

International Lawyer

Volume 38
Number 3 *International Legal Developments in
Review: 2003*

Article 4

2004

African Law

Sousa Gregory De

Betty-Ann Bryce

Recommended Citation

Sousa Gregory De & Betty-Ann Bryce, *African Law*, 38 INT'L L. 539 (2004)
<https://scholar.smu.edu/til/vol38/iss3/4>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in International Lawyer by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

COMPARATIVE LAW

African Law

GREGORY DE SOUSA AND BETTY-ANN BRYCE*

I. Introduction

The year 2003 saw very interesting developments. Truth and Reconciliation Commissions began work in Sierra Leone, Burundi, and Kenya. The controversial Apartheid Reparation cases continued in New York. In Algeria, 243 of the world's longest serving prisoners of war were released. Judicial reform and combating corruption in the court system were recurring themes throughout the year for Nigeria, Kenya, Angola, South Africa, Mauritius, Ghana, Tanzania, and Malawi.

The battle over corporate responsibility for international human rights violations heated up in 2003, with the Apartheid Reparation cases in the U.S. District Court for the Southern District of New York, before Judge John Sprizzo. *In re South African Apartheid Litigation MDL No. 1499 (JES)* represents a consolidated group of ten actions¹ charging dozens of multinational corporations² with alleged human rights violations stemming from their business dealings in South Africa during the apartheid era. The plaintiffs claim that: (1) the banks provided the funding that kept the apartheid government in power; (2) without oil the police and military could not have functioned and the economy would have collapsed;

*Gregory de Sousa is Chair of the African Law Committee of the ABA's Section of International Law and Practice. He is a Barrister-at-Law of the Middle Temple, England, a qualified Advocate in certain Commonwealth jurisdictions, and an attorney admitted in New York and Federal Bar practicing in New York. He is a member of the New York State Conference of Bar Leaders and served on its Executive Council. He is a Past President of the New York Chapter of the Society for International Development, a prominent Rome-based International NGO involved with development in Africa. Previously, he spent fifteen years in Tanzania, Kenya, and Uganda serving in the government ministries of Customs & Excise, Transport & Communications, Meteorology, Medical Research, and Civil Aviation. He edited this submission from the African Law Committee, with the bulk of the research and writing undertaken by Betty-Ann Bryce, also a member of the African Law Committee. Betty-Ann Bryce is an attorney admitted in New York and Federal Bar practicing products liability litigation. Former court-appointed special advocate for abused and neglected children in New York, Ms. Bryce has participated in various international programs having to do with Women in International Law, Human Rights, and Immigrants' Rights.

1. The plaintiffs include ninety-one apartheid victims and the Khulumani Support Group, a South African Organization representing 33,000 victims.

2. The defendants include banks (e.g., Citigroup, JP Morgan Chase, UBS AG, Credit Suisse, Deutsche Bank, Barclays Bank), oil companies (Shell and ExxonMobil), vehicle manufacturers (Ford, DaimlerChrysler, GM), and technology companies (IBM and UNISYS).

(3) vehicle manufacturers supplied military vehicles; and (4) technology companies supplied the resources for the national identity system. The companies were targeted not simply for doing business with South Africa, but for allegedly supporting the apartheid system and profiting from crimes against humanity. Defendants filed motions to dismiss, arguing that the plaintiffs' claims were not justiciable and that the allegations failed to plead a violation of international law or a U.S. treaty as required by the Alien Tort Claims Act (ATCA).³

Throughout the year, the cases were subjected to intense international media scrutiny. Corporations reportedly launched intense behind-the-scenes campaigns to fight the legal basis of the claims.⁴ In a letter dated October 27, 2003, William H. Taft (Legal Adviser to the U.S. Department of State) responding to a statement of interest letter from Judge Sprizzo stated, *inter alia*, "it is our view that continued adjudication of the above-referenced matters risks potentially serious adverse consequences for significant interests of the United States."⁵ South African President Mbeki,⁶ and Minister of Justice and Constitutional Development, Dr. Penuell M. Maduna, came out firmly against the lawsuits as well. Maduna, in his ten-page declaration to the court, called for dismissal saying, "permitting the litigation would discourage much needed foreign investment and delay the achievement of the government's goals."⁷ Nobel Laureate economist and former World Bank Vice-President Joseph E. Stiglitz sent a two-page letter to the court supporting the lawsuits saying they would aid economic growth in South Africa. Dan O'Flaherty, Executive Director of the U.S.-South Africa Business Council and Vice-President of the National Foreign Trade Council,⁸ said the lawsuits made no sense because U.S. firms followed U.S. government codes of conduct during the apartheid era, and "they violated South African law in order to protect the human rights of their workers and did make a substantial contribution to undermining the apartheid regime. So we don't feel that we've got anything to apologize for."⁹ The final hearing of the year was on November 6th, wherein Judge Sprizzo, after four hours of

3. ATCA is a 1978 statute that allows foreign plaintiffs (referred to as "aliens") to sue for torts that also constitute violations of the "law of nations" (international law) or a treaty of the United States. This statute has been used by human rights victims to bring suit against torturers and war criminals. See 28 U.S.C. § 1350 (West 2004).

4. The April 11, 2003, online edition of *The Mail & Guardian* reported that U.S. corporate lobbyists had in place a Legal Support Group, which met regularly to coordinate the campaign. The U.S.-South Africa Business Council, based in Washington, played a leading role in the lobbying effort. The *Guardian* also reported that a legal firm was hired to submit a counter-opinion to judges. Lobbying of U.S. government officials and members of Congress was planned and free-market think tanks and business groups rallied to the cause, publishing a series of articles to raise awareness of the lawsuits and others like it. See *Multinationals Gang up on Apartheid Victims*, MAIL & GUARDIAN, APR. 11, 2003, [hereinafter *Multinationals Gang up on Apartheid Victims*], available at <http://static.highbeam.com/a/africanewsservice/april182003/multinationalsganguponapartheidvictims/> (last visited Sept. 8, 2004).

