

EXPULSION OF ALIENS

[Agenda item 6]

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Comments and observations received from Governments

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Multilateral instruments cited in the present document

	<i>Source</i>
Convention on International Civil Aviation (Chicago, 7 December 1944)	United Nations, <i>Treaty Series</i> , vol. 15, No. 102, pp. 295.
Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (Rome, 4 November 1950)	<i>Ibid.</i> , vol. 213, No. 2889, p. 221.
Protocol No. 4 to the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (Strasbourg, 16 September 1963)	<i>Ibid.</i> , vol. 1496, No. 2889, p. 263.
Protocol No. 11 to the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby (Strasbourg, 11 May 1994)	<i>Ibid.</i> , vol. 2061, No. 2889, p. 7.
Convention relating to the Status of Refugees (Geneva, 28 July 1951)	<i>Ibid.</i> , vol. 189, No. 2545, p. 137.
Protocol relating to the Status of Refugees (New York, 31 January 1967)	<i>Ibid.</i> , vol. 606, No. 8791, p. 267.
Convention relating to the Status of Stateless Persons (New York, 28 September 1954)	<i>Ibid.</i> , vol. 360, No. 5158, p. 117.
Vienna Convention on Consular Relations (Vienna, 24 April 1963)	<i>Ibid.</i> , vol. 596, No. 8638, p. 261.
Convention on offences and certain other acts committed on board aircraft (Tokyo, 14 September 1963)	<i>Ibid.</i> , vol. 704, No. 10106, p. 219.
International Covenant on Civil and Political Rights (New York, 16 December 1966)	<i>Ibid.</i> , vol. 999, No. 14668, p. 171.
African Charter on Human and Peoples' Rights (Nairobi, 27 June 1981)	<i>Ibid.</i> , vol. 1520, No. 26363, p. 217.
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 10 December 1984)	<i>Ibid.</i> , vol. 1465, No. 24841, p. 85.
Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Schengen, 14 June 1985)	<i>Official Journal of the European Communities</i> , L 239, 22 September 2000, p. 13.
Agreement on the European Economic Area (Oporto, 2 May 1992)	<i>Ibid.</i> , L001, 3 January 1994, p. 3.

Introduction

1. At its fifty-seventh session, in 2005, the International Law Commission decided, in accordance with article 19, paragraph 2, of its statute, to request, through the Secretary-General, Governments to submit any information concerning the practice of States, including national legislation, relating to the topic “Expulsion of aliens”.¹

2. In paragraph 4 of its resolution 60/22, of 23 November 2005, the General Assembly invited Governments to provide information to the Commission, as requested in chapter III of the Commission’s report on its fifty-seventh session,² regarding, *inter alia*, the topic “Expulsion of aliens”.

3. At its fifty-ninth session, in 2007, and at its sixty-first session, in 2009, the Commission reiterated its request for information in relation to the topic “Expulsion of aliens”, also identifying a number of specific points on which comments and information from Governments would be of particular interest to the Commission.³

4. In paragraph 3 of its resolutions 62/66, of 6 December 2007, and 64/114, of 16 December 2009, the General Assembly drew the attention of Governments to the importance for the Commission of having their views on the various aspects of, *inter alia*, the topic “Expulsion of aliens”, in particular on all the specific issues identified in chapter III of the Commission’s report on the work

of, respectively, its fifty-ninth and sixty-first sessions. Furthermore, in paragraph 4 of the same resolutions, the Assembly invited Governments, within the context of paragraph 3, to provide information regarding practice on this topic.

5. Included here are the written replies that were received by 31 August 2010 from the following States: Andorra (4 May 2010); Armenia (23 April 2010); Bahrain (12 April 2010); Belarus (30 March 2010); Bosnia and Herzegovina (6 April 2010); Bulgaria (31 March 2010); Canada (25 May 2010); China (26 April 2010); Croatia (4 May 2010); Cuba (31 March 2010); the Czech Republic (18 February 2010); El Salvador (22 February 2010); Finland (31 March 2010); Germany (20 January 2010); Italy (19 May 2010); Kuwait (26 April 2010); Lithuania (16 April 2010); Malaysia (26 August 2009 and 5 April 2010); Malta (16 February 2010); Mexico (6 April 2010); New Zealand (13 April 2010); Norway (10 May 2010); Peru (24 February 2010); Portugal (11 May 2010); Qatar (25 May 2010); Republic of Korea (22 April 2010); Romania (20 January 2010); Serbia (29 March 2010); Singapore (October 2010); Slovakia (22 September 2010); South Africa (8 April 2010); Sweden (30 March 2010); Switzerland (6 April 2010); and the United States (26 March 2010). Previous comments and information provided by Governments on this topic are found in *Yearbook ... 2009*, vol. II (Part One), document A/CN.4/604.

6. This document comprises three subsections. Subsections A and B contain, respectively, the comments and information on the specific issues (or aspects thereof) identified by the Commission in its 2007 and 2009 reports. Section C contains comments and information on other issues relating to the topic.

¹ *Yearbook ... 2005*, vol. II (Part Two), p. 13, para. 27.

² *Ibid.*

³ *Yearbook ... 2007*, vol. II (Part Two), pp. 13–14, para. 27; and *Yearbook ... 2009*, vol. II (Part Two), para. 29. The issues on which the Commission invited Governments to submit comments and information are listed below in sections A and B below.

Comments and information received from Governments

A. Comments and information on the specific issues identified by the Commission in its 2007 report

1. State practice with regard to the expulsion of nationals. Is it allowed under domestic legislation? Is it permissible under international law?

CHINA

Chinese law does not provide for the expulsion of Chinese citizens. Expulsion is applied only to aliens who do not possess Chinese nationality, and not to citizens of China.

MALAYSIA

Article 9 of the Federal Constitution makes provision for the prohibition of banishment and freedom of movement, where no citizen shall be banished or excluded from the Federation. The Federal Constitution does not provide against expulsion of non-citizens.

2. The manner in which persons having two or more nationalities are dealt with under expulsion legislation. Can such persons be considered aliens in the context of expulsion?

CHINA

1. Under the Nationality Law of the People’s Republic of China, China does not recognize dual nationality for any Chinese national.

2. Persons of known foreign nationality may be expelled. Under most circumstances, the nationality of a person having two or more nationalities will be determined on the basis of the foreign passport used at the time that person entered China.

MALAYSIA

1. Malaysian laws do not recognize dual citizenship. Article 24 (1) of the Federal Constitution provides that if the Federal Government is satisfied that any citizen has

acquired by registration, naturalization or other voluntary and formal act the citizenship of any country outside the Federation, the Federal Government may by order deprive that person of his citizenship.

2. Before an order for deprivation of citizenship can be made, the Federal Government is required, pursuant to article 27, to provide notice in writing to the person against whom the order is proposed to be made, informing him of the ground on which the order is proposed and of his right to have the case referred to a committee of inquiry.

3. The question of deprivation of nationality as a possible precondition for a person's expulsion. Is such a measure allowed under domestic legislation? Is it permissible under international law?

CHINA

Chinese law has no provisions in this regard.

MALAYSIA

1. First and foremost, it must be noted that article 9 of the Federal Constitution prohibits the banishment of a citizen. In addition, the Banishment Act 1959 (Act No. 79) relates to the banishment and expulsion from Malaysia of persons other than citizens.

2. Section 5 of Act No. 79 provides that, where the Minister is satisfied, after such inquiry or such written information, that the banishment from Malaysia of any person not being a citizen or an exempted person would be conducive to the good of Malaysia, the Minister may make an order that the person be banished from Malaysia either for the term of his natural life or for such other term as may be specified in the order. Furthermore, section 8 provides that the Minister may, if he thinks fit, in place of issuing a warrant of arrest and detention or in place of making a banishment order, make an order requiring any person who he is satisfied is not a citizen or an exempted person to leave Malaysia before the expiration of a period of 14 days from the date of service under subsection (4) of a copy of the order.

3. Since the law prohibits the banishment or expulsion of a citizen, the deprivation of nationality is a possible precondition for a person's expulsion. Malaysian laws allow for the deprivation of nationality under certain specific conditions, namely, articles 24 to 26A of the Federal Constitution. However, it is emphasized that only under these specific conditions may a citizen be deprived of his citizenship.

4. Article 24 (1) of the Federal Constitution provides that if the Federal Government is satisfied that any citizen has acquired by registration, naturalization or other voluntary and formal act the citizenship of any country outside the Federation, the Federal Government may by order deprive that person of his citizenship. Furthermore, article 24 (2) provides that if the Federal Government is satisfied that any citizen has voluntarily claimed and exercised in any country outside the Federation any rights available to him under the law of that

country, being rights accorded exclusively to its citizens, the Federal Government may by order deprive that person of his citizenship. In addition, as provided under article 24 (4), if the Federal Government is satisfied that any woman who is a citizen by registration under article 15, "Citizenship by registration (wives and children of citizens)", has acquired the citizenship of any country outside the Federation by virtue of her marriage to a person who is not a citizen, the Federal Government may by order deprive her of her citizenship.

5. Article 25 (1) of the Federal Constitution provides that the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under article 16A, "Citizenship by registration (persons resident in the states of Sabah and Sarawak on Malaysia Day)", or a citizen by naturalization if satisfied:

(a) That he has shown himself by act or speech to be disloyal or disaffected towards the Federation;

(b) That he has, during any war in which the Federation is or was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business which to his knowledge was carried on in such manner as to assist an enemy in that war; or

(c) That he has, within the period of five years beginning with the date of the registration or the grant of the certificate, been sentenced in any country to imprisonment for a term of not less than 12 months or to a fine of not less than 5,000 ringgit, or the equivalent in the currency of that country, and has not received a free pardon in respect of the offence for which he was so sentenced.

6. Article 25 (1A) of the Federal Constitution provides that the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under article 16A or a citizen by naturalization if satisfied that without the Federal Government's approval, he has accepted, served in, or performed the duties of any office, post or employment under the Government of any country outside the Federation or any political subdivision thereof, or under any agency of such a Government, in any case where an oath, affirmation or declaration of allegiance is required in respect of the office, post or employment.

7. Provided that a person shall not be deprived of citizenship under this clause by reason of anything done before the beginning of October 1962, in relation to a foreign country, and before the beginning of January 1977, in relation to a Commonwealth country, notwithstanding that he was at the time a citizen.

8. Article 25 (2) of the Federal Constitution provides that the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under article 16A or a citizen by naturalization if satisfied that he has been ordinarily resident in countries outside the Federation for a continuous period of five years and during that period has neither:

(a) Been at any time in the service of the Federation or of an international organization of which the Federal Government was a member; nor

(b) Registered annually at a consulate of the Federation his intention to retain his citizenship.

9. Provided that this clause shall not apply to any period of residence in any Commonwealth country before the beginning of January 1977.

10. Article 26 (1) provides that the Federal Government may by order deprive of his citizenship any citizen by registration or by naturalization if satisfied that the registration or certificate of naturalization was obtained by means of fraud, false representations or the concealment of any material fact, or was effected or granted by mistake. Article 26 (2) further provides that the Federal Government may by order deprive of her citizenship any woman who is a citizen by registration under article 15 if satisfied that the marriage by virtue of which she was registered has been dissolved, otherwise than by death, within the period of two years beginning with the date of the marriage.

11. Article 26A provides that where a person has renounced his citizenship or has been deprived thereof under article 24 (1) or article 26 (1) (a), the Federal Government may by order deprive of his citizenship any child of that person under the age of 21 who has been registered as a citizen or was so registered as being the child of that person or of that person's wife or husband.

4. The question of the collective expulsion of aliens who are nationals of a State involved in an armed conflict with the host State. In such a situation, should a distinction be drawn between aliens living peacefully in the host State and those involved in activities hostile to it?

