role of the federal courts may have been unclear before 1991, after passage of the Torture Victim Prevention Act of 1991,<sup>20</sup> there was strong evidence that the law expressed a policy that encourages U.S. district courts to hear such suits.

16. See *Tercero v. C&Y Sportswear, Inc.*, No. 2:00CV12715 (C.D. Cal. filed Dec. 5, 2000). Nien Hsing makes jeans, thousands of which are sold through U.S. military sales outlets. United States legislators mounted a delegation to Nicaragua to investigate the workers' claims of firings, beatings, and false arrests—and found them to have merit. The legislators then wrote a letter to President Bill Clinton, which ultimately resulted in a warning by Charlene Barshefsky, the U.S. trade representative, that Nicaragua could be jeopardizing its preferential trade benefits if it did not enforce its worker rights laws.

17. Previous litigants sought redress for abuses such as torture, rape, genocide, and environmental crimes. See, e.g., *Jota v. Texaco, Inc.*, 157 F.3d 153 (2d Cir. 1998), remanded to 93 Civ. 7527, 2000 U.S. Dist. LEXIS 745 (S.D.N.Y. Jan. 31, 2000) (alleging contamination of Ecuadorian lands and rivers); *Abebe-Jira v. Negewo*, 72 F.3d 844 (11th Cir. 1996) (alleging torture of Ethiopian prisoners); *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995) (alleging torture, rape, and other abuses orchestrated by Serbian military leader); *In re Estate of Ferdinand Marcos*, 25 F.3d 1467 (9th Cir. 1994) (alleging torture and other abuses by former president of Philippines); *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984) (alleging claims against Libya based on armed attack upon civilian bus in Israel); *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980) (alleging torture by Paraguayan officials); *Xuncax v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995) (alleging abuses by Guatemalan military forces).

18. See *Joo v. Japan*, No. 1:00CV2233 (D.D.C. filed Sept. 18, 2000).

19. See *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000) (stating the federal district court had dismissed the case on the ground of forum non conveniens, concluding that England was an adequate alternative forum).

20. 28 U.S.C. § 1350 (2000).

One of the most unusual ATCA cases was brought by Egyptian émigrés (who had become Canadian citizens by the time they filed the lawsuit) against Coca-Cola.<sup>21</sup> The Egyptian government confiscated the plaintiffs' property (land and factories) in the early 1960s, allegedly because of the plaintiffs' religious beliefs. The litigants alleged that Coca-Cola had acquired the property, some thirty years later, with knowledge that it had been expropriated from plaintiffs. The Second Circuit Court of Appeals refused to assert jurisdiction under the ATCA, finding no evidence of Coca-Cola's complicity to deprive plaintiffs of their property.<sup>22</sup>

#### E. THE FUTURE OF THE ALIEN TORT CLAIMS ACT

Of course, no one can predict the nature, scope, or extent of the ATCA's viability in the future. For some, the further development and evolution of the use of the ATCA seems inevitable as foreign populations become increasingly educated and aware of their rights and seek ways to remedy abuses. Others contend that such litigation is not a magic pill that will solve the problems of developing nations. What does seem clear is that, on the merits, plaintiffs will continue to have a steep uphill climb to prove that the alleged unlawful actions of companies and governments meet the fairly stringent proof standards required for finding a violation of international law.

## II. *Aramco* and Its Progeny

In *EEOC v. Arabian Am. Oil Co. (Aramco)*,<sup>23</sup> the Supreme Court held that federal and state laws may not be applied extraterritorially unless a clearly expressed intention to the contrary is expressed in the statute. Since the *Aramco* decision, the scope of the presumption against the extraterritorial application of federal and state law has been extensively litigated. Although most of the thorny issues have been settled, this past year saw several interesting cases come before the courts.