5. Letter from William H. Taft, IV, Legal Adviser to U.S. Department of State, in response to Judge Sprizzo (Oct. 27, 2003), available at <http://www.nftc.org/default/ussabc/south%20african%20apartheid%20litigation.pdf>.

6. In April, President Thabo Mbeki in his address to the South African parliament said, "We consider it completely unacceptable that matters that are central to the future of our country should be adjudicated in foreign courts which bear no responsibility for the well-being of our country and the observance of the perspective contained in our constitution or the promotion of nation reconciliation."

7. Letter from Dr. Penuell M. Maduna, Minister of Justice and Constitutional Development, to Judge Sprizzo (July 11, 2003), available at <http://www.nftc.org/default/ussabc/Maduna%20Declaration.pdf>.

8. See *Multinationals Gang up on Apartheid Victims*, *supra* note 4.

9. See *id.*

testimony, told the plaintiffs' lawyers that they failed to make a convincing case that the companies had "aided and abetted" crimes of the apartheid regime.¹⁰ He compared what the corporations did to that of "someone selling sugar to a bootlegger," saying the motivation was financial gain, which is different from the motivation of the apartheid governments.¹¹ Judge Sprizzo suggested he might dismiss the suits, but plans to issue a written opinion in 2004.¹²

Moroccan soldiers held in Algeria by the Polisario Front Independence Movement were released, some after twenty-eight years of imprisonment. Morocco took control of the Western Sahara, a former Spanish colony until the Spanish left in 1976. Local Saharawi desert people, natives of the Western Sahara opposed to Moroccan rule, formed the Polisario Front with military backing from Algeria and fought a war of independence against Morocco until a United Nations peace mission brokered a cease-fire in 1991. Although under the Geneva Convention all the prisoners should have been released in 1991, the Polisario Front would only release the prisoners in the framework of the U.N. peace plan, which promised a referendum on independence.¹³ According to the Polisario, the prisoners were not released because Morocco blocked the vote on the referendum. Over the past two and a half years, the Polisario Front has released nearly a thousand Moroccans from the prisons, but 914 remain even after the release of this latest group.

Kenya undertook serious measures to clean up the judiciary. The government announced and followed through on plans to identify and weed out corrupt judges. It instituted criminal corruption proceedings against High Court Justice Samuel Oguk and then formed a tribunal to investigate Justice Bernard Chunga—who resigned before the tribunal could begin its work. The most sweeping efforts came when twenty-three judges were suspended and tribunals were appointed to investigate allegations of corruption against them. In Nigeria, nine judges were fired for granting *ex parte* orders—something the National Judicial Council has been working hard to prevent. Angola signed a co-operation agreement with the United States in August, moving it closer to modernizing the Angolan judicial system. The agreement calls for the exchange of experienced judges, lawyers, clerks, and other specialists, as well as the exchange of correspondence and verbal communication of laws, regulations, studies, and training materials.¹⁴ In Ghana, Chief Justice George Kingsley Acquah said plans are far too advanced to completely overhaul the judicial service in order to eliminate corruption.¹⁵ Overall, Kenya, South Africa, Mauritius, Ghana, Tanzania, and Malawi developed

10. See Joc Lauria, *US Judge May Dismiss Apartheid Lawsuit*, IOL, Nov. 9, 2003, available at http://www.iol.co.za/index.php?click_id=3&art_id=ct20031109094155702R163640&set_id=1.

11. The Judge went on to say, "being at the scene of a crime is not sufficient, enjoying the benefits of crime is not enough to prove participation. There's no indication that the defendants helped shape the policies of the South African government." *Id.* at 2.

12. Judge Sprizzo indicated the claims brought by plaintiffs were too broad, but left open the possibility of smaller suits alleging specific criminal acts. See *Apartheid Lawsuits 'too broad'*, NEWS24.COM (Nov. 7, 2003), available at http://www.news24.com/News24/South_Africa/News/0,,2-7-1442_1441929,00.html.

13. See Sebastian Usher, *Polisario Releases Moroccan POWs*, BBC News, Sept. 2, 2003, available at <http://news.bbc.co.uk/1/hi/world/africa/3200039.stm>.

14. See *Agreement with USA will Modernise Judicial Sector*, AllAfrica Global Media, Aug. 18, 2003, available at <http://allafrica.com/stories/200308181059.html>.

15. See Ivy Benson, *Plan to Overhaul Judicial Service Under Way, says CJ*, GHANAIAN CHRON., July 28, 2003, available at <http://www.ghanaiian-chronicle.com/230728/page2h.htm>.

specialized investigation agencies aimed at fighting corruption.¹⁶ In April, the United Nations and the South African government issued an analysis of the country's corruption and anti-crime efforts. The report found that South Africa contributes actively and substantially to anti-corruption efforts at all levels, and that several pieces of legislation and enforcement structures are unique in the region and of the highest international standards.¹⁷

Appended hereunder are laws, landmark decisions, and other significant legal developments across the continent in 2003.