CHINA

1. Chinese law has no specific provisions distinguishing the status of aliens living peacefully in the host State and of those involved in activities hostile to it, nor does it have any practices in this regard.

2. The Chinese Government has not expelled aliens temporarily or permanently residing in China because of international relations (whether in peacetime or in a state of war), domestic political exigency, politics, economics, ideology, religion or race. However, the Chinese Government will deal with aliens involved in hostile activities against it in accordance with international law and the provisions of domestic legislation.

MALAYSIA

1. Malaysia is studying and following conscientiously the discussion on this issue, and at this juncture would like to associate itself with the view that there is presently no universal rule prohibiting the collective expulsion of aliens.

2. Furthermore, the question of collective expulsion in cases of armed conflicts is not addressed by national legislation in Malaysia. It must also be noted that, legally, there is no distinction between the aliens living peacefully in Malaysia and those involved in activities hostile to it.

3. If an alien is involved in activities hostile to Malaysia, he or she may be prosecuted under the relevant criminal laws and may be convicted, if successful.

4. Besides that, an alien will also be subjected to sections 9 and 15 of the Immigration Act 1959/63 (Act No. 155). Section 9 provides that the Director-General may in his absolute discretion cancel any pass at any time by writing under his hand, or cancel any permit at any time by writing under his hand, if he is satisfied that the presence in Malaysia of the holder of any permit is, or would be, prejudicial to public order, public security, public health or morality in Malaysia. Besides that, section 15 provides that a person shall not remain in Malaysia after the cancellation of any permit or certificate, after the making of a declaration, after the expiration of the period of any pass relating to or issued to him, or after the notification to him, in such manner as may be prescribed, of the cancellation, under any regulations made under this Act, of any pass relating to or issued to him, unless he is otherwise authorized to remain in Malaysia under this Act.

5. The question of whether an alien who has had to leave the territory of a State under an expulsion order that is subsequently found by a competent authority to be unlawful has the right of return*

MALAYSIA

1. In Malaysia, the Banishment Act 1959 (Act No. 79) (revised 1972) relates to the banishment and expulsion from Malaysia of persons other than citizens. Section 8 of Act No. 79 provides that the Minister may, if he thinks fit, in place of issuing a warrant of arrest and detention or in place of making a banishment order, make an order requiring any person who he is satisfied is not a citizen or an exempted person to leave Malaysia before the expiration of a period of 14 days from the date of service of the order. Section 8 (4) of Act No. 79 also provides that a copy of the expulsion order shall be served on the person against whom it is made by a senior police officer, or by any other person authorized by the Minister to serve the order and shall be served personally on that person in the same manner as a summons is required to be served under the Criminal Procedure Code (Act No. 593), and the officer or person serving the copy shall notify the person against whom it is made that he may at any time within 14 days of the service apply to the High Court for an order that the expulsion order be set aside on the ground that he is a citizen or an exempted person.

2. Section 10 of Act No. 79 provides that any person in respect of whom an expulsion order has been made may, within 14 days of the service of a copy of the expulsion order under section 8 (4), apply to the High Court for an order that the expulsion order be set aside on the ground that he is a citizen or an exempted person; and if it be proved on that application that the person is a citizen or an exempted person, the High Court shall set aside the expulsion order, as the case may be, and direct that the applicant be set at liberty.

* See also section B.3 below.

3. It must be noted that the above situation applies when the person is actually still in Malaysia at the moment when he succeeds in setting aside the expulsion order and being eventually set at liberty.

4. However, it must be noted that when a person is banished and leaves Malaysia, even if he manages to set aside the expulsion order within 14 days of the order, he does not have the right of return to Malaysia. This is because he will now be subjected to section 6 of the Immigration Act 1959/63 (Act No. 155). In other words, he will only be allowed to enter Malaysia if he possesses a valid entry permit or pass.

5. It should be noted that "exempted person" means a person exempted from sections 5 and 8 by any order made under section 12. Section 12 provides that the Minister may by order direct that any particular person or persons of any specified class shall be exempt, either unconditionally or subject to such conditions as the Minister may impose, from sections 5 and 8.

6. Criteria that could be used to distinguish between the expulsion of an alien and the question of non-admission; more specifically, determining the point at which the removal of an illegal immigrant is governed by the expulsion procedure and not by the non-admission procedure

CHINA

1. The relevant Chinese laws have separate provisions regarding the expulsion of and denial of entry to aliens.

2. In practice, the point at which the removal of an illegal immigrant is governed by the expulsion procedure and not by the non-admission procedure depends on whether the illegal immigrant had already entered China at the time he or she was discovered. The non-admission procedure is applied when the illegal immigrant has not yet entered China.

MALAYSIA

1. A main criterion for drawing a distinction between these two procedures seems to be the territorial one, since it is not feasible to expel a person who is not present in the territory of the expelling State. Such a person can only be denied admission. Thus, non-admission means preventing a person who is actually outside the territory of a State from entering that State, while expulsion means forcing a person who is actually in the territory of a State to leave that territory.

2. With regard to the non-admission of an alien, it is governed under sections 6 and 9 of the Immigration Act 1959/63 (Act No. 155). Section 6 (1) provides that no person other than a citizen shall enter Malaysia unless he is in possession of valid entry permit or pass. In addition to that, section 9 provides that the Director-General may, where he deems it expedient to do so in the interests of public security or by reason of any economic, industrial, social, educational or other conditions in Malaysia, by order, prohibit the entry or re-entry into Malaysia of any person or class of persons.

3. On the other hand, in relation to the expulsion of an alien, as mentioned above, it will only be applicable to an alien who is actually in Malaysia. In this regard, section 31 of Act No. 155 makes provisions for the removal of prohibited immigrants from Malaysia where, if during the examination of any person arriving in Malaysia or after such enquiry as may be necessary the person is found to be a prohibited immigrant, the Director-General shall, subject to any regulations made under this Act, prohibit the person from disembarking or may in his discretion detain him at an immigration depot or other place designated by the Director-General until an opportunity arises to return him to his place of embarkation or to the country of his birth or citizenship.

4. Furthermore, section 32 provides for removal of illegal immigrants where any person who is convicted of an offence under sections 5, 6, 8 or 9 shall be liable to be removed from Malaysia by order of the Director-General, provided that no citizen convicted of an offence under section 5 shall be ordered to be removed from Malaysia under this subsection.

5. Last but not least, section 33 provides for the removal of persons unlawfully remaining in Malaysia by reason of sections 9, 15 or 60. The person shall, whether or not any proceedings are taken against him in respect of any offence against this Act, be removed from Malaysia by order of the Director-General.

7. The legal status of illegal immigrants located in the territorial sea or in internal waters, or in the frontier zone excluding port and airport areas. Specifically, apart from port and airport areas, is there an international zone within which an alien would be considered as not having yet entered the territory of the State? If so, how is the extent and breadth of such a zone determined?

CHINA

1. The Chinese Government is of the view that apart from port and airport zones, no international zones exist within which an alien could be considered as not yet having entered the territory of a State.

2. In China, illegal aliens who have entered border zones or territorial or domestic waters other than seaports or airports are considered to have entered Chinese territory, and expulsion procedures are applied to them. However, illegal aliens who have not completed legal entry procedures and are discovered in port areas open to the outside, such as seaports and airports, are not considered to have entered Chinese territory even though they have reached the seaport or airport zone. Expulsion procedures are not applied to such aliens; rather their cases are handled in accordance with the non-admission procedure.

MALAYSIA

1. Apart from port and airport areas, there is no international zone within Malaysia within which an alien would be considered as not having yet entered its territory.

2. It must be noted that section 6 of Act No. 155 provides that no person, unless he is a citizen, shall enter Malaysia unless he is in possession of a valid entry permit or pass. Besides that, section 15 of Act No. 155 elaborates on unlawful entry or presence in Malaysia. Therefore, any non-citizen who enters Malaysia without a valid entry permit or pass will be considered an “illegal immigrant”.

3. Reference as to the meaning of “entry” can be made to the Immigration Act 1959/63 (Act No. 155). Section 2 of Act No. 155 defines “entry” as:

(a) In the case of a person arriving by sea, disembarking in Malaysia from the vessel in which he arrives;

(b) In the case of a person arriving by air at an authorized airport, leaving the precincts of the airport;

(c) In the case of a person entering by land and proceeding to an immigration control post in accordance with section 26, leaving the precincts of the post for any purpose other than that of departing from Malaysia by an approved route; and

(d) In any other case, any entry into Malaysia by land, sea or air.

Provided that it shall not include in any case an entry made for the purpose of complying with this Act or an entry expressly or impliedly sanctioned by an immigration officer for the purpose of any enquiry or detention under this Act.

4. Nevertheless, an “illegal immigrant” who is within the territorial sea or in internal waters but has not disembarked onto the land would still be considered under domestic laws as being unlawfully present in the territory.

8. State practice in relation to grounds for expulsion, and the question of whether and, where appropriate, the extent to which such grounds are restricted by international law*

CHINA

Practice in relation to grounds for expulsion

1. In practice, expulsion is generally not applied to long-term or permanent foreign residents of China under the following circumstances: if they have resided, paid taxes or operated a business in China for a long period, or if their children are with them in China, or if expulsion would lead to the break-up of the family, its reduction to poverty, or deprivation of means of support for a lifetime. Expulsion is also generally not applied to stateless persons residing long-term or permanently in China. For substantive legal provisions, see section B.1 below.

Restrictions under international law

2. The expulsion of aliens must be carried out in accordance with the law; a State must not abuse its right of expulsion. The Chinese Government makes the decision as to whether to expel a person in strict accordance with the provisions of domestic legislation, international treaties and agreements, and commonly accepted international practice, taking into consideration the facts, nature and circumstances of that person’s actions. Such decisions are not to be prejudiced by such factors as the alien’s nationality, race, skin colour or religious faith.

* See also section B.1 below.

3. China is a party to the Convention relating to the Status of Refugees of 28 July 1951. Under the provisions of that Convention, aliens applying for refugee status after entering China may not be forcibly expelled while their refugee status is being determined or if they have been recognized as refugees (with the exception of those who have committed serious crimes).

4. China is also a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Under the provisions of that Convention, if there is sufficient cause to believe that any person risked being tortured in another country, China will not expel that person to that country.

MALAYSIA

1. Section 5 of the 1959 Banishment Act allows the Minister to make an order to banish a person if he is “satisfied after such inquiry or on such written information as he may deem necessary or sufficient that the banishment from Malaysia [of a non-citizen] would be conducive to the good of Malaysia”.

2. In addition, non-citizens who entered Malaysia not in compliance with the provisions of the Immigration Act 1959/63 (Act No. 155) are regarded as illegal immigrants and are punishable under the Act. Likewise, illegal immigrants are subject to deportation in accordance with the provisions of the Act.

B. Comments and information on the specific issues identified by the Commission in its 2009 report

1. Grounds for expulsion provided for in national legislation*

ANDORRA

1. The Immigration Act sets out the details with regard to the administrative expulsion of foreign citizens (arts. 106 *et seq.*). This standard establishes two main grounds for administrative expulsion. The first is that the entry into or the presence within Andorra of the person who is the subject of the measure represents a risk to the security of the State, persons, property or to public order. The second is that the foreign person has been notified of his/her irregular status but has not left the Principality of Andorra within the established deadline.

2. However, there are limitations to this administrative measure which provide important guarantees for the individual concerned. In this regard, the Constitution of the Principality of Andorra of 14 March 1993 establishes in article 22 that the expulsion of a person residing legally in Andorra can be granted only for the reasons and according to the terms provided by law, and as a result of a definitive judicial ruling in the case of a person exercising the right to a hearing. In addition, the Immigration Act establishes that foreign children, foreign adults born in Andorra who have lived there continuously since birth, and foreign adults residing legally in Andorra continuously for a period of 20 years, cannot be subject to expulsion.