In *Stevens v. Premier Cruises, Inc.*,<sup>24</sup> the Eleventh Circuit was asked to decide whether Title III of the Americans with Disabilities Act (ADA)<sup>25</sup> applies to foreign-flag cruise ships operating in United States waters. The lower court, applying the rationale in *Aramco*, had determined that Title III does not apply to foreign-flag cruise ships. The Eleventh Circuit reversed, holding that the district court's conclusion was grounded in the inaccurate legal assumption that foreign-flag ships operating in United States waters are "extraterritorial."<sup>26</sup> By definition, the court observed, an extraterritorial application of a statute involves the regulation of conduct beyond the borders of the United States. Accordingly, a foreign-flag ship sailing in U.S. waters is not extraterritorial and the presumption against extraterritoriality

21. See *Bigio v. The Coca-Cola Co.*, 97 Civ. 2858, 1998 WL 293990 (S.D.N.Y. June 5, 1998), *rev'd on other grounds* 239 F.3d 440 (2d Cir. 2000).

22. See *Bigio v. The Coca-Cola Co.*, 235 F.3d 63 (2d Cir. 2000) (stating the court did, however, assume jurisdiction based upon diversity of citizenship).

23. *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244 (1991).

24. *Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237 (11th Cir. 2000).

25. See 42 U.S.C. § 12101 (2000) (stating that Title III of the ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation). See *id.* § 12182(a).

26. See *Stevens*, 215 F.3d at 1242.

invoked in the *Aramco* decision is inapposite.<sup>27</sup> Thus, the Eleventh Circuit was able to extend the reach of Title III of the ADA while avoiding the limitations imposed by *Aramco*.

Conversely, in *Hu v. Skadden, Arps, Slate, Meagher & Flom LLP*,<sup>28</sup> the court rejected an argument based, in part, on the fact that the allegedly discriminatory conduct occurred within the borders of the United States. The plaintiff, a Chinese citizen, sued under the Age Discrimination in Employment Act (ADEA)<sup>29</sup> alleging that the defendant declined to hire him for its overseas office because of his age. The district court granted defendant's motion to dismiss for lack of subject matter jurisdiction, holding that outside the United States the ADEA's protection is limited to United States citizens employed by American companies or their subsidiaries. The court rejected the plaintiff's argument that since he resided in the United States at the time of the decision and was interviewed at the defendant's New York office, the extraterritorial presumption did not apply.<sup>30</sup>

In *Mukaddam v. Permanent Mission of Saudi Arabia to the United Nations*,<sup>31</sup> the plaintiff filed suit under Title VII and the New York Human Rights Law claiming that the defendant wrongfully terminated her following a pattern of harassment and gender discrimination. Defendant argued for dismissal on various grounds, including lack of subject matter jurisdiction because of its immunity from suit under the Foreign Sovereign Immunities Act (FSIA).<sup>32</sup> The court, however, determined that the defendant was not immune from suit under the FSIA because defendant's employment of the plaintiff constituted a commercial activity within the meaning of the statute.<sup>33</sup> Since plaintiff's employment took place in the United States, and her discriminatory discharge and retaliation claims were based upon her employment, the court held that plaintiff's allegations, if proved, would establish that her employment came within the commercial activity exception to the FSIA. In addition, the court held that Congress intended Title VII to apply extraterritorially to the United States for activities of foreign employers. Since the defendant was not immune from suit under the FSIA, therefore it could be held liable under Title VII.

Finally, in *Maurais v. Snyder*,<sup>34</sup> the court found absolutely no language in the Employee Retirement Income Security Act (ERISA)<sup>35</sup> that evinced a clearly expressed intent on behalf

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27. *See id.*

28. *Hu v. Skadden, Arps, Slate, Meagher & Flom LLP*, 76 F. Supp. 2d 476 (S.D.N.Y. 1999).

29. 29 U.S.C. § 621 (2000).

30. *See Hu*, 76 F. Supp. 2d at 477.

31. *Mukaddam v. Permanent Mission of Saudi Arabia to the United Nations*, 111 F. Supp. 2d 457 (S.D.N.Y. 2000).