II. Angola

In July, the Angolan Council of Ministers passed a decree with regulations for setting up a diamond monitoring and certification mechanism in accordance with the Kimberly Process, an international diamond certification system. The Kimberly Process requires governments and the diamond industry to implement import-export controls to prevent rough diamonds (a diamond that is unsorted or unworked) from entering lawful markets, a practice used by rebel movements to finance military activities and civil wars.¹⁸ The controls involve importing and exporting tamper-resistant containers accompanied by valid certificates from the exporting country's government affirming that the diamonds are not rough diamonds.¹⁹

In October, De Beers emerged unsuccessfully in its lawsuit against Endiama, Angola's Diamond Company, and the Angolan Government. De Beers sued Ediamo and the State through its branch, Angola Prospecting (DEBAP), in an international arbitral court to prevent implementation of legislation on diamonds limiting mining concession areas and regulating diamond trading.²⁰

III. Burundi

Burundi, a country with a history of ethnic conflict resulting in the death of hundreds of thousands of civilians, took strides to move forward in 2003. In April, the transitional national parliament approved a law aimed at preventing genocide, crimes against humanity, and war crimes in Burundi.²¹ This law is a part of Burundi's peace accord and Foreign Minister Therence Sinunguruza described it as "an important step . . . in implementing the

16. See Haroun Wandalo, *Kenya Lauded Over Efforts to End Graft*, E. AFRICAN STANDARD, May 14, 2003, available at <http://www.eastandard.net>.

17. See UN Drug And Crime Office, *South Africa Launch Corruption Report*, AllAfrica Global Media, Apr. 4, 2003, available at <http://allafrica.com/stories/200304050002.html>.

18. See Press Release, General Assembly GA/10132, General Assembly Text Strongly Supports 'Kimberly Process' Certification Scheme, Aimed At Combating Use Of Diamonds for Financing Conflict (Nov. 4, 2003), available at <http://www.un.org/News/Press/docs/2003/ga10132.doc.htm>. The following States in addition to Angola and regional economic integration organizations subscribe to the Kimberley Process: Armenia; Australia; Botswana; Brazil; Burkina Faso; Canada; Côte d'Ivoire; Central African Republic; China; Democratic Republic of the Congo; European Community; Gabon; Ghana; Guinea; India; Israel; Japan; Republic of Korea; Lao People's Democratic Republic; Lesotho; Mauritius; Mexico; Namibia; Norway; Philippines; Russian Federation; Sierra Leone; South Africa; Sri Lanka; Swaziland; Switzerland; Thailand; Ukraine; United Arab Emirates; United Republic of Tanzania; United States; Vietnam; and Zimbabwe.

19. See Clifford Sosnow, *Kimberly Process: An Inadvertent Regulatory Burden* (Feb. 2003), available at <http://www.terrale.com/pdf/Kimberley%20Process%20-%20LV.pdf> (last visited Sept. 7, 2004).

20. See *De Beers Loses Law Suit Against Endiama*, AllAfrica Global Media, Sept. 27, 2003 (on file with author).

21. See *Burundi Approves Genocide Law*, BBC NEWS, Apr. 16, 2003, available at <http://news.bbc.co.uk/2/hi/africa/2952881.stm>.

peace agreement.”²² The parliament also adopted a law recognizing the authority of the International Criminal Court.²³

In August, the transitional parliament adopted a controversial law, granting temporary legal immunity to ethnic Hutu political leaders.²⁴ The “Immunity Law,” as it is commonly referred, is valid only during the transitional period and the immunity does not extend to crimes of genocide, crimes against humanity, or war crimes. The law assures that Hutu political leaders returning from exile to participate in the transitional government cannot be arrested or charged for such crimes committed with a political objective from July 1, 1962, the date of Burundi’s independence, to the date of the law’s promulgation, August 27, 2003. Prior to the vote, the “Coalition of MPs against genocide” (twenty-eight Tutsi members of parliament) led by member Cyrille Sigejeje, walked out in protest.²⁵ LIGUE ITEKA, the country’s largest human rights organization, also denounced the law.²⁶ Venant Bamboneyeho, head of the human rights organization, SONERA, and the Anti-Genocide Association, called the law a mistake and appealed to civil society to block its implementation.²⁷

IV. Ghana

In November, a court in Ghana’s Upper West Region sentenced a forty-five year old female farmer, Fefe Dari, to five years in jail for circumcising three girls, including a three-week old baby. Women’s organizations see this and other convictions as evidence that some progress has been achieved in the bid to completely eliminate Female Genital Mutilation (FGM),²⁸ which often leads to medical complications and can leave a woman psychologically scarred for life.²⁹ FGM has been illegal in Ghana since 1994.

22. *See id.*

23. *See Burundi Signs up to War Crimes Court*, MAIL & GUARDIAN, Apr. 23, 2003, available at <http://www.mg.co.za/Content/13.asp?ao=13498>.

24. *See Hutu Immunity Law Approved*, News24, Aug. 8, 2003, <http://www.news24.com/News24/Africa/News/0,,2-11-1447-1408375,00.html>.

25. “The United Nations and the international community have worked together in Sierra Leone, Liberia and our neighbor, Rwanda, to chase criminals, [but] in Burundi, criminals receive amnesty,” Sigejeje said. “It is unbelievable! Reconciliation is not possible when criminals are not sentenced.” *See Approval of Temporary Immunity Law Sparks Heated Debate*, U.N. INTEGRATED REGIONAL INFORMATION NETWORKS (Sept. 3, 2003), available at <http://www.danbu.dk/polit.htm>.