* See also section A.8 above.

An exception to these cases can be made if there is an overriding need in the interest of the security of the State, persons, property or public order.

3. The Act establishes a maximum expulsion period of 10 years for persons presenting a risk to the security of the State, persons, property or to public order, and a maximum of 2 years for persons who, having been found to have irregular status, have not left the Principality of Andorra within the established deadline. Lastly, article 119.5 of the Immigration Act establishes that, prior to expelling a resident, the administration must issue an expulsion notice, unless the expulsion is the result of an enforcement measure or if the person is considered a serious risk to the security of the State.

ARMENIA

1. The status of aliens in Armenia is regulated by the Constitution, international treaties, the Law on Aliens of the Republic of Armenia and other legal documents. The issue regarding expulsion of aliens, in particular the definition of “expulsion”, legal grounds for expulsion, pursuing actions on expulsion, circumstances prohibiting expulsion, rights and obligations of aliens in the course of the case hearings, decision on expulsion, appeal and implementation of the decision and detention of an alien with the purpose of his/her expulsion are regulated by the Law on Aliens.

2. The Law on Aliens defines “expulsion” as the compulsory removal of an alien from Armenia when no legal grounds exist for his/her stay or residence in Armenia. An alien is obliged to leave the territory of Armenia in the following cases: (a) expiration of validity of entry visa or residency permit; (b) invalidation of entry visa as prescribed by the Law on Aliens; (c) dismissal of application for acquiring or extending the term of residency status; and (d) deprivation of residency status on the grounds prescribed by the Law on Aliens. Failure by the alien to voluntarily leave the territory of the Republic of Armenia as a result of any of the above-mentioned reasons may serve as legal grounds for expulsion.

BAHRAIN¹

Expulsion under the Alien Act of 1965 and amendments thereto

1. Deportation orders issued against foreign offenders are addressed in the Alien (Migration and Residence) Act of 1965 and the amendments thereto. In that Act, such an order is referred to as a deportation order. Article 25, paragraph 1, of the Act provides that the Chief of Police and Public Security may, with the authorization of the Head of State, in either of the circumstances specified in paragraph (2) of that article, issue an order (referred to as a “deportation order” in the Act) obliging the alien to leave Bahrain and to remain outside it thereafter.

2. With the authorization of the Head of State, a deportation order may be issued against an alien in the following circumstances:

(a) When a court attests to the Chief of Police and Public Security that an alien has been found guilty by that court or by a lower court against the judgement of which the alien has appealed of an offence punishable by imprisonment and that the court has recommended that a deportation order should be issued against that alien;

(b) When the Chief of Police and Public Security believes that it is in the public interest to issue a deportation order against an alien.

3. The General Directorate of Nationality, Passports and Residence is responsible for implementing the provisions of the Alien Act and takes the required measures against aliens who have been sentenced in criminal cases or who have committed an offence under the Alien Act, including violations of residency conditions. Offenders may be expelled either immediately upon issuance of the requisite order or after having served their sentence, depending on the judgement passed and the offence committed.

Expulsion in implementation of a court order

[...]

Expulsion of foreign workers under the Labour Market Regulation Act (No. 19 of 2006)

4. Following the promulgation of the Labour Market Regulation Act (No. 19 of 2006), the Labour Market Regulatory Authority assumed responsibility for expelling foreign workers whose work permit had become invalid for any of the reasons mentioned in the Act, obtaining a permit on the basis of false documents or information, expiration of permit validity, termination of project-related employment or violation of the conditions of the permit (art. 26).

BELARUS

1. In accordance with article 65 of the Act of 3 June 1993, “On the legal status of aliens and stateless persons in the Republic of Belarus”, as amended by the Act dated 19 July 2005 (hereinafter “the Aliens Act”), aliens and stateless persons (hereinafter “aliens”) may be expelled from Belarus in the interests of national security, public order, the protection of the morals and health of the population, and the rights and freedoms of Republic of Belarus citizens and other persons.

2. Decisions concerning expulsion are taken by internal affairs or State security bodies, either on their own initiative or at the request of the State bodies concerned.

3. It should be noted that on 21 July 2010, a new Act “On the legal status of aliens and stateless persons in the Republic of Belarus” (hereinafter “the new Aliens Act”), dated 4 January 2010, which contains similar provisions on the expulsion of aliens, will come into force.

4. Furthermore, the Code of Administrative Offences of 21 April 2003 and the Code of Administrative Procedure and Enforcement of 20 December 2006 have been in force in Belarus since 1 March 2007. International legal approaches to this issue were duly taken into account in their development.

¹ The text of relevant legislation has been provided to the Codification Division of the United Nations Office of Legal Affairs.

5. The Code of Administrative Offences established a new kind of administrative penalty: the deportation of aliens for the commission of an administrative offence.

6. Deportation may be applied to aliens as an additional administrative penalty for violations of the rules for residence in, and transit through, the territory of Belarus. This administrative penalty is determined in accordance with the nature and harmful consequences of the administrative offence committed, the circumstances in which it was committed and the identity of the alien who committed the administrative offence.

7. Administrative penalties for violations of the legal status of aliens and stateless persons in Belarus form a key part of the system of preventive measures, help to curb negative aspects related to illegal migration and fulfil a generally preventive function as a whole.

8. In accordance with article 66 of the Aliens Act, aliens are included in the list of persons whose entry into Belarus is prohibited or undesirable on the basis of a deportation or expulsion decision. The deported or expelled alien may be prohibited from entering Belarus for a period of 1 to 10 years. However, the new Aliens Act changed the period in which a deported alien is prohibited from entering Belarus and this may be from one year to five years.

9. The period of prohibition to enter Belarus is determined in the light of the circumstances that gave rise to the expulsion or deportation decision, and other information describing the identity and relating to the presence of the alien in Belarus.

10. If aliens subject to expulsion or deportation orders apply for refugee status, additional protection or asylum in Belarus in accordance with its legislation, their deportation or expulsion is suspended.

11. Expulsions or deportations are suspended until decisions are taken on applications for refugee status or additional protection in Belarus, until the expiry of the period established by law for appeals against decisions taken on applications for refugee status or additional protection in Belarus, until the entry into force of court decisions dismissing appeals or until decisions are taken on applications for asylum in Belarus.

12. Expulsions or deportations are halted when aliens subject to expulsion or deportation decisions are granted refugee status, additional protection or asylum in Belarus, and when aliens may not be returned or deported involuntarily to a country where their life or freedom would be threatened on the grounds of their race, religion, citizenship, nationality, membership of a particular social group or political opinions, or where they may be subjected to torture.

BOSNIA AND HERZEGOVINA

1. Pursuant to article 88 of the Law on Movement and Stay of Aliens and Asylum, a measure of expulsion from Bosnia and Herzegovina may be imposed against an alien for one of the following reasons:

(a) If he/she has entered or attempted to enter Bosnia and Herzegovina illegally, or stayed in Bosnia and Herzegovina after the visa expiry or expiry of non-visa stay, or he/she attempted to violate or violated the regulations pertaining to the State border crossing on exiting Bosnia and Herzegovina;

(b) If his/her visa has been annulled by a final decision and an alien has not left the territory of Bosnia and Herzegovina within the 15 days or the deadline for voluntary execution as prescribed by this Law;

(c) If his/her stay has been cancelled and he/she failed to leave Bosnia and Herzegovina voluntarily as prescribed by this Law;

(d) If he/she has remained in Bosnia and Herzegovina after the termination of his/her refugee status, subsidiary protection or temporary protection, or after the requirements are met as referred to under article 117 (Expulsion in case of rejection of request for international protection) of this Law, and he/she has not acquired the right to stay in accordance with this Law;

(e) The decision on withdrawal or release from Bosnia and Herzegovina citizenship has become legally binding, but he/she has not realized the right of residence in accordance with this Law;

(f) If there is a final and binding decision based upon which he/she has been found guilty for the crime of trading narcotics or weapons, or engaging in trafficking or smuggling of human beings, terrorism, money-laundering, or any other form of organized, cross-border and transnational crime;

(g) If he/she was legally convicted for committing a criminal offence for which a prison sentence of one year or longer prison sentence may be pronounced;

(h) If his/her presence constitutes a threat to public order, legal order or security of Bosnia and Herzegovina; or

(i) If he/she has been accepted based on an international agreement on cooperation for handing over and admitting persons whose stay is illegal, and he/she has not been granted a valid residence permit in Bosnia and Herzegovina.

2. Pursuant to article 90 of the Law on Movement and Stay of Aliens and Asylum special cases of expulsion are prescribed, as follows:

1. Exceptionally, based upon a substantiated proposal from the Ministry, Service, other organizational unit of the Ministry or the police, the Council of Ministers may, while resolving individual cases, take the decision on expulsion of an alien from Bosnia and Herzegovina, with a permanent prohibition of entry to Bosnia and Herzegovina, if they have assessed that his/her expulsion is necessary in the interest of public order or is based on reasons of national security in the sense of the provision of article 1, paragraph 2, of Protocol 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), as amended by Protocol 11.

2. The decision referred to in paragraph (1) of this article cannot be executed contrary to the requirements referred to in article 91 (Principle of *non-refoulement*) of this Law.

BULGARIA

1. The authorities of the Ministry of the Interior or of the State Agency for National Security have the authority to expel an alien who has been granted a long-term residence permit in another member State of the European Union (EU); who qualifies to be granted a long-term residence permit for Bulgaria, if the said person is a factory or office worker or a self-employed person in Bulgaria or for the purpose of study, including vocational training, if the said person or his or her family members represent a serious threat to national security or to public order, following consultations with the competent authorities of the other EU member State for which they hold a long-term residence permit. In case of expulsion, the length of the alien's residence within the territory of Bulgaria, the age, the health status, the marital status, the social integration, as well as the existence of a relationship with the State of residence or the lack of a relationship with the State of origin of the person are taken into consideration. The authorities of the Ministry of the Interior or of the State Agency for National Security are required to notify the competent authorities of the respective EU member State for the implementation of the expulsion decision.

2. According to article 42 (1) of the Aliens in the Republic of Bulgaria Act, expulsion of an alien is imposed where his or her presence in Bulgaria poses a serious threat to national security or to public order. According to article 42a of the same Act, expulsion is furthermore imposed on aliens residing within the territory of Bulgaria subject to an expulsion decision issued by the competent authorities of another EU member State. In such cases, the expulsion is effected provided that the expulsion decision has not been rescinded or suspended by the issuing State and that the alien poses a serious and present threat to national security or the expulsion decision is based on the alien's failure to comply with the requirements of the provisions regulating the entry into and residence of aliens in the issuing EU member State (art. 42b of the Aliens in the Republic of Bulgaria Act). Expulsion under article 42a of the Aliens in the Republic of Bulgaria Act takes effect only after confirmation that the expulsion decision has not been rescinded or suspended and upon receipt from the issuing EU member State of the documents confirming the alien's identity. Such expulsion does not take effect if a special law or an international treaty to which the Republic of Bulgaria is a party provides otherwise.

3. Whereby an alien poses a serious and present threat to public order or to national security because he or she has been convicted for a criminal offence for which a penal sanction of deprivation of liberty of at least one year has been imposed, or because of the existence of serious grounds to believe that he or she has committed a serious criminal offence or intends to commit such an offence within the territory of a member State of the European Union, the authorities of the Ministry of the Interior and of the State Agency for National Security are authorized to issue an expulsion order and request its enforcement by the competent authorities of the respective EU member State in respect of an alien present within its territory (art. 44g of the Aliens in the Republic of Bulgaria Act).