32. *See* 28 U.S.C. § 1602 (2000) (stating that traditionally, foreign states have enjoyed broad sovereign immunity from suit in United States courts. In 1976, Congress enacted the FSIA, codifying a "restrictive theory" of sovereign immunity, and established it as the sole basis for obtaining subject matter jurisdiction over a foreign state, its agencies, or its instrumentalities. *See id.* Under the FSIA, a foreign state is immune from suit in the United States absent an express waiver of immunity or an applicable statutory exception. *See* 28 U.S.C. §§ 1604, 1605 (2000). Where there is no immunity, the federal district courts have subject matter jurisdiction over non-jury civil actions against foreign states and their instrumentalities and, if service of process is made in accordance with the FSIA, there is personal jurisdiction over the foreign defendant. *See* 28 U.S.C. § 1330(b) (2000).

33. *See* 28 U.S.C. § 1605(a)(2) (2000) (providing, in relevant part: A foreign state or its instrumentalities shall not be immune from the jurisdiction of courts of the United States or of the States in any case in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere).

34. *Maurais v. Snyder*, C.A. No. 00-2133, 2000 U.S. Dist. LEXIS 13818 (E.D. Pa. 2000).

35. 29 U.S.C. § 1001 (2000).

of Congress to apply ERISA extraterritorially. Plaintiff, a citizen of Canada, brought an action against the defendants to recover the balance for unpaid surgical and other medical services performed on an American patient in Canada. The defendant sought to dismiss the complaint on the basis that the state law claims were preempted by ERISA. The court, applying the reasoning of *Aramco*, rejected the defendant's argument and held that ERISA could not be applied extraterritorially.

The federal courts continue to adhere to the doctrine that U.S. laws cannot be applied extraterritorially absent a clearly expressed intention to the contrary. This limitation in the scope of federal and state law avoids the sovereignty issues that would arise if the United States attempted to broadly impose its labor and employment standards in other nations. But, with the increasing importance of global trade and the internationalization of our economy, the pressure to export the standards of the United States to other countries will continue to increase. As the Supreme Court observed in the *Aramco* decision, this is an issue for the legislature, not for the courts.

### III. Labor and Employment Developments from Around the World

This section summarizes labor and employment legislation, conventions, and other initiatives for the year 2000 with respect to countries and other organizations from around the world. The article identifies and summarizes significant, noteworthy, or interesting developments in this area and does not attempt to present an exhaustive global review of labor and employment laws passed in 2000.

#### A. THE INTERNATIONAL LABOR ORGANIZATION

In June 2000, the delegates to the International Labor Conference unanimously adopted the ILO Convention on the Elimination of the Worst Forms of Child Labor, Convention 182.<sup>36</sup> The convention calls for states to take swift and effective measures to prevent the most damaging child exploitation practices, including child slavery, prostitution, pornography, the use of children for drug trafficking and other illicit activities, the forced or compulsory recruitment of children for use in armed conflict, and any other work that harms the health, safety or morals of children. The convention came into force in November 2000, with nearly 25 percent of the ILO's 175 members participating as formal signatories.<sup>37</sup>

Also in June, the delegates to the International Labor Conference adopted a revised Convention on Maternity Protection, Convention 183.<sup>38</sup> Overall, the convention would grant significant benefits to pregnant and breastfeeding women, including a compulsory maternity leave period, cash benefits during such leave, prohibition against terminating employment on the basis of pregnancy, maternity leave, or a period following return to

36. Convention Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, June 17, 1999, 38 I.L.M. 1207 (1999), ratified version available at <http://ilolex.ilo.ch:1567/scripts/convde.pl?C182>.

37. See *ILO Worst Forms of Child Labour Convention Comes into Force*, INT'L LABOUR ORG., Nov. 17, 2000, at <http://www.ilo.org/public/english/bureau/inf/pr/2000/43.htm>.