26. Ligue Iteka denounced the law, saying it would never have accepted the immunity law, which contradicts the Arusha accord for peace and reconciliation. President Pie Ntakirutimana, denounced the law, as an “acceptance of impunity.” *Id.*

27. Bamboneyeho said in adopting the law, parliament betrayed the people of Burundi. He demanded that the National Assembly admit its mistake, in acting against the interests of the Burundian people. He said further, “We call upon civil society and all forces for peace to come together to refuse the implementation of a law that has never been approved by any country in the world.” *Id.*

28. Female genital mutilation refers to the removal of part, or all, of the female genitalia. The most severe form is infibulation, also known as pharaonic circumcision. An estimated 15 percent of all mutilations in Africa are infibulations. The procedure consists of clitoridectomy (where all, or part of, the clitoris is removed), excision (removal of all, or part of, the labia minora), and cutting of the labia majora to create raw surfaces, which are then stitched or held together in order to form a cover over the vagina when they heal. A small hole is left to allow urine and menstrual blood to escape. In some less conventional forms of infibulation, less tissue is removed and a larger opening is left.

29. *See GHANA: Women Call For Stiffer Female Circumcision Laws*, U.N. INTEGRATED REGIONAL INFORMATION NETWORKS (Feb. 2, 2004), available at http://www.irinnews.org/report.asp?ReportID=39247&SelectRegion=West_Africa&SelectCountry=GHANA.

V. Kenya

In 2003, Kenya experienced a change in leadership from Daniel Arap Moi to Mwai Kibaki. President Kibaki outlined his vision for the country in his inaugural speech and promised responsive, transparent, and innovative leadership, declaring, "[t]he era of road-side policy declarations is gone. My government's decisions will be guided by teamwork and consultations. The authority of Parliament and the independence of the judiciary will be restored and enhanced as part of the democratic process and culture that we have undertaken to foster."³⁰ The new president's commitment to fight corruption was tested soon after entering office. The Attorney General instituted a criminal action against High Court Judge Samuel Oguk, who was accused of obtaining money with the intent to commit fraud.³¹ This marked the first time a Kenyan judge was charged in court; the judiciary had long been regarded as one of the most corrupt institutions in Kenya. In another move, President Kibaki appointed tribunals to investigate corruption allegations against twenty-three judges. The tribunals will investigate the conduct of these judges in relation to the allegations of corruption, unethical practices, and absence of integrity in the performance of their duties.³²

In April, the Anti-Corruption and Economic Crimes Bill, and the Public Service Code of Conduct and Ethics Bill passed. These bills give power to the Anti-Corruption Authority to prosecute those who have stolen public funds and clears the way for the resumption of donor aid.³³ The Anti-Corruption and Economic Crimes Bill introduced tough measures to counter corruption and establish the Kenya Anti-Corruption Commission (KACC). The KACC has powers of investigation and prosecution; Parliament and the Attorney General can order the KACC to investigate individuals, and people convicted will forfeit their wealth to the state.³⁴ The Public Service Code of Conduct and Ethics Bill requires all public figures and senior civil servants to declare their wealth including land, buildings, and vehicles. The officers must also disclose the income and assets of their spouses and dependent children.

Additionally, Muslims threatened secession if Kadhi's courts were not included in Kenya's new constitution.³⁵ Christians, led by the Secretary-General of the National Council of Churches of Kenya (NCCCK), Dr. Mutava Musyimi, argued that the inclusion of the Kadhi's

30. See *Rainbow Vision for a Ravaged Land*, SUNDAY TIMES, Jan. 5, 2003, available at <http://www.suntimes.co.za/2003/01/05/news/africa/africa03.asp>.

31. See *Kenyan Judge's Fraud Case Tests Kibaki's Will*, IOL, Jan. 27, 2003, http://www.iol.co.za/index.php?click_id=87&art_id=qw1043668801493B265&set_id=1.

32. See Maina Muiruri & Nyakundi Nyamboga, *Graft: Kibaki Names Judges, Sets up Tribunals*, E. AFRICAN STANDARD, Oct. 16, 2003, available at <http://www.eastandard.net/headlines/news16102003015.htm>.

33. According to President Kibaki, the Government held consultations with the donor community, and they insisted these two bills be passed and implemented as a condition for resumption of aid. See Njeri Eugene & Mugo Njeru, *Anti-Corruption, Public Service Bills Top of Parliament's Agenda, Says Kibaki*, THE NATION, Jan. 4, 2003, available at <http://www.nationaudio.com/News/DailyNation/04012003/News/News61.html>. Government workers were given until the end of June to either declare their wealth or lose it. Justice and Constitutional Affairs Minister Kiraitu Murungi said, "everybody from the messenger to the President of the country will make known to the government what they owned. Any officer who leaves out what he/she owns in the forms will lose out to the Government." See Ochieng' Sino, *Declare Wealth or Lose It, Civil Servants Told*, E. AFRICAN STANDARD, May 12, 2003, available at <http://www.eastandard.net/headlines/news20052003014.htm>.

34. See Xavier Lugaga & Hydin Gethin, *Graft, Ethics Bills Now Become Law*, E. AFRICAN STANDARD, May 2, 2003, available at <http://www.eastandard.net/archives/May/fri02052003/headlines/news02052003007.htm>.

35. See Dennis Lumiti, *Muslims Vow to Lobby for Kadhi's Courts*, E. AFRICAN STANDARD, Apr. 7, 2003, available at <http://216.185.134.103/archives/April/mon07042003/headlines/news0704200303.htm>.

courts will favor Muslims.³⁶ Kadhi's courts are Muslim courts and their jurisdiction includes people who profess and adhere to Muslim law in matters relating to personal status, marriage, divorce, or inheritance in proceedings where all of the parties adhere to the Muslim religion. The courts are presided over by a chief Kadhi, who is appointed by the Judicial Service Commission.