4. According to article 25 of the Act on Entry into, Residence in, and Exit from the Republic of Bulgaria by European Union Citizens and Family Members Thereof, expulsion is imposed on EU citizens or on their family members when their presence in the Republic of Bulgaria poses an imminent threat to national security or to public order. Expulsion is imposed on EU citizens who have resided in Bulgaria for the last 10 years only in exceptional cases related to national security, and on minors—when this is in their interest. Where an expulsion order has not been enforced for more than two years after its entry into force, the issuing authority must verify whether the factual grounds for its issuing still apply. If the factual grounds no longer apply, the order shall be considered rescinded. EU citizens or their family members on whom expulsion has been imposed may not be expelled to a State where their life and freedom will be jeopardized and where they will be exposed to a risk of persecution, torture, or inhuman or degrading treatment.

CHINA

Provisions of the Criminal Law

1. Article 35 of this law provides that deportation may be imposed independently or supplementarily on an alien who commits a crime.

Provisions of the Law on Entry and Exit of Aliens

2. Article 16 of this law provides that aliens who fail to abide by Chinese laws may have their period of stay in China curtailed or their status of residence in China annulled by the competent authorities of the Chinese Government.

3. Article 27 of this law provides that an alien who enters or resides in China illegally may be detained for examination or be subjected to residential surveillance or deportation by a public security organ at or above the county level.

4. Articles 29 and 30 of this law provide that if a person enters or leaves China illegally, establishes illegal residence or makes an illegal stopover in China, travels to places closed to aliens without a valid travel document, forges or alters an entry or exit certificate, uses another person's certificate as his own or transfers his certificate, and if the circumstances of the case are serious, [that person] may be ordered to leave the country within a certain time or may be expelled from the country.

5. Moreover, article 43 of the Rules for Implementation of the Law of the People's Republic of China on Entry and Exit of Aliens provides that aliens who fail to present for examination their residence permit as required, or to carry with them their passport or residence certificate, or refuse examination of their certificate by the police may, where the circumstances are serious, be ordered to leave the country within a specified time limit.

6. Article 44 of the Rules for Implementation provides that aliens who engage in employment in China without approval may, where the circumstances are serious, be ordered to leave the country within a specified time limit.

*Provisions of the Law on Public Security
Administration Punishments*

7. Article 10 of this law provides that any foreigner who violates public security administration may be ordered to leave the country within a certain time or may be expelled from the country.

CROATIA

1. The conditions and the procedure of expulsion of aliens from the Republic of Croatia have been laid down in:

(a) The Aliens Act (Republic of Croatia "Official Gazette" Nos. 79/07 and 36/09);

(b) Book of rules on travel documents, visas and on treatment of aliens (Republic of Croatia "Official Gazette" No. 79/07);

(c) Contravention Act (Republic of Croatia "Official Gazette" Nos. 88/02, 122/02, 187/03, 105/04, 127/04 and 107/07); and

(d) Penal Act (Republic of Croatia "Official Gazette" Nos. 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 71/06 and 110/07).

2. The decision on expulsion shall be:

(a) Criminal court judgement pronouncing an expulsion security measure to an alien;

(b) Misdemeanour court decision pronouncing a protective measure of expulsion of aliens from the country;

(c) Decision on expulsion issued by the Ministry of the Interior, a police administration, or a police station.

3. An alien may be removed from Croatia if he/she represents a danger for the public order, national security or public health.

4. When making a decision on expulsion, account shall be taken of personal, family, economic and other circumstances.

5. The ruling on the expulsion of an alien (facultative expulsion) may be given particularly in the circumstances when:

(a) His/her stay has been found illegal;

(b) He/she has crossed or attempts to cross the State border illegally;

(c) He/she helps others to illegally enter, transit or stay in the country;

(d) He/she has concluded a marriage of convenience;

(e) He/she has violated the regulations on employment and work of aliens;

(f) He/she has violated the regulations on public order, weapons, abuse of narcotic drugs or customs levies and taxes;

(g) He/she has committed a predicate criminal offence;

(h) He/she has been sentenced with final force and effect in some other country for a violent crime punishable also under Croatian legislation;

(i) He/she repeats an offence.

6. Decision on the expulsion of an alien (obligatory expulsion) shall be pronounced in cases where:

(a) An alien has been sentenced to an unconditional prison sentence of more than one year for an aforethought criminal offence;

(b) For an aforethought criminal offence, an alien has, in the period of five years, been on a few occasions sentenced with final force and effect to a prison sentence of altogether three years;

(c) An alien has been sentenced to an unconditional prison sentence for a criminal offence against the values protected by international law;

(d) An alien represents a danger to national security.

7. The right of special protection against expulsion is exercised by the aliens who have been granted:

(a) Permanent stay in Croatia;

(b) Temporary stay in Croatia for an uninterrupted period of 10 years;

(c) Temporary stay and those aliens who are married to a Croatian national, or those with permanent stay.

8. They may be expelled only if there exists one of the reasons for obligatory expulsion.

9. The decision on expulsion provides for the ban of entry and stay for an alien in Croatia, which shall not be shorter than three months, or longer than five years.

10. A protective measure of the expulsion of an alien from the country may be imposed on a perpetrator of a contravention for whom there is a reason to believe that he/she would continue committing contraventions.

11. A protective measure of the expulsion on an alien from the country may neither be imposed for the period of less than three months, nor for the period of more than three years.

12. A safety measure of the expulsion of an alien from the country may be imposed on the perpetrator of a criminal offence, if there is a reason to believe that he/she is about to commit a certain criminal offence.

13. The safety measure of the expulsion of an alien from the country may not be shorter than 1 year, or longer than 10 years, counting from the day the sentence has become final, taking into account that the time of imprisonment shall not be included in the period of the duration of this measure.

14. A permanent expulsion security measure may be imposed on a perpetrator of a criminal offence for which a long-term prison sentence has been provided for in the law.

CUBA

Cuban criminal law provides for the expulsion of aliens as one of the additional sanctions applicable to natural persons in accordance with the provisions of article 28.3 (i) of Law No. 62 dated 30 April 1988, the Penal Code of the Republic of Cuba. Article 46.1 of the Code provides that the punishment of expulsion may be applied to an alien when a competent tribunal finds that the nature of the offence, the circumstances of its commission, or the personal character of the defendant indicate that his or her continued presence in the Republic would be harmful. It further provides that the expulsion of aliens may be imposed as an additional measure once the principal sanction has been completed and grants the Ministry of Justice the discretion of ordering the expulsion of the sanctioned alien prior to the completion of the primary sanction, in which case the criminal culpability of the guilty person is annulled.

CZECH REPUBLIC

1. An alien may be expelled from the Czech Republic either by an order issued by a court following criminal conviction (expulsion by court order), or by an administrative order issued by the police (administrative expulsion).

2. Expulsion following a criminal conviction is regulated by section 80 of the Criminal Code (Act No. 40/2009). The court may order the expulsion of an offender who is not a Czech citizen, either as the only penalty or in combination with another penalty, if necessary to protect the safety of persons or property or another general interest. Expulsion may be ordered as the only penalty if the nature and gravity of the crime and the offender's personal situation do not warrant additional penalties.

3. The offender may be barred from re-entry for a period of 1 to 10 years or for an indefinite period of time, depending on the nature and gravity of the crime, the offender's chances of rehabilitation and his or her personal situation, as well as the danger posed to the safety of persons, property or another general interest.

4. The court will not order expulsion:

- (a) If the offender's citizenship cannot be ascertained;
- (b) If the offender has been granted asylum or additional protection under other legislation;
- (c) If the offender holds a permanent residence permit, works and has an established home in the Czech Republic, and his or her expulsion would be inconsistent with the commitment to family reunification;

(d) If there is a danger that the offender might face persecution in the receiving State on the grounds of his or her race, ethnicity, nationality, association with a social group, political opinion or religion, or that as a result of the expulsion the offender might be exposed to torture or other inhuman or degrading treatment and/or punishment;

(e) If the offender is an EU citizen or a family member of an EU citizen, regardless of citizenship, who holds a permanent residence permit in the Czech Republic, or an alien who has been granted a long-term resident status in the Czech Republic in accordance with other legislation, unless the court finds that there are substantial grounds for believing that the offender might endanger national security or public order;

(f) If the offender is an EU citizen who has continuously resided in the Czech Republic for the past 10 years, unless the court finds that there are substantial grounds for believing that the offender might endanger national security; or

(g) If the offender is a child, who is an EU citizen, unless the expulsion would be in the child's best interests.

5. Administrative expulsion is regulated by chapter X of Act No. 326/1999 concerning the residence of aliens in the territory of the Czech Republic, as amended ("Aliens Residence Act").

6. On receiving an administrative expulsion order from the police, the alien must leave the Czech Republic within a certain deadline and will not be eligible for re-entry for a period stated in the administrative expulsion order. The grounds for administrative expulsion are enumerated in section 119 *et seq.* of the Aliens Residence Act, including the maximum periods for which the expellee may be barred from re-entry (within these maximum limits, the actual length of expulsion is determined by the police on a case-by-case basis, depending on the gravity of the breaches committed by the alien in the Czech Republic).

7. Once the administrative expulsion order becomes final, the police place the alien on the list of undesirable persons. An alien awaiting administrative expulsion is either left at liberty or detained in an aliens detention centre. The grounds for and maximum lengths of administrative expulsion differ according to the alien's residence status.

8. An alien holding a temporary residence permit may be administratively expelled and barred from re-entry:

(a) For up to 10 years:

(i) If there is a well-founded risk that, while in the Czech Republic, the alien might endanger national security by using force to achieve political ends, by engaging in activities that undermine the foundations of a democratic State or are intended to violate territorial integrity, or in other similar manner; or

(ii) If there is a well-founded risk that, while in the Czech Republic, the alien might seriously disrupt public order, or endanger public health in case he or she has a serious disease; or

(iii) If the alien has repeatedly and deliberately violated laws and regulations or obstructed the execution of judicial or administrative orders;

(b) For up to five years:

(i) If during a border check or an inland check on the residence status of aliens, the alien has presented a forged document and/or has presented another person's document as his or her own;

(ii) If during an inland check on the residence status of aliens or during a border check while leaving the Czech Republic, the alien has presented a travel document which is invalid, because the validity period indicated in it has expired, or because it is damaged so much that the entries are illegible, or because any of its parts has come loose, been torn or is missing, or because it contains incorrect data or unauthorized alterations;

(iii) If the alien is employed in the Czech Republic without an employment permit in cases where such permit is a necessary condition for employment, or if he or she has engaged in taxable gainful activities in the Czech Republic without the licence required by special laws and regulations, and/or if he or she has employed an alien without an employment permit or procured such employment for an alien;

(iv) If the alien has acted, or is supposed to have acted, on behalf of a legal entity which has employed an alien without an employment permit and/or procured such employment;

(v) If the alien does not undergo a border check when requested by the police;

(vi) If the alien has clandestinely crossed, or attempted to clandestinely cross, the State border;

(vii) If the alien has crossed the State border at a place other than a border crossing point; or

(viii) If the alien has not provided credible evidence that he or she has been staying in the territory of the States parties for the period of time for which he or she is allowed to stay there temporarily without a visa or on a short-stay visa; or

(c) For up to three years:

(i) If the alien has, without lawful authority, been staying in the Czech Republic without a travel document;

(ii) If the alien has, without lawful authority, been staying in the Czech Republic without a visa or without a valid residence permit; or

(iii) If, in the course of any proceedings under the Aliens Residence Act, the alien has made false statements with the intention to influence the decisions of an administrative authority.

9. An alien holding a permanent residence permit may be administratively expelled and barred from re-entry (depending on the gravity of the breaches):

(a) For up to 10 years:

(i) If there is a well-founded risk that, while in the Czech Republic, the alien might endanger national security by using force to achieve political ends, by engaging in activities that undermine the foundations of a democratic State or are intended to violate territorial integrity, or in other similar manner; or

(ii) If there is a well-founded risk that, while in the Czech Republic, the alien might seriously disrupt public order; or

(b) For up to three years, if an alien whose residence permit has been withdrawn does not leave the Czech Republic within the set deadline.