38. See *International Labour Conference Adopts New Convention and Recommendation on Maternity Protection*, INT'L LABOUR ORG., June 15, 2000, at <http://www.ilo.org/public/english/bureau/inf/pr/2000/28.htm>.

work and the entitlement to breaks for breastfeeding. The convention will enter into force after ratification by two member states. As of this writing, only Slovakia had done so.

In November 2000, the ILO, in an unprecedented move, recommended the imposition of sanctions by ILO members against Myanmar (Burma). The ILO pursued this action under Article 33 of the ILO constitution, which enables ILO members to take whatever measures possible under applicable national laws and regulations to bring a country into compliance with ILO labor standards. The action is aimed at compelling Myanmar to comply with Convention No. 29 on forced labor, which the country ratified in 1955. According to a 1998 Commission of Inquiry, Myanmar has engaged in “widespread and systematic” forced labor.

#### B. AUSTRALIA

The Australian government enacted equal opportunity legislation regarding women workers. The legislation established the Equal Opportunity for Women in the Workplace Agency and the office of the Director of Equal Opportunity for Women in the Workplace, among other things.<sup>39</sup>

#### C. BELARUS

Belarus amended its disability laws to further define the term “disabled” and to establish certain rights and liberties for the disabled. The new law also addresses rehabilitation and medical assistance, education and vocational training, and guaranteed rights with respect to job placement, employment, working conditions, and leave.<sup>40</sup>

#### D. CANADA

The Canadian government passed comprehensive legislation on nuclear safety. The new law addresses contamination and other safety issues with respect to nuclear energy workers and contains licensing, record keeping, equipment, and other requirements.<sup>41</sup>

#### E. CHINA

The Chinese government established rules governing employer contributions to occupational retirement schemes and provided for financial penalties upon an employer’s failure to make the required contributions.<sup>42</sup>

#### F. CROATIA

Croatia’s enactment of a constitutional provision provided for, *inter alia*, the human rights, liberties, and cultural autonomy of ethnic minorities and national communities.<sup>43</sup>

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39. Equal Opportunity for Women in the Workplace Act (1999) (Austl.), available at [http://www.eeo.gov.au/aboutus/the\\_act/index.html](http://www.eeo.gov.au/aboutus/the_act/index.html).

40. Act to Amend and Supplement the Act on Social Protection of the Disabled, Vedomosti Verkhovnego Soveta No. 418, at 120 (2000) (Belr.), available at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

41. General Nuclear Safety and Control Regulations, C. Gaz., Vol. 134, No. 13 (2000) (Can.), available at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

42. Occupational Retirement Schemes (Recovery of Arrears) Rules (No. 285 of 2000), H.K. SAR Gaz. Supp.No. 2 (2000) (P.R.C.), available at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

43. Constitutional Act of 31 May 2000 on Human Rights and Liberties and on Rights of Ethnic and National Communities or Minorities in Croatia, Narodne Novine No. 105, at 3774 (2000) (Croat.), available at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

## G. THE EUROPEAN UNION

The European Court of Justice (ECJ) ruled that German legislation barring women from employment involving the use of arms in the German army is contrary to the Community principle of equal treatment between men and women.<sup>44</sup> The case was originally brought in a German court, which referred the matter to the ECJ for a ruling in light of the Community Directive. The German law prohibited women from rendering service “involving the use of arms” and circumscribed women’s employment to very narrow areas involving medicine and military-music.<sup>45</sup> The ECJ found that this almost wholesale exclusion was not a proper derogating measure justified by the specific nature of the posts or by the particular context in which the activities are carried out and therefore was precluded by the Community Directive.<sup>46</sup>

European Union Member States approved landmark labor legislation that would ban employers from discriminating against workers based on their age, disability, sexual orientation, or religion.<sup>47</sup> Ireland opposed the legislation out of concern relating to religious schools.<sup>48</sup> The United Kingdom gained an exemption from the age and disability provisions for its armed forces.<sup>49</sup> Member States will have three years to implement the change through national legislation.