In June, the Money Laundering Bill passed in Parliament. According to Finance Minister David Mwiraria, Kenya possessed a number of the characteristics that made it susceptible to money laundering. These included: (1) a cash-based economy; (2) a lack of comprehensive legislation; (3) parallel banking activities; (4) alternative remittance avenues; (5) inadequate exposure among law enforcement and judicial officers; and (6) unstable neighboring regimes.³⁷ The new legislation will strengthen existing legislation as well as other regulations and guidelines.

In July 2003, the Criminal Law Amendment Bill passed. This bill barred the police from forcing confessions out of criminal suspects.³⁸ It also amended the Penal Code, Criminal Procedure Code, the Evidence Act, the Children's Act, and the Prevention of Corruption Act. It abolished corporal punishment and caning as a court sentence; and permitted children's testimony without requiring corroboration. The bill also mandates that only the High Court can hear murder cases. The passage of this bill led to the landmark decision in December from the High Court. Eighteen year-old Paul Nguni Ngigi was convicted and sentenced to life for raping a four year-old girl, Joyce Majiwa. Kenyan chairperson of the International Federation of Women Lawyers, said, "if it were not for the amended law, the offender would have walked off with a very light sentence, served at the discretion of the magistrate."³⁹ This case signified an important step towards deterring the rising instances of sexual violence against children in the country.

Also in July, a group of Kenyan women who claimed British soldiers on exercise in Kenya raped them were granted legal aid to sue the Ministry of Defense in a U.K. court.⁴⁰ The suit alleges that the Ministry of Defense did nothing to stop systematic rape by soldiers despite complaints dating back thirty years.

VI. Mozambique

In April, Mozambique's Parliament ratified the International Labor Organization's Worst Forms of Child Labor Convention.⁴¹ Signing the convention binds Mozambique to take steps to eliminate all forms of child labor including slavery, forced labor, child prostitution, and the recruitment of people under the age of eighteen into the armed forces.

36. See Eliud Chisika & Victor Obure, *Muslims Protest Over Kadhi Courts*, E. AFRICAN STANDARD, Apr. 26, 2003, available at <http://216.185.134.103/archives/April/sat26042003/headlines/news26042003004.htm>.

37. See Aggrey Ouma, *Bill on 'Dirty Cash' Ready*, E. AFRICAN STANDARD, June 17, 2003, available at <http://www.eastandard.net/business/bsnews17062003007.htm>.

38. See David Mugnyi, *Bill to Forbid Forced Police Confessions*, THE NATION, Feb. 27, 2003, available at <http://allafrica.com/stories/200302270038.html>.

39. See *Landmark Sentence for Sexual Offence*, U.N. INTEGRATED REGIONAL INFORMATION NETWORKS (Dec. 9, 2003), available at <http://allafrica.com/stories/200312090067.html>.

40. See Andrew Woodcock, *Kenyan 'Rape Victims' Win Legal Aid to Sue MoD*, THE INDEPENDENT (UK), July 2, 2003, available at <http://news.independent.co.uk/uk/legal/story.jsp?story=420927>.

41. See *'Worst Forms' of Child Labour Outlawed*, MAIL & GUARDIAN, Apr. 18, 2003, available at <http://www.mg.co.za/Content/13.asp?ao=13395>.

VII. Namibia

In April, a new bill was adopted making it the legal duty of children to maintain their parents.⁴² Under this bill, parents can petition the maintenance court for support from their children. The bill applies when parents, due to circumstances beyond their control, are unable to support themselves. In addition, the child must be able to support the parent, and it must be established that the parent's spouse or another person legally liable to maintain the parent is also unable to do so.

In June, the Community Courts Bill passed with unanimous support from both sides of the chamber. The bill legitimized the power of community courts by empowering them to, among other things, order arrests. Council members felt this act would work to ease the long-standing backlog of cases in magistrates' courts throughout Namibia.⁴³

In July, people who were tortured after detainment in the Caprivi Region during the State of Emergency in August 1999 negotiated settlements in five of the 120 civil claims against the government.⁴⁴ Among the five claims was the prominent case of National Assembly member Geoffrey Mwilima. Mwilima claimed the police beat him with a *sjambok* (whip) until he lost consciousness, in addition to kicking out his teeth and breaking his jaw. Mr. Mwilima elevated the profile of these cases when pictures of his *sjambok*-scarred back appeared on the front pages of Namibian newspapers.⁴⁵ The settlements did not include any admissions of liability on the part of the government.

VIII. Nigeria

In March, the River State House of Assembly passed a law banning dehumanizing and harmful traditional practices.⁴⁶ The law bans: (1) the practice of drinking water that is used to wash the corpse of the spouse; (2) sleeping alone or on the same bed with a corpse; (3) being naked during any period of the burial rites; (4) throwing and catching the corpse seven times on the pretext that the act is a separation of the living and the dead; or (5) sitting on broken coconuts or any other harmful objects.

In June, Governor Diepreye Alamiyeseigha signed into law two bills, the Bayelsa State Female Genital Mutilation Prohibition Law 2002 and the Revised Edition (Law of Bayelsa State) Law 2002 banning FGM. According to the law, the practice of FGM is prohibited notwithstanding custom or tradition. The law further stipulates prison terms, monetary fines, or both for anyone that breaches the relevant sections of the law.⁴⁷

The government announced plans in May to set up juvenile courts as part of the Child Rights Act. The courts will be established nationwide with jurisdiction over children be-

42. See *Parents, Children to be Brought Into Line by Maintenance Law*, THE NAMIBIAN, May 2, 2003, available at <http://www.namibian.com.na/2003/march/national/03CC107254.html>.