10. A collective administrative expulsion (i.e. expulsion of groups of aliens by a single expulsion order) is prohibited by the international treaties to which the Czech Republic is a party (art. 4 of Protocol No. 4 to the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto) as well as by domestic legislation (section 118 of the Aliens Residence Act). Every case is examined individually, taking into account the specific situation of the person concerned.

EL SALVADOR

1. *False declaration.* Where an alien makes a false declaration either when entering the national territory or in its dealings with the Directorate-General for Migration and Alien Affairs. This offence is contemplated in article 16 of the Migration Act.

2. *Unlawful entry.* Where an alien enters Salvadorian territory unlawfully, i.e. via a point not set up to conduct migration control, irrespective of whether he or she is in possession of a travel document. This offence is established in article 6 of the Migration Act.

3. *Unlawful stay.* Where the duration of stay granted to an alien who entered the country lawfully expires, leaving him or her with irregular migratory status. This offence is contemplated in the third paragraph of article 60 of the Migration Act. See also article 66 of the Migration Act.

4. *Commission of a crime.* Where an alien commits a crime on Salvadorian territory, irrespective of whether he or she entered the country lawfully, and the competent authority orders his or her immediate expulsion from Salvadorian territory. This offence is established in article 61 of the Migration Act.

5. *National interests.* Article 63 of the Migration Act states that, where qualifying discretionary grounds exist, the Ministry of Justice and Public Security may order the expulsion from Salvadorian territory of an alien whose presence is contrary to national interests.

6. *Judicial order.* Article 60 of the Penal Code states the following: "The sentence of expulsion from the national territory for aliens shall include immediate enforced departure from the national territory, once the

main sentence has been served and a ban on returning to the national territory for a maximum of five years, at the judge's discretion".

7. *Procurement of specialized services.* The fourth paragraph of article 26 of the Migration Act states that when a contract for the provision of services ends, for whatever reason, the alien must abandon the national territory, failing which he or she will be expelled from the country.

8. *Entry as temporary residents.* Aliens who entered the country as temporary residents and aliens covered by article 23, paragraph (c), of the Migration Act must, within 48 hours of their registration, deposit with the Directorate-General for Migration and Alien Affairs the cost of an air ticket between the city of San Salvador and their country of origin. Failure to meet this requirement will be punished with expulsion from the national territory. This provision does not apply to persons who are Central American or Panamanian by birth.

9. It should be noted that the grounds described in points 7 and 8 above, though contained in the Migration Act in force since 1958, are not currently applied.

FINLAND

1. Section 149 of the Aliens Act (No. 301/2004) provides that an alien who has resided in Finland under a residence permit may be deported if:

1. He or she resides in Finland without the required residence permit;

2. He or she is found guilty of an offence carrying a maximum sentence of imprisonment for a year or more, or if he or she is found guilty of repeated offences;

3. He or she has, through his or her activities, shown that he or she is liable to endanger other people's safety; or

4. He or she has been engaged, or on the basis of his or her previous activities and for other reasons there are grounds to suspect that he or she may engage in activities that endanger Finland's national security or relations with a foreign State.

2. An alien who has been issued with a long-term resident's EC residence permit in Finland may be deported only if he or she poses an immediate and sufficiently serious threat to public order or security.

3. A refugee may be deported in the cases referred to in paragraphs 2 to 4 of Section 149 of the Aliens Act above. A refugee may not be deported to his or her home country or country of permanent residence against which he or she still needs international protection. A refugee may only be deported to a State which agrees to admit him or her.

4. When considering deportation, account must be taken of the facts on which the decision is based and the facts and circumstances otherwise affecting the matter as a whole. When considering the matter, particular attention must be paid to the best interest of the children and the protection of family life. Other facts to be considered must include the duration and purpose of the alien's residence in Finland, the nature of the residence permit issued to him or her, the alien's ties to Finland and the cultural and social ties to the home country of his or her family. Should

the deportation be on the basis of the criminal activity of the alien, account must be taken of the seriousness of the act and the detriment, damage or danger caused to public or private security.

GERMANY

1. As previously indicated by Germany,¹ the German Residence Act (*Aufenthaltsgesetz, AufenthG*) sets out various grounds for expulsion. These include grounds based on the commission of criminal offences or convictions, as well as those related to terrorist or extremist activities and regulatory offences.

2. The two-step process for ending residence in Germany must be taken into account when considering the question of restrictions imposed by international law. An alien's residence permit expires upon expulsion and his/her right of residence in Germany is thus terminated. He/she is therefore required to leave the country (section 50 of the Residence Act). Only once this requirement to leave the country has become enforceable, and it is not assured that the alien will leave voluntarily or reasons of public security and order make the supervision of the departure seem necessary, is the requirement to leave enforced by means of deportation (section 58 of the Residence Act). International obligations may militate against both expulsion and deportation. For example, the considerations mentioned in article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and article 6 of the German Basic Law (Constitution) have been incorporated into the Residence Act in section 56 (special protection from expulsion in the case of family ties in Germany). Sections 60 (2) and (5) of the Residence Act prohibit deportation (also because of the obligation under article 3 of the Convention) if there is a danger that the alien, once deported, would be subject to torture or inhumane or degrading treatment or punishment. These restrictions apply no matter what grounds for expulsion exist.

¹ See *Yearbook ... 2009*, vol. II (Part One), document A/CN.4/604, section A.8.

ITALY

Provisions for the Expulsion of Foreigners from Italian Territory in the Consolidated Text on Immigration and the Condition of the Foreigner

1. The Italian legal code provides for two types of expulsion: administrative and jurisdictional.

2. Administrative expulsion can be ordered by the Minister of the Interior or by the Prefect for the following reasons:

(a) Reasons of public order or State security;

(b) Violations of the laws governing entry to and residence in Italian territory;

(c) The social danger posed by the subject, as determined by specific legal parameters (art. 13, paras. 1 and 2);

(d) The need to prevent domestic and international terrorism (Law No. 155/2005, art. 2).

3. In addition, there is a “deferred” return to the border of foreigners who, having entered the territory without undergoing border controls, are stopped at or immediately after entry, and foreigners who, not meeting the requirements for entry into Italy, are admitted temporarily into the territory for reasons of public rescue (art. 10, para. 2). The police chief executes the expulsion by escorting the subject coercively to the border. Only in the event that the subject’s visa has expired by more than 60 days and renewal has not been requested does the expulsion include notification that the territory must be left within 15 days (art. 13, paras. 4 and 5).

4. The police chief’s coercive escorting of the subject to the border must be approved by the judicial authorities and execution of it is suspended until authorization has been granted. The decision to authorize can be appealed to the Court of Appeals (art. 13, para. 5 *bis*).

5. When expulsion measures on the grounds of illegal entry or residence are adopted against a foreigner who has exercised his or her right to family reunification, or against the family member who has been reunified, consideration must also be given to the nature and effectiveness of family ties, the duration of the stay, and the existence of family, cultural or social ties to the country of origin (art. 13, para. 2 *bis*).

6. Jurisdictional Expulsion is ordered by the judge and falls within the following framework:

(a) As a substitute for monetary penalties for the crime of illegal entry and residence in the territory (art. 10 *bis* of the Consolidated Text and art. 62 *bis* of Legislative Decree No. 274/2000 as introduced by art. 1, paras. 16 and 17, *d*), provided for by Law No. 94/2009);

(b) As a substitute or alternative to detention (art. 16 of the Consolidated Text);

(c) As a security measure imposed by a guilty verdict and executed after fulfilment of the penalty, on the basis of the certification of the danger posed by the subject (art. 15 of the Consolidated Text, arts. 235 and 312 of the Criminal Code, art. 86 of the Consolidated Text, on narcotics).

7. In no case can expulsion or return be made to a State where the foreigner could be subject to persecution on the grounds of race, gender, language, citizenship, religion, political views, or personal or social condition, nor can the risk be taken of sending someone to another State that does not provide protection from persecution (art. 19, para. 1, of the Consolidated Text).

8. Expulsion is also prohibited, unless there are reasons of public policy and security, in the following cases:

(a) Foreign minors younger than 18 years of age, unless they are exercising their right to follow an expelled parent or guardian;

(b) Foreigners holding a residence card, except for cases of expulsion pursuant to laws regarding residence card holders;

(c) Foreigners living with second-degree relatives or a spouse of Italian nationality;

(d) Women who are pregnant or have given birth to a dependent child in the past six months (art. 19, para. 2, of the Consolidated Text) and the husbands with whom they live (order of the Constitutional Court No. 376/2000).

KUWAIT

1. The process of expelling foreigners or returning them to their own countries necessarily presupposes the existence of a penal text that includes authorization for expulsion as an additional penalty. The imposition and execution of an expulsion order are reasonable forms of national legal protection that are based on a well-established body of law. The guidelines for such orders may be found in the provisions of article 66 of the Kuwaiti Penal Code, Law No. 16 of 1960, which provides that the supplementary or additional penalties set forth in the Code include the expulsion from the country of a foreign national.

2. The Penal Code, article 79, also includes provisions that govern expulsion order procedures, namely, that in addition to any prison sentence imposed on a foreign national, a judge may order expulsion from Kuwait once the term of imprisonment has been served. That provision does not affect the right of the administrative authorities to expel aliens in accordance with the law.

3. When a foreign national has been sentenced to deprivation of liberty for a crime that was an offence against honour or an abuse of confidence, and the judge has ordered that person to be expelled from Kuwait once the sentence has been served, the Public Prosecutor must, as soon as the penalty has been completed, announce the judge’s decision to the administrative authorities that are interested in its execution.

4. It should be noted that the law specifies the ways in which foreign nationals are to be informed of the issuance of an expulsion judgement. The Code of Criminal Procedure and Judicial Proceedings (decree No. 60/17, article 179), provides that every accused and defendant shall be given an official copy of any judgement that is issued. No charge is to be made for that copy, which shall be delivered to the accused or defendant in person and officially announced.

5. An expulsion order is, without doubt, a supplementary or additional penalty and inevitably presupposes a main sentence: penal expulsion is only one means by which aliens may be expelled, particularly when the offence involved honour or an abuse of confidence, and in that case the alien will be expelled as soon as the main sentence has been served.

6. Penal expulsion is not the only means by which aliens may be expelled. In article 79 (decree No. 70/16), the law grants the relevant administrative authority the right

to expel aliens whenever the provisions of the law allow. Such expulsion is known as administrative expulsion. The law governing the residence of foreign nationals (decree No. 59/17, article 20), provides that a foreign national shall leave Kuwait at the order of the Chief of Police and Public Security if he has not obtained a residence permit or that permit has expired. He may return to Kuwait if he satisfies the conditions for entry that are set forth in the law.

7. In order to offer greater regulatory flexibility, one mechanism which the law governing the residence of foreign nationals (decree No. 59/17, article 24 *bis*), offers to foreign nationals that are in breach of the residence laws is a provision that allows for an accommodation to be reached with such persons once they have paid the requisite fine for the infraction.

LITHUANIA¹

1. The procedure of entry and exit, presence and stay of aliens, as well as the procedure for appealing against decisions concerning the legal status of aliens and other issues in connection with the legal status of aliens in Lithuania, are regulated by the Law of the Republic of Lithuania on the Legal Status of Aliens passed on 29 April 2004 (hereinafter referred to as the Law).

2. The Law stipulates the following:

Obligation to depart from Lithuania: a decision taken in the manner prescribed by legal acts obliging an alien to depart voluntarily within a specified time period from the territory of Lithuania;

Return to a foreign country: transfer of an alien to his country of origin or a foreign country to which he has the right to depart, according to a decision agreed with that country according to the procedure established by legal acts;

Expulsion from Lithuania: compulsory transportation or removal of an alien from the territory of Lithuania in accordance with the procedure established by legal acts.