The European Commission issued two reports concerning gender equality. The first report, *inter alia*, reviews progress made during 1999 to improve equal opportunities across the European Union.<sup>50</sup> It focused on efforts made by Member States to desegregate the labor market, facilitate the reintegration of women into the labor market, reconcile work and family life, and reduce discrimination between men and women in social security and social protection systems. The report found that women continued to be paid, on average, 28 percent less than men in the private sector, that more women are unemployed and for longer periods than men, and that women continue to be less integrated in the labor market.

The second report focused on a 1996 Council Recommendation calling for Member States to develop an integrated strategy to promote a balanced participation of women and men and to promote a gender balance at all levels of governmental bodies and committees.<sup>51</sup> The report found that there were no dramatic changes with respect to the underrepresentation of women in parliaments, governments, and committees preparing decisions, as well as in the higher levels of the labor market. It concluded that the problem of underrepresentation of women in decision-making is structural and multifaceted and that establishing a gender balance will take time.

44. See Case C-285/98, *Tanja Kreil v Bundesrepublik Deutschland*, [2000] ECR I-69.

45. *Id.*

46. *See id.*

47. Council Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation, 2000 O.J. (L 303) 16.

48. *See id.*

49. *See id.*

50. Resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council of 29 June 2000 on the Balanced Participation of Women and Men in Family and Working Life, 2000 O.J. (C 218) 5.

51. Report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the Implementation of Council Recommendation 96/694 of 2nd December 1996 on the Balanced Participation of Women and Men in the Decision-Making Process, COM(2000)120 final at 1.

## H. FRANCE

Legislation passed in 1998 to reduce the workweek to thirty-five hours for companies with more than twenty employees became effective in February 2000.<sup>52</sup> Companies with less than twenty employees will be subject to the new law beginning in January 2002.<sup>53</sup>

## I. GHANA

Ghana passed the Immigration Act that contains comprehensive legislation on immigration. It provides for admission, residence, employment, and removal of foreign nationals.<sup>54</sup>

## J. INDONESIA

The Indonesian government passed comprehensive legislation governing labor relations and trade unions.<sup>55</sup> Among other things, the legislation establishes the right of every worker to form or become a union member; makes it unlawful to interfere with workers' rights to organize and participate in union activities; establishes certain rights of unions, including the right to negotiate collective agreements and represent workers in industrial dispute settlements; establishes certain obligations of unions, including the obligation to defend members against violations of their rights and to improve the welfare of members and their families; makes it unlawful for unions to discriminate against potential members on the basis of political allegiance, religion, ethnicity, or sex; and identifies certain areas that all collective agreements must regulate.<sup>56</sup>

## K. IRELAND

Ireland passed the Human Rights Commission Act establishing a Human Rights Commission and regulating its membership, functions, powers, and proceedings.<sup>57</sup>

The government also provided for a Code of Practice on Voluntary Dispute Resolution where negotiating arrangements are not in place and where collective bargaining does not occur.<sup>58</sup> The Code requires referral of disputes to the Labour Relations Commission. If the Commission does not initially resolve the dispute, an agreed cooling-off period must be adopted. If issues remain unresolved, the Commission must make a written report to the Labour Court, which then issues a recommendation.<sup>59</sup>

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52. Decree No. 98-946 of Oct. 22, 1998, J.O., Oct. 24, 1998, p. 16118 (Fr.), available at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

53. See *id.*

54. Immigration Act, Official Gazette, No. 573, at 1 (2000) (Ghana), available at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

55. Act Concerning Trade Union/Labour Union, No. 21 (2000) (Indon.), available at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

56. See *id.*

57. Human Rights Commission Act, Official Gazette, No. 9 (2000) (Ir.), available at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

58. Industrial Relations Act, Official Gazette, No. 145, at 4 (2000) (Ir.), available at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

59. See *id.*

Passage of the Criminal Justice Act gave effect to the Convention Against Torture, adopted by the United Nations in 1984.<sup>60</sup>