43. See Petros Kuteue, *Green light for Community Courts Bill*, THE NAMIBIAN, June 9, 2003, available at <http://www.namibian.com.na/2003/june/national/03D72792C3.html>.

44. See Werner Menges, *Five Torture Cases Settled*, THE NAMIBIAN, July 7, 2003, available at <http://www.namibian.com.na/2003/june/national/03E0601CC7.html>.

45. See *id.*

46. See Okon Bassey, *Rivers Legislates Against Obnoxious Traditional Rites*, AllAfrica Global Media, Mar. 26, 2003, available at <http://allafrica.com/stories/200303260451.html>.

47. See *Governor Alamiyeseigha Signs Genital Mutilation Prohibition Bill*, AllAfrica Global Media, June 19, 2003, available at <http://allafrica.com/stories/200306190749.html>.

tween the ages of one day and eighteen years old.⁴⁸ The new law on the rights of children will address many societal ills such as exploitative child labor, child trafficking, abduction and sale of children, and sexual exploitation. Those found guilty of child trafficking will be liable to sentences of at least ten years in jail.

IX. Rwanda

In 2003, the United Nations implemented a number of changes in the U.N. International Criminal Tribunal for Rwanda (ICTR) to expedite the genocide trials. The ICTR, set up in 1995 to investigate the mass murders that occurred in 1994, has been plagued by administrative problems since its inception. The ICTR has only completed fifteen cases, with sixty-one in progress; fifty-five people are in detention with more than half of them awaiting trial. In May, twenty-three of the Tribunal Law and Rules of Procedure were amended. The purpose of the amendments was to fill loopholes within the rules of procedure and align the tribunal rules with those of the UN International Criminal Tribunal for the former Yugoslavia (ICTY).⁴⁹ The changes included: (1) a provision for the substitution of judges which allows the new judge to resume at the point the exiting judge left off; (2) the removal of the exceptional circumstances clause which allowed first-time detainees to seek provisional release before demonstrating exceptional circumstances; and (3) the introduction of plea-bargain agreements between the prosecution and defense.⁵⁰ In June, the U.N. General Assembly elected eighteen temporary judges to four-year terms.⁵¹ The U.N. hopes this additional judicial manpower will enable the tribunal to complete its trials by 2008, instead of 2017.⁵²

The U.N. Security Council voted in August to create a separate prosecutor post for the ICTR.⁵³ Prior to the vote, Carla Del Ponte held the position of chief prosecutor of the ICTY and ICTR. The vote came on the heels of U.N. Secretary-General Kofi Annan's recommendation to the council that a separate prosecutor be appointed for the Rwanda Tribunal.⁵⁴ Annan was responding to longstanding pressure from the Rwandan Government, which openly advocated for a separate prosecutor. The Government has been at odds with Del Ponte since she announced that the tribunal would seek to prosecute members of the Tutsi Rwandan Patriotic Army for war crimes committed during and after the

48. See *Government to Set Up Juvenile Courts*, AllAfrica Global Media, May 27, 2003, available at <http://allafrica.com/stories/200305271082.html>.

49. See *RWANDA: Tribunal Amends Laws to Expedite Genocide Trials*, U.N. INTEGRATED REGIONAL INFORMATION NETWORKS (May 30, 2003), http://www.irinnews.org/report.asp?ReportID=34445&SelectRegion=Great_Lakes&SelectCountry=RWANDA.

50. See *id.*

51. See *RWANDA: UN Elects 18 More Judges for Genocide Tribunal*, U.N. INTEGRATED REGIONAL INFORMATION NETWORKS (June 26, 2003), available at http://www.irinnews.org/report.asp?ReportID=35006&SelectRegion=Great_Lakes&SelectCountry=RWANDA.

52. See *id.*

53. See *RWANDA: Security Council Appoints Separate Prosecutor for ICTR*, U.N. INTEGRATED REGIONAL INFORMATION NETWORKS (Aug. 29, 2003), available at http://www.irinnews.org/report.asp?ReportID=36271&SelectRegion=Great_Lakes&SelectCountry=RWANDA.

54. See *RWANDA: Security Council meets on UN Tribunals*, U.N. INTEGRATED REGIONAL INFORMATION NETWORKS (Aug. 8, 2003), available at http://www.irinnews.org/report.asp?ReportID=35868&SelectRegion=Great_Lakes&SelectCountry=RWANDA.

genocide.⁵⁵ The Government also accused her of mismanagement of the Tribunal's Office of the Prosecutor and of dedicating the bulk of her time and attention to the ICTY.⁵⁶ Gerald Gahima, Rwanda's Prosecutor General, said that the people took "strong exception" to the fact that the investigation of more than one million deaths has been made a "part-time job of a prosecutor based on another continent."⁵⁷ The U.N. Security Council split the two jobs saying it was convinced that both tribunals would operate more efficiently and expeditiously with their own lead attorneys.⁵⁸ Ms. Del Ponte's contract was renewed, and she continues to serve as the prosecutor for the ICTY. Hassan Jallow,⁵⁹ a resident of Gambia, was appointed prosecutor for the ICTR. The Government of Rwanda pushed for further changes in addition to the separate prosecutor, including changing the ICTR's statutes to make it more efficient and accountable.⁶⁰