An alien is expelled from Lithuania if:

(a) The alien has failed to comply with the requirement obliging him to depart from Lithuania within a set time period;

(b) The alien has entered or is staying in Lithuania unlawfully;

(c) The alien's stay in Lithuania constitutes a threat to public security or public policy;

(d) A decision has been taken to expel the alien from another State subject to the provisions of Council Directive No. 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals.²

3. The aforementioned provisions are not applicable to aliens who may be returned to the country of origin or a foreign country as well as to asylum applicants. An unaccompanied minor alien is returned only in the case where he will be properly cared for considering his needs, age and independence level in the foreign State to which he is returned. If an unaccompanied minor alien cannot be returned to the country of origin or another country, he must be granted the right to stay in Lithuania on the grounds provided for in the Law. When considering the issue of return of an alien, cooperation with foreign States and international organizations is undertaken pursuant to applicable international treaties.

4. The decision regarding expulsion of an alien from Lithuania in the cases where the alien has failed to comply with the requirement obliging him to depart from Lithuania within a set time period or where the alien has entered or is staying in Lithuania unlawfully, as well as the decision regarding the possibility of implementing, where the decision was taken to expel the alien from another State subject to the provisions of Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals, is taken by the Migration Department under the Ministry of the Interior of Lithuania.

5. The decision regarding expulsion of an alien from Lithuania in the case where the alien's stay in Lithuania constitutes a threat to public security or public policy is taken by Vilnius Regional Administrative Court.

6. Decisions regarding expulsion of an alien from Lithuania are enforced by the State Border Guard Service under the Ministry of the Interior of Lithuania or by the police.

7. When taking the decision to expel an alien from Lithuania, the following circumstances are taken into account:

(a) The period of his lawful stay in Lithuania;

(b) His family relationship with persons resident in Lithuania;

(c) His social, economic and other connections in Lithuania; and

(d) The type and extent of the seriousness of the committed violation of law.

8. The implementation of the decision regarding the expulsion of an alien from Lithuania is suspended if:

(a) The decision regarding expulsion of an alien from Lithuania is appealed against in court, except in cases when the alien must be expelled due to the threat which he constitutes to State security or public policy;

¹ The following information has been provided by the Ministry of the Interior of the Republic of Lithuania and is based on the current version of the Law of the Republic of Lithuania on the Legal Status of Aliens (*Official Gazette*, 2004, No. 73-2539). It is important to note that a new draft law amending the aforementioned law is currently being elaborated in order to implement the provisions of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member States for returning illegally staying third-country nationals (*Official Journal of the European Union*, No. L 348 of 24 December 2008).

² *Official Journal of the European Union*, No. L 149 of 2 June 2001, p. 34.

(b) The foreign country to which the alien may be expelled refuses to accept him;

(c) The alien is in need of immediate medical aid, the necessity of which was confirmed by a consulting panel of a health-care institution;

(d) The alien cannot be expelled due to objective reasons (the alien is not in possession of a valid travel document; it is not possible to obtain travel tickets, etc.).

9. If the expulsion of an alien from the Republic of Lithuania is suspended due to the circumstances listed in items (b) to (d) in the previous paragraph and these circumstances do not cease to exist within one year of the suspension of the implementation of the decision to expel the alien from Lithuania, the alien is issued with a temporary stay permit.

10. It is prohibited to expel or return an alien to a country where his life or freedom is under threat or where he may be subjected to persecution on the grounds of race, religion, nationality, political opinion or membership of a social group or to a country from whence he may later be expelled to such a country (this provision is not applicable with respect to an alien who for serious reasons constitutes a threat to the security of Lithuania or has been convicted by an effective court judgement of a serious or particularly serious crime and constitutes a threat to the public).

11. An alien is not expelled from Lithuania or is not returned to a foreign country, if:

(a) There are serious grounds to believe that the alien will be tortured, subjected to cruel, inhuman or degrading treatment or punishment in that country;

(b) He, in accordance with the procedure set by the Government of Lithuania, was granted with a decision period during which he, as an actual or former victim of a crime associated with human trafficking, must take a decision regarding cooperation with pretrial investigation entities or courts.

MALAYSIA

1. In Malaysia, the Banishment Act 1959 [Act No. 79] (Revised 1972) is an Act relating to the banishment and expulsion from Malaysia of persons other than citizens. Section 5 of Act No. 79 provides that, where the Minister is satisfied after such inquiry or such written information, that the banishment from Malaysia of any person not being a citizen or an exempted person would be conducive to the good of Malaysia, the Minister may make an order that the person be banished from Malaysia either for the term of his natural life or for such other term as may be specified in the order. Furthermore, section 8 provides that the Minister may, if he thinks fit, in place of issuing a warrant of arrest and detention or in place of making a banishment order, make an order requiring any person who he is satisfied is not a citizen or an exempted person to leave Malaysia before the expiration of a period of 14 days from the date of service under subsection (4) of a copy of the order.

2. "Exempted person" means a person exempted from sections 5 and 8 by any order made under section 12. Section 12 provides that the Minister may direct, by order, that any particular person, or persons of any specified class, shall be exempt, either unconditionally or subject to such conditions as the Minister may impose, from sections 5 and 8.

3. A more common ground for expelling an alien from Malaysia is exercised under the Immigration Act No. 1959/63 (Act No. 155). An alien who is found to be in breach of Act No. 155 will be liable to be removed from Malaysia under part V of the Act, where the Director-General of Immigration may, in the case of a prohibited immigrant, prohibit that person's entry, and, in the case where an alien is an illegal immigrant or unlawfully residing in Malaysia, order for the removal of such person from Malaysia (sections 31–33 of Act No. 155). The definition of prohibited immigrant can be found under section 8 of Act No. 155.

4. Under section 31 of Act No. 155, if, during the examination of any person arriving in Malaysia or after such enquiry as may be necessary, the person is found to be a prohibited immigrant, the Director-General may, subject to any regulations made under this Act, prohibit the person from disembarking or may, at his discretion, order that person's detention at an immigration depot or other designated place until an opportunity arises to return that person to his place of embarkation or to the country of his birth or citizenship.

5. Section 32 of Act No. 155 further provides that those other than citizens convicted of an offence under section 5, 6, 8 or 9 shall be liable to be removed from Malaysia by order of the Director-General. Section 5 of Act No. 155 provides that the Minister may, by notification in the Gazette, prescribe approved routes and declare such immigration control posts, landing places, airports or points of entry, as he may consider to be necessary for the purposes of this Act, to be immigration control posts, authorized landing places, authorized airports or authorized points of entry, as the case may be, and no person shall, unless compelled by accident or other reasonable cause, enter or leave Malaysia except at an authorized landing place, airport or point of entry.

6. Under section 6 of Act No. 155, any person other than a citizen can only enter Malaysia if he is in possession of a valid entry permit lawfully issued to him under section 10; his name is endorsed upon a valid entry permit in accordance with section 12, and he is in the company of the holder of the permit; he is in possession of a valid pass lawfully issued to him to enter Malaysia; or he is exempted from this section by an order made under section 55 (Power to exempt by the Minister).

7. Section 9 provides that the Director-General may in his absolute discretion cancel any pass at any time by writing under his hand; or cancel any permit at any time by writing under his hand, if he is satisfied that the presence in Malaysia of the holder of any permit is, or would be, prejudicial to public order, public security, public health or morality in Malaysia.

8. Section 33 of Act No. 155 further allows for the removal, by order of the Director-General, of any person whose presence is unlawful by reason of section 9, 15 or 60 of the Act.

9. Besides that, section 15 provides that a person shall not remain in Malaysia after the cancellation of any permit or certificate; after the making of a declaration; after the expiration of the period of any pass relating to or issued; or after the notification to him, in such manner as may be prescribed, of the cancellation, under any regulations made under this Act, of any pass relating to or issued to him, unless he is otherwise authorized to remain in Malaysia under this Act. Section 60 is a savings provision for immigration laws which are repealed by Act No. 155.

MALTA¹

1. The immigration legislation of Malta does not mention “expulsion”, but rather “removal” and “deportation”. Both issues are distinct. The former is the result of a removal order issued by the Principal Immigration Officer, while the latter follows the issue of a deportation order by the Minister responsible for immigration.

2. Removal orders are issued to prohibited immigrants in line with articles 5 and 14 of chapter 217 of the Laws of Malta. Deportation orders are issued according to article 22 of the same Law.

¹ Relevant legislation was enclosed and is available at the Codification Division of the United Nations Office of Legal Affairs.

MEXICO

1. Article 33 of the Political Constitution of the United Mexican States provides that the executive branch shall have the exclusive power to expel from national territory, without the need for a prior court ruling, any alien whose continued presence it deems inexpedient.

2. The General Population Act, enacted in order to regulate factors affecting the size, structure, dynamics and distribution of the population within the national territory in order to ensure that its members share fairly and equitably in the benefits of economic and social development, regulates the process for the expulsion of aliens in accordance with the guidelines set forth in the Constitution. Article 125 of the Act provides that aliens shall be expelled if they engage in any of the following behaviours:

(a) Aiding, harbouring or abetting an individual in the violation of the Act’s provisions;

(b) Presenting immigration documents with a signature that is forged or different from the one normally used;

(c) Failing to leave the national territory within the time period established owing to the cancellation of immigration status;

(d) Re-entering the national territory after being expelled without having obtained authorization for re-entry;

(e) Failing to disclose or concealing expulsion status in order to be granted and to obtain a new entry permit;

(f) After legally obtaining authorization to enter the country, remaining illegally in non-compliance with or violation of the administrative or legal provisions established as conditions for the stay;

(g) Conducting activities not authorized under this Act or under the entry permit granted;

(h) Fraudulently using or claiming possession of an immigration status other than the one granted;

(i) Entering the country without the required documentation;

(j) Attempting to take or takes Mexican citizens or aliens to another country for the purposes of trafficking without the required documentation.

NEW ZEALAND

1. The Immigration Act 1987 (“the Act”) allows for the expulsion of aliens through deportation, revocation of residence permits upon which a person subsequently becomes unlawful, and the removal of persons unlawfully in New Zealand and who are subsequently served with a removal order. The grounds and relevant sections of the Act are set out below:

Deportation

(a) Deportation of persons threatening national security (through Order in Council) under sections 72 and 73 of the Act;

(b) Deportation of criminal offenders (deportation of holders of residence permits following conviction) under section 91 of the Act;

(c) Deportation of exempt person (exempt from the requirement to hold a permit under the Act) following conviction under section 92 of the Act.

Revocation

(d) Revocation of residence permit by immigration officer under section 19 of the Act;

(e) Revocation of residence permit by the Minister of Immigration under section 20 of the Act—on the following grounds only:

(i) Permit granted as a result of administration error (sect. 20 (1) (a));

(ii) Permit was procured by fraud, forgery, false or misleading information or concealment of misleading information (sect. 20 (1) (b));

(iii) Permit was granted to a person who held a visa or other permit which was procured by fraud, forgery, false or misleading information or concealment of misleading information (sect. 20 (1) (c));

(iv) Permit granted to a person who is no longer recognized as a refugee in New Zealand and that earlier recognition was procured by fraud, forgery, false or misleading information or concealment of misleading information (sect. 20 (1) (ca));

(v) Requirements imposed on a permit holder have not been met (sect. 20 (1) (d)).

Removal of persons in New Zealand unlawfully

(f) Persons in New Zealand unlawfully can be detained in custody pending removal from New Zealand (upon issuance of a Removal Order under section 53 of the Act);

(g) A person can be detained pending removal from New Zealand (under section 128) if he or she:

- (i) Has been refused a permit;
- (ii) Is not exempt from the requirement to have a permit under the Act;
- (iii) Fails to apply in the prescribed manner for permit;
- (iv) Is a stowaway;
- (v) Has had a pre-cleared permit revoked.