#### L. KAZAKHSTAN

The government passed legislation providing for the evaluation of the poverty level, measures of State support of socially disadvantaged populations, persons disabled for work, the fight against unemployment and measures for the placement of the unemployed in industry, agriculture, and enterprises.<sup>61</sup>

#### M. THE NETHERLANDS

The Dutch government announced plans to compel employers to pay one-third of the cost of childcare (the government and working parents would contribute the remainder).<sup>62</sup> Currently, employers must contribute toward employees' childcare costs only in companies governed by collective agreements that stipulate such contributions.<sup>63</sup> Under the proposed measure, employers and trade unions would be given three years to include the proposed childcare funding in collective agreements. Failure to do so would result in mandatory inclusion via legislation.<sup>64</sup>

#### N. NEPAL

The Nepalese government passed extensive regulations governing child labor. The legislation regulates employment of children under sixteen years of age, and prohibits the employment of children under the age of fourteen.<sup>65</sup>

#### O. NEW ZEALAND

The Employment Relations Act, passed by New Zealand's government, established a comprehensive regulatory scheme governing employment relations.<sup>66</sup> The Act addresses issues concerning freedom of association; deals with the recognition and operation of unions, including registration of unions, unions' rights to represent members, access to the workplace and union meetings; addresses collective bargaining and collective agreements; addresses individual employee's terms and conditions of employment; deals with strikes, lockouts, and essential services; treats personal grievances, disputes, including racial and sexual harassment, and enforcement; and deals with institutions such as mediation services, the Employment Relations Authority and Employment Court.<sup>67</sup>

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60. Criminal Justice Act, Official Gazette, No. 11 (2000) (Ir.), available at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

61. Decree No. 1164 of 31 July 2000 on the Plan of Measures for the Realization of the Programme to Fight against Poverty and Unemployment in the Years 2000-2002, Aktuler Zhinagy, No. 31, at 107 (2000) (Kaz.), available at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

62. See *Government Proposes to Make Employers Meet One-Third of Childcare Costs*, EIRO online, <http://www.eiro.eurofound.ie/2000/06/inbrief/nl0006193n.html>.

63. See *id.*

64. See *id.*

65. Child Labour (Prohibition and Regulation) Act, 2000 Nepal Recorder, vol. 24. no. 14, at 173 (Nepal), available at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

66. Employment Relations Act, Official Gazette, No. 24 (2000) (N.Z.), available at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

67. See *id.*

## P. POLAND

At the end of 1999, the Polish government amended its Labour Code to change the duration of maternity leave to twenty weeks for the first and each subsequent birth, and to thirty weeks for multiple births.<sup>68</sup>

## Q. TURKEY

The Turkish Ministry of Labour and Social Security Notice established rules and regulations requiring the employment of disabled workers and ex-convicts in enterprises with fifty or more employees and set a 3 percent hiring mandate.<sup>69</sup>

## R. UKRAINE

The Ukrainian government passed trade union legislation providing for the right of workers to form or join trade unions. The legislation guarantees rights and outlines obligations of trade unions and their associations.<sup>70</sup>

## S. VIETNAM

Vietnamese legislation regulated the settlement and mediation of certain employment terminations. The legislation provides for warning letters, negotiation to achieve consensus on settling terminations and stipulation of severance pay, gratuity, and compensation.<sup>71</sup>

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68. Act to Amend the Labour Code, Dziennik Ustaw, No. 99, at 5334 (1999) (Pol.), *available at* <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

69. Notice of the Ministry of Labour and Social Security, Resmi Gazete, No. 23945, at 13 (2000) (Turk.), *available at* <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

70. Act on Trade Unions, Their Rights and Guarantees Concerning Their Activities, No. 1045-XIV (as amended by Act No. 1458-III) (2000) (Ukr.), *available at* <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.

71. Settlement of Labour Dismissal and the Stipulation of Severance Pay, Gratuity and Compensation in Companies, Decree No. Kep-150/Men/2000 (Vietnam), *available at* <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E>.