Since the Genocide, Rwanda has been governed by a tri-fold combination of laws drawn from the country's 1991 constitution. The 1993 Peace Accord was signed in Arusha, Tanzania, and a declaration by Kagame's party, the Rwanda Patriotic Front was instituted.⁶¹ In June, President Paul Kagame signed Rwanda's new constitution into law. Rwandan lawyers have since called on the Government to align the law governing Gacaca courts with the new constitution. The law of Gacaca courts was adopted in March 2001 as a way of bringing justice more quickly to survivors of the Genocide; however, under Gacaca law, lawyers are excluded from Gacaca trials. Jean Haguma, Chairman of the National Bar Association, said "it is the constitution that overrules other laws. Relevant authorities should therefore consider changing the law of Gacaca."⁶²

Batwa (Pygmies), the country's third and smallest ethnic group, appealed in March to the government for affirmative action to improve their lives.⁶³ The existing land rights legislation has not benefited the hunter-gatherer *Batwa*. Zephyrin Kalimba, Chairman of the Rwanda Association for Indigenous People (CAURWA), argues that the *Batwa* suffer

55. See *RWANDA: Kigali Calls for change in UN tribunal's mandate*, U.N. INTEGRATED REGIONAL INFORMATION NETWORKS (Aug. 7, 2003), available at http://www.irinnews.org/report.asp?ReportID=35840&SelectRegion=Great_Lakes&SelectCountry=RWANDA.

56. See *id.*

57. See *UN Prosecutor Defends Role*, BBC News, Aug. 8, 2003, available at <http://news.bbc.co.uk/1/hi/world/africa/3136867.stm>.

58. See *id.*

59. Before accepting the post as prosecutor for the ICTR, Jallow was a permanent judge at the Special Court for Sierra Leone. He's served as Gambia's attorney general and minister of justice from 1984 to 1994 and later as a judge of Gambia's Supreme Court. In 1998, he was appointed by Annan to serve as an international legal expert for a judicial evaluation of the Rwandan and Yugoslav tribunals. He also served as a legal expert for the Organization of African Unity and the Commonwealth and worked towards drafting the African Charter on Human and People's Rights, which was adopted in 1980. See *RWANDA: New ICTR prosecutor takes up his post*, U.N. INTEGRATED REGIONAL INFORMATION NETWORKS (Oct. 6, 2003), http://www.irinnews.org/report.asp?ReportID=37018&SelectRegion=Great_Lakes&SelectCountry=RWANDA.

60. See *id.*

61. See *RWANDA: New constitution becomes Effective*, U.N. INTEGRATED REGIONAL INFORMATION NETWORKS (June 5, 2003), available at http://www.irinnews.org/report.asp?ReportID=34546&SelectRegion=Great_Lakes&SelectCountry=RWANDA.

62. See *RWANDA: Lawyers Call on Government to Harmonise Gacaca Law with Constitution*, U.N. INTEGRATED REGIONAL INFORMATION NETWORK (Dec. 31, 2003), available at http://www.irinnews.org/report.asp?ReportID=38661&SelectRegion=Great_Lakes&SelectCountry=RWANDA.

63. See *Rwanda: Pygmies appeal for affirmative action*, 21 LEGAL BRIEF, Mar. 31, 2003, available at <http://www.legalbriefafrica.co.za/newsletters/LBAfricaUSA021.html>.

from continued unfairness and should have special representation for housing, education, and in Parliament.⁶⁴ Chairman Zephyrin Kalimba fears the *Batwa* families are vulnerable and bound for extinction if action is not taken.

X. Sierra Leone

In April, public hearings began before Sierra Leone's Truth and Reconciliation Commission.⁶⁵ According to reports, 700 people, victims, perpetrators, and witnesses of the country's ten-year civil war, are expected to appear before the Commission. A February 2000 Act of Parliament established the Commission, an independent organization, as a result of its creation by the July 1999 Lome Peace Agreement. The Commission's mandate includes creating an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone. It is to address impunity, to respond to the needs of victims, to promote healing and reconciliation, and to prevent a repetition of the violations and abuses suffered during the civil war. The general function of the Commission is to investigate and report on: (1) the causes, nature, and extent of the human rights violations and abuses; (2) the context in which they occurred; and (3) whether they resulted from a deliberate policy, authorization or plan.

In August, President Kabbah formally launched the Kono Diamond Peace Alliance, a coalition aimed at cleaning up the diamond-mining sector in Sierra Leone and returning it to profitability. The U.S. Embassy called the Alliance an important step towards improving control and management of Sierra Leone's diamond industry, which has been plagued for years by smuggling, money laundering, corruption, and unfair labor practices.⁶⁶

XI. South Africa

In January, the South African Law Commission recommended that any person infected with a life-threatening sexually transmittable disease, who failed to disclose it to his or her partner before having sex, would be guilty of rape.⁶⁷ Parliament proceeded to pass the bill in August. In February, a landmark decision recognized two women, who both contributed biologically to the conception of twins, as the biological parents.⁶⁸ In May, the Government introduced legislation to compel banks to provide financing to the poor seeking to buy houses. The Community Reinvestment (Housing) Bill placed a number of obligations on banks.⁶⁹

64. See *id.*

65. See *SIERRA LEONE: Public Hearings Start at Truth Commission*, U.N. INTEGRATED REGIONAL INFORMATION NETWORK (Apr. 16, 2003), available at http://www.irinnews.org/report.asp?ReportID=33535&SelectRegion=West_Africa&SelectCountry=SIERRA_LEONE.

66. See Ambassador Peter R. Chaveas, *On The Occasion Of The Launching Of The Kono Peace Diamond Alliance*, Koidu (Aug. 27, 2003), available at <http://www.sierra-leone.org/chaveas082703.html>.