NORWAY

1. The legal framework applicable to expulsion of foreign nationals is the act of 15 May 2008 on the entry of foreign nationals into the Kingdom of Norway and their stay in the realm (Immigration Act) and the regulations of 15 October 2009 regarding the access of foreign nationals to the realm and their stay in the realm (Immigration Regulations).

2. A foreign national may only be expelled from Norwegian territory in pursuance of a decision made in accordance with the Immigration Act.¹ Pursuant to the Immigration Act, sections 66 to 68, a foreign national can be expelled if:

(a) He or she has committed a criminal act, in Norway or abroad (nationals holding a permanent residence permit can only be expelled for serious crimes);

(b) He or she has committed a terrorist act or has provided a safe haven for any person he or she knows has committed such an offence;

(c) Fundamental national interests make it necessary (threats against Norwegian and foreign interests in Norway or against Norwegian interests abroad).

3. Foreign nationals not holding a residence permit may also be expelled if:

(a) He or she has grossly or repeatedly violated the provisions of the Immigration Act, for example by staying in Norway illegally, working here illegally or providing incorrect information to the immigration authorities (for example, by stating an incorrect identity, withholding information that he has another identity in another country, etc.);

(b) He or she evades the implementation of a decision requiring him or her to leave Norway;

(c) He or she is expelled by another Schengen State.

¹ A translation of the law proposal was enclosed and is available at the Codification Division of the United Nations Office of Legal Affairs.

4. According to section 70, a foreign national may not be expelled if this would be a disproportionate measure with regard to the foreign national him/herself or his/her family, having regard for their connection to the country on the one hand and the gravity of the criminal offence on the other. In cases concerning children, the child's best interest shall be a fundamental consideration.

5. A foreign national who is born in Norway, and who subsequently has continuously had a fixed abode here, is, according to section 69, protected against expulsion. European Economic Area (EEA) nationals (citizens of a European Union/ European Free Trade Association country) have extended protection against expulsion in accordance with the relevant EU legislation (*cf.* the Immigration Act, sects. 122 and 123).

PERU

1. Aliens who violate the Aliens Act are subject to penalties, the most severe being expulsion from Peru.

2. Legislative Decree No. 703, which sets out the grounds for expulsion:

Article 64

Expulsion from the country shall occur in the following cases:

- 1. Clandestine or fraudulent entry into Peru;
- 2. A judicial warrant; and
- 3. Anyone who has been ordered to leave or whose stay or residency has been revoked and who has not left Peru.

3. Legislative Decree No. 635 of 3 April 1991, adopting the Penal Code of Peru:

Article 30

Sentences that restrict freedoms include: (1) expatriation (repealed); and (2) in the case of aliens, expulsion from the country.

Article 303

Aliens who have served their sentences shall be expelled from the country, and their return shall be prohibited.

PORTUGAL

1. The general regime on the expulsion of aliens is provided by Law No. 23/2007, of 4 July, and is further regulated by Regulatory Decree No. 84/2007, of 5 November. The former sets out the legal framework for the entry into, stay in, exit and removal of foreign nationals from the national territory.

2. It is important to be aware that Law No. 23/2007 does not apply to:

(a) Nationals of an EU member State, of a State that is Party to the European Economic Area or of a third State with which the EU has concluded an agreement on the free movement of persons;

(b) Nationals of a third State residing in the national territory under the refugee status, who are beneficiaries of subsidiary protection under the asylum provisions or of temporary protection;

(c) Nationals of a third State who are family members of a Portuguese or of a foreign citizen under the preceding subparagraphs.

3. Within this legal background, chapter VIII of Law No. 23/2007 specifically deals with expulsion matters.

4. Article 134 provides for information on the grounds of removal. Without prejudice to the arrangements of the international conventions to which Portugal is bound to, a foreign national shall be expelled when:

(a) Entering or staying illegally in the Portuguese territory;

(b) Endangering national security or offend against public order;

(c) His/her presence or activities in the country are a threat to the interests or dignity of the Portuguese State or of its nationals;

(d) Interfering abusively with the exercise of political rights reserved for national citizens;

(e) Having committed acts that if known to the Portuguese authorities would have prevented his/her entry into the country;

(f) In respect of him or her, there are serious reasons for believing that he/she has committed serious offences or intends to commit such acts, namely within the European Union territory.

5. Notwithstanding the above rules, the following exceptions may apply:

Pursuant to article 135, foreign citizens cannot be expelled from the country should:

(a) They have been born in the Portuguese territory and reside in this very territory;

(b) They be effectively responsible for the care of Portuguese children resident in Portugal;

(c) They have effective parental responsibility for children who are nationals of a third State resident in the Portuguese territory, and for whom they are responsible to provide maintenance, namely in respect of their education;

(d) They live in Portugal since the age of 10 or below and reside there.

6. Furthermore, article 136, paragraph 1, affords wider protection to foreign nationals with long-term resident status in Portugal by establishing that a decision on the judicial expulsion of a long-term resident can only be based on the fact that he/she constitutes a genuine and sufficiently serious threat to public order or public security and should not in any case be based on financial grounds.

7. In particular, where the judicial expulsion is applied as an additional penalty, one should consider that the

conditions for its application depend firstly on the fact that the foreign national is or is not habitually resident in Portugal as well as on the fact that he/she is or is not a permanent resident.

8. A foreign national who is not habitually resident in Portugal can be expelled, if he/she has been convicted for a malicious crime carrying a prison sentence of more than six months or a fine as an alternative to imprisonment for a term exceeding six months. It is essential to note that the grounds for imposing the accessory penalty have to be mandatory and the penalty must be justified and is not *ope legis*.

9. A foreign national who is habitually resident in Portugal can be expelled, if he/she has been convicted for a malicious crime carrying a prison sentence of more than one year. The judge must take into consideration the seriousness of the acts committed by the defendant, his/her character, the possibility of relapse into crime, the degree of social integration, the special prevention and the duration of residence in Portugal.

10. Foreign nationals with long-term resident status in Portugal enjoy enhanced protection under the conditions indicated previously. He/she can only be expelled from the country if there is evidence that he/she constitutes a genuine and sufficiently serious threat to public order or public security.

QATAR

1. The entry and exit, residence and sponsorship of visiting foreigners is regulated by Law No. 4 of 2009, article 1. The terms "deportation" and "order to leave" are clarified as follows:

(a) *Deportation*: any foreigner in respect of whom a deportation order is issued must leave the country;

(b) *Order to leave*: any foreigner who has not entered the country legally must leave.

2. The same law, in article 37, provides reasons for the deportation of foreigners, including the fact that their presence in the country poses a threat to its internal or external security or safety, or damages the national economy, public health or public decency. Without regard to the provisions of any other law, the Minister shall issue an order for the deportation of any foreigner of whom it is proved that his presence in the country poses a threat to its internal or external security or safety, or damages the national economy, public health or public decency.

3. Should any foreigner convicted of a crime or misdemeanour be sentenced to imprisonment, the court may issue a deportation order. The Penal Code, article 77, provides as follows:

Without prejudice to the right of the relevant administrative bodies to deport any foreigner in accordance with the law, the court may, in respect of a foreigner convicted of a crime or misdemeanour who is sentenced to imprisonment, issue a deportation order once the sentence has been served. If the offence for which the penalty is imposed in accordance with the previous paragraph was dishonourable or dishonest, the court must issue a deportation order once the sentence has been served or has lapsed.

4. On the basis of the Penal Code, article 78, the court may issue a deportation order instead of the penalty prescribed for the offence. That article provides as follows:

With respect to misdemeanours, the court may issue a deportation order instead of the penalty prescribed for the offence.

5. Deportation is provided for as a complementary and subordinate penalty as follows:

(a) The Penal Code, article 65, paragraph 7 (deportation), provides that deportation shall be a penalty complementary and subordinate to those provided for in articles 77 and 78, and may be ordered by a judge when the law provides that he may do so;

(b) Article 28, paragraph 4, of the Food Control Law, No. 8 of 1990, provides that if the offender is a foreigner, he may be deported from the country once all the other penalties passed on him have been served.

REPUBLIC OF KOREA¹

1. Expulsion measures are applicable to persons who are non-nationals of the Republic of Korea. The State's right of expulsion is subject to limitations of the expulsion of permanent residents ("F-5" status); protection of human rights; and due process of law. The head of the immigration office or a branch office or the head of a foreigner internment facility may deport non-nationals of the Republic of Korea (referred to in legislation of the Republic of Korea as "foreigners") under the Immigration Control Act (art. 46 of the Immigration Control Act).

2. Under the Act, "deportation" is defined as the expulsion from the Republic of Korea of foreigners who have violated the Immigration Control Act.

3. "Expulsion" in the Commission draft and "deportation" under the Immigration Control Act of the Republic of Korea may be regarded as identical in actual meaning in that both of them apply to foreigners who reside either legally or illegally in the country and that administrative measures are executed regardless of the will of the foreigners.

4. In addition to deportation, a foreigner may be subject to a "Recommendation for Departure" or a "Departure Order" under the Immigration Control Act:

(a) *Recommendation for Departure*: The head of the immigration office or a branch office may recommend that an alien who has committed a minor violation of the Immigration Control Act depart voluntarily from the Republic of Korea (art. 67 of the Immigration Control Act).

(b) *Departure Order*: The head of the immigration office or a branch office, or the head of a foreigner internment facility, may order any foreigner violating the Immigration Control Act to depart from the Republic of Korea specifying a certain period of time with which the foreigner is to voluntarily leave the country (art. 68 of the Immigration Control Act).

Expulsion measures are applicable to non-nationals of the Republic of Korea

5. Legislation regarding the expulsion is applicable to foreigners, non-nationals of the Republic of Korea (art. 2 of the Constitution; art. 46 of the Immigration Control Act; the Nationality Act).

(a) *Dual nationals*

6. Those who are regarded as nationals of the Republic of Korea are not subject to the expulsion. Nationals of the Republic of Korea who have nationalities of both of the Republic of Korea and a foreign country by birth or pursuant to the Nationality Act and who do not choose Korean nationality or do not give up their original nationality (not of the Republic of Korea) are not regarded as nationals of the Republic of Korea and are not exempt from expulsion (arts. 10 and 12 of the Nationality Act).

(b) *Stateless persons*

7. No provisions prescribe the legal status of stateless persons. Some provisions, however, infer that stateless persons are regarded as foreigners in the Republic of Korea and are not exempt from expulsion (art. 8 of the Enforcement Regulations of Immigration Control Act; art. 16 of the Enforcement Decree of the Passport Act).

8. As a contracting party to the Convention relating to the Status of Stateless Persons of 28 September 1954, the Republic of Korea shall not expel a stateless person who is lawfully in its territory, save on grounds of national security or public order (art. 31 of the Convention).

(c) *Refugees*

9. Refugees are persons to whom the Convention relating to the Status of Refugees of 28 July 1951 is applied under article 1 of the Refugee Agreement or article 1 of the Protocol relating to the Status of Refugees (art. 2 of the Immigration Control Act). As a contracting party to the Convention, the Republic of Korea shall not expel a refugee lawfully in their territory save on grounds of national security or public order, and the expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law (art. 32 of the Refugee Convention).

10. In addition, the Republic of Korea shall not expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (art. 33 of the Refugee Convention).

Limitations on the right of expulsion

Limitations on the expulsion of permanent residents ("F-5" status)

11. Foreigners who have a sojourn status that entitles them to permanent residency in the Republic of Korea ("F-5" status under the Immigration Control Act) shall not be deported from the Republic of Korea. However,

¹ The text of several provisions of national legislation relating to the expulsion of aliens was enclosed and is available at the Codification Division of the United Nations Office of Legal Affairs.

there are exceptions for those who have committed insurrection, foreign aggression or other violations of the relevant provisions of the Criminal Act (art. 46, para. 2, of the Immigration Control Act).