67. See *New sex laws on the cards*, NEWS24, Jan. 21, 2003, available at http://www.news24.com/News24/South_Africa/News/0,6119,2-7-1442-1309797,00.html.

68. See Philip de Bruin, *Lesbians: Biological parents*, NEWS24, Nov. 2, 2003, available at http://www.news24.com/News24/South_Africa/News/0,6119,2-7-1442-1319027,00.html.

69. See *South Africa: Law to Facilitate Access to Housing This Year*, 29 LEGALBRIEF, May 26, 2003, available at <http://www.legalbriefafrica.co.za/newsletters/LBAfricaUSA029.html>.

In September, in another landmark decision, the Cape High Court ruled that the customary law principle allowing only the eldest male to become an intestate heir is unconstitutional, thereby ending discrimination against women and children.⁷⁰

XII. Togo

In February, a new electoral code transferring responsibility for preparing and organizing elections from Togo's Independent National Elections Commission (*Commission Electorale Nationale Indépendante* or CENI) to the Ministry of the Interior was adopted. Parties opposing the code severely criticized it for its failure to place a limit on the number of times the president can run for re-election.⁷¹

XIII. Zimbabwe

In January, the Labor Relations Amendment Bill introduced in 2001 was passed. The Labor Minister, July Moyo, described the bill as a product of on-going democratic reforms of the labor market. Industry and labor representatives slammed the amendments saying they were catastrophic. Economic consultant and commentator, Eric Bloc, said the bill is a recipe for disaster.⁷² It would also result in more company closures and retrenchments as employers downsized operations.⁷³

Moving beyond the land redistribution for resettlement by black farmers, President Mugabe announced in July the Indigenisation Bill and Mining Law Amendments.⁷⁴ Under the Indigenisation Bill, the Government will force local companies and the units of foreign firms operating there, such as Anglo American and Old Mutual, to offer a fifth of their share to black investors. The mining law would be amended to make it easier for black people to own mines.⁷⁵ The amendments address mining title administrative procedures to encourage development and incorporate the facilitation and control of minerals export permit systems. The Government admitted that the land redistribution policy was not as effective as they hoped and, in fact, failed to benefit large numbers of poor black farmers. Commercial agriculture has collapsed, leaving about five million people needing food as a result of the shortages. Special Affairs Minister John Nkomo, Chairperson of the ruling Zanu-PF, told BBC News that the seizure of white-owned farms failed to benefit large numbers of poor black farmers, as initially hoped, because the black farmers failed to take over the land once it was acquired. According to Nkomo, only forty percent of people who were allocated land subsequently took control. The Minister pointed to lack of finances as

70. See *Africa 'Male Only' Heir System Declared Unconstitutional*, LEGALBRIEF, Sept. 29, 2003, http://www.legalbrief.co.za/view_1.php?artnum=12323.

71. See *TOGO: New Code Reduced mandate of independent electoral commission*, U.N. INTEGRATED REGIONAL INFORMATION NETWORK (Feb. 10, 2003), available at http://www.irinnews.org/report.asp?ReportID=32217&SelectRegion=West_Africa&SelectCountry=TOGO.

72. See *id.*

73. See *Legal Brief Africa*, at http://www.legalbrief.co.za/index.php?page=Legalbrief_Africa (last visited Sept 9, 2004).

74. See *Mugabe to Make Firms Sell Stake to Black Investors*, BUS. REP., July 23, 2003, available at <http://www.busrep.co.za/index.php?fSectionId=561&fArticleId=193914>.

75. See *Mines and Minerals Act to be Amended*, HERALD ONLINE, July 28, 2003, available at <http://www.herald.co.zw/index.php?id=23284&pubdate=2003-07-28>.

the reason. The black farmers did not have the money to buy seed, fertilizers, or hoes to redevelop the farmland to make it productive. They had difficulties obtaining bank loans without the title deed held by their white owners. The Minister's statement came after Mugabe's government, through the Presidential Land Implementation Committee, re-claimed half a million acres of farmland from Zanu-PF loyalists believed to have more than one farm.⁷⁶

July marked Zimbabwe's fourth month of a severe cash shortage. In response to this crisis, the Government introduced a new law to prevent hoarding of and trading in cash.⁷⁷ In December, the Bank Use Promotion and Anti-Money Laundering Bill was presented to Parliament and referred to the Parliamentary Legal Committee for consideration. Under this bill, any person, other than a trader, parastatal, money lender, or financial institution, who otherwise than for good cause is found in possession of cash in excess of five million dollars, shall be guilty of an offence and liable to a fine equivalent to the excess cash held.⁷⁸ The bill proposes to empower police officers to act on search warrants to search, upon reasonable grounds, persons believed to be hoarding cash and confiscate such money. Police officers will also be empowered to search persons suspected of hoarding cash without a search warrant depending on the circumstances and seriousness of the case.

These bills are described by the Government as part of its policy to facilitate greater participation by indigenous people of Zimbabwe in the mining sector where they should play a more active and meaningful role by having a stake in the sector.⁷⁹

76. See *Mugabe Aide Admits Land Grab Failed*, MAIL & GUARDIAN, Jan. 4, 2004, available at <http://www.mg.co.za/Content/13.asp?ao=29184&t=1>.

77. See *Zim to Ban Notes in Bid to Beat Cash Shortage*, IOL, July 7, 2003, available at http://www.iol.co.za/index.php?click_id=68&art_id=qw1059514740826B252&set_id=1.

78. See *Anti-Money Laundering Bill Presented in House*, AllAfrica Global Media, Dec. 23, 2003, available at <http://allafrica.com/stories/200312230394.html>.

79. See *id.*