12. In 1972, the Supreme Court decided that the expulsion of an overseas Chinese in Korea, who was being expelled from the Republic of Korea having been accused of the violation of Anti-Communist Act in 1970s, was illegal beyond the discretion of the Government as he had been born in the Republic of Korea and had so far worked in the country.

ROMANIA

1. There are three different cases in which the removal of an alien from the territory may be ordered in accordance with Romanian legislation.

2. First, if an alien commits an offence (an act of a criminal nature) and the judge who finds him guilty and sentences him considers that the presence of that alien constitutes a threat to the values protected by criminal law, he may order the expulsion of the alien from the national territory.

3. Secondly, in the event of illegal entry into or illegal residence in the national territory (due to revocation or annulment of the residence permit, expiry of the permanent residence permit or rejection of the application for asylum), the alien in an irregular situation may be returned. This is an administrative measure applied in the absence of the right of residence in Romanian territory.

4. In exceptional cases, where national security is at stake, an alien, even one legally present in Romanian territory, may be declared undesirable by a national court (only one legal instance, the Court of Appeals of Bucharest, is competent to issue such a ruling), if the alien in question had engaged in, was engaging in at the moment the measure was taken, or had the intention (established on the basis of plausible reasons) of engaging in, activities of a nature that could endanger national security or public order.

SERBIA

1. The expulsion of an alien from the territory of Serbia is the criminal sanction of the security measure provided for in the Criminal Code. The Court may expel an alien who has committed a criminal offence for the period of 1 to 10 years.

2. The removal of an alien from the territory of Serbia is the infringement sanction of the protection measure provided for by the Law on Infringements. The Court may remove from the territory of Serbia an alien who has committed an infringement rendering his/her further stay in the country undesirable for a period of six months to three years.

3. In the execution of the protection measure of the removal of an alien from the territory of Serbia, the Ministry of Internal Affairs, as the competent authority, will deny, by a decision, further stay to an alien in Serbia and determine the period within which he/she must leave

Serbia, as well as the period within which he/she must not enter Serbia.

4. The Ministry of Internal Affairs will remove by force an alien who has been pronounced the protection measure of removal or the security measure of expulsion and an alien who is to be returned under an international treaty or an alien staying unlawfully in Serbia or who does not leave Serbia within the period determined for him/her.

SINGAPORE

1. The Immigration Act (chap. 133, 2008 rev. ed.) allows for the removal of certain categories of persons who have already entered Singapore, namely: (a) illegal immigrants; (b) persons whose presence in Singapore is unlawful because they do not possess the necessary permit or certificate; and (c) persons who are prohibited immigrants (who, in turn, are defined as members of the prohibited classes set out in section 8 (3) of the Act).

2. The Banishment Act (chap. 18, 1985 rev. ed.) empowers the Minister for Home Affairs to issue a banishment order or an expulsion order if the Minister is "satisfied after such inquiry or on such written information as he may consider necessary or sufficient that the banishment [or expulsion, as the case may be] ... would be conducive to the good of Singapore". A banishment order may be for the duration of the banished person's natural life or for a specific period of time (see section 5 (1)).

3. Under section 17 of the Mental Health (Care and Treatment) Act 2008 (Act 21 of 2008), the Minister of Health can direct by warrant that a person who is not a Singapore citizen or not domiciled in Singapore, and who is detained under the provisions of the Act in a designated psychiatric institution, be removed to the country of which he is a national or in which he is domiciled. This is conditioned on such removal likely being to the benefit of the person and where proper arrangements have been made for the removal and subsequent care and treatment of the person.

SLOVAKIA

1. The grounds for administrative expulsion of aliens from the territory of Slovakia are laid down in section 57, paragraphs 1 and 2, of Act No. 48/2002 Coll. on stay of aliens and on amending and supplementing other acts as amended (hereinafter referred to as to "the Act on Stay of Aliens"). The above provision of the Act on Stay of Aliens also lays down the duration of the prohibition of entry to the territory of Slovakia as follows:

(a) For a period of five years if the alien:

(i) Endangers the security of the State, public order, health, rights and freedoms of others and—in specifically defined areas—also the natural environment;

(ii) Was finally sentenced for committing an intentional criminal offence, except for receiving the sentence of expulsion;

(iii) Has violated legal provisions on narcotic and psychotropic agents;

(iv) Has submitted false or altered documents or documents of another person during the inspection conducted in compliance with this Act;

(v) Performs an activity that is different from the activity for which he/she was granted a temporary residence permit or a visa;

(vi) Has concluded marriage with the intention to acquire a residence permit;

(b) For a maximum of five years, but not less than one year, if:

(i) The alien unlawfully enters or unlawfully stays on the territory of the Slovak Republic;

(ii) The alien refuses to prove his/her identity in a credible manner;

(iii) The alien staying on the territory of Slovakia on the basis of an international agreement or by a decision of the Government of Slovakia performs activities that are contrary to the international agreement or to the decision of the Government of Slovakia;

(iv) The alien, in the course of proceedings conducted under this Act, knowingly provides untruthful, incomplete or misleading information or submits false or altered documents;

(v) It is established that the grounds based on which the alien was granted a temporary residence permit have ceased to exist without the alien notifying the police department of such fact;

(vi) The alien obstructs the execution of a decision of a State authority; or

(vii) The alien commits a serious violation of or repeatedly violates generally binding legal regulations.

2. If, in addition to the above, the police department finds that the alien's actions seriously endanger the security of the State, it may issue a decision on his/her administrative expulsion, including a prohibition of entry for a maximum of 10 years. The period of the prohibition of entry is determined on the basis of the principle that if the police department establishes the existence of several grounds for administrative expulsion of the alien, the entry prohibition period is determined according to the strictest provision.

SOUTH AFRICA

The grounds for expulsion provided for in the national legislation are illegal entry into the country; contraventions of permits; forged or fraudulently obtained permits; and forged or fraudulently obtained identity documents and passports. An alien is or becomes illegal when he has no residence permit or the residence permit has expired or is withdrawn or when the application for such a permit has been rejected or has been declared a "prohibited" or "undesired" person in terms of the Immigration Act No. 13 of 2002 as amended (the Act). An illegal alien who

has not left South Africa within the time limit prescribed by law may be expelled in the form of deportation.

SWEDEN

Refusal of entry and expulsion of aliens is regulated in chapter 8 of the Aliens Act (2005:716).

Refusal of entry

Section 1

An alien may be refused entry

1. If he or she has no passport when a passport is required to enter or stay in Sweden;

2. If he or she lacks a visa, residence permit or some other permit that is required to enter, stay or work in Sweden;

3. If it comes to light when the alien arrives in Sweden that he or she intends to visit some other Nordic country but lacks the permit required to enter that country;

4. If, on entry, he or she avoids providing requested information, knowingly supplies incorrect information that is of importance for the right to enter Sweden or knowingly suppresses any circumstance that is of importance for that right,

5. If he or she does not meet the requirements for entry laid down in article 5 of the Schengen Convention; or

6. If he or she has been refused entry to or expelled from a State belonging to the European Union or from Iceland, Norway or Switzerland either under the circumstances referred to in chapter 7, section 6, or if the refusal-of-entry or expulsion order has been based on the failure of the alien to follow applicable provisions concerning an alien's entry into or stay in that State.

A European Economic Area national¹ may not be refused entry under the first paragraph, point 1, if he or she can prove his or her identity by a means other than possession of a passport. The same shall apply to a family member of a European Economic Area national who is not a European Economic Area national himself or herself.

A European Economic Area national and a member of his or her family may not be refused entry solely on the grounds that he or she does not fulfil the provisions in article 5.1 (c) of the Schengen Convention concerning sufficient means of subsistence.

Section 2

An alien may be refused entry

1. If it can be assumed that he or she will lack adequate funds for the stay in Sweden or in some other Nordic country that he or she intends to visit or for the journey home;

2. If it can be assumed that during the stay in Sweden or in some other Nordic country he or she will not support himself or herself by honest means or will engage in activities that require a work permit, without having such a permit;

3. If it can be assumed, on the basis of previous imprisonment or some other particular circumstance, that he or she will commit a criminal offence in Sweden or in some other Nordic country;

4. If it can be assumed on the basis of previous activities or otherwise that he or she will engage in sabotage, espionage or unlawful intelligence activities in Sweden or in some other Nordic country; or

5. If, pursuant to the Act on Certain International Sanctions (1996:95), it has been prescribed that he or she may be refused entry.

¹ According to chapter 1, section 3b, of the Aliens Act, a "European Economic Area State" means a State that is covered by the European Economic Area agreement. A "European Economic Area national" means an alien who is a national of a European Economic Area State.

An alien may also be refused entry in other cases when this has been requested by the central aliens authority in another Nordic country and it can be assumed that he or she will otherwise proceed to that country. The first paragraph, point 1, does not apply to a European Economic Area national and the members of his or her family. However, persons other than workers or self-employed persons, persons seeking employment and their family members may be refused entry if any of them, after entering Sweden, proves to be a burden to the social assistance system under the Social Services Act (2001:453).

Section 3

An alien may not be refused entry if he or she on arrival in Sweden had or at some subsequent time has had a residence permit that has become invalid. Nor may entry be refused on the grounds that the alien lacks a residence permit, if during a period when such a permit is required to stay in Sweden he or she instead has had but no longer has a right of residence.

An alien who has a right of residence may not be refused entry.

Section 4

The Swedish Migration Board shall examine the question of refusing entry if

1. The alien is seeking asylum here;
2. The alien has a close family member who is seeking asylum here; or
3. The alien may be refused entry pursuant to section 1, first paragraph, point 6, or section 2, second paragraph.

In other cases both the Swedish Migration Board and the police authority may examine the issue of refusing entry.

If the police authority is in doubt as to whether an alien should be refused entry, the case shall be referred to the Swedish Migration Board.

Section 5

A first instance decision on refusal of entry may not be made later than three months after the first application for a residence permit has been made following arrival in Sweden.

Section 7

An alien who is not refused entry under section 1, point 1 or 2, may be expelled from Sweden if he or she is staying in this country but lacks a passport or the permits required to stay in the country. The Swedish Migration Board examines such expulsion cases.

Expulsion of European Economic Area nationals and their family members on the grounds of public order and security: Section 7a

An alien who has a right of residence may be expelled from Sweden out of consideration for public order and security. If the alien has a right of permanent residence at the time of the expulsion order, however, he or she may only be expelled if there are exceptional grounds for this.

A European Economic Area national who is a child or who has stayed in Sweden during the 10 immediately foregoing years may be expelled only if the decision is absolutely necessary out of consideration for public security.

Expulsion on account of criminal offences: Section 8

An alien may be expelled from Sweden if he or she is convicted of an offence that is punishable by imprisonment. An alien may also be expelled if a court sets aside a suspended sentence or probation that has been imposed on an alien and imposes another penalty.

An alien may, however, only be expelled if he or she is sentenced to a more severe penalty than a fine and

1. If, in view of the type of act involved and other circumstances, it can be assumed that he or she will be guilty of continued criminal activity in this country; or
2. If, in view of the resulting damage, danger or violation of private or public interests, the offence is so serious that he or she should not be allowed to stay.

Section 15

The Act concerning Special Controls in Respect of Aliens (1991:572) contains provisions on expulsion on grounds of national security and on account of anticipated criminal activity under the Act on Criminal Responsibility for Terrorist Offences (2003:148).

SWITZERLAND

See reply contained in *Yearbook ... 2009*, vol. II (Part One), document A/CN.4/604, section A.8, p. 166.

UNITED STATES OF AMERICA

1. United States statutory law concerning the expulsion of non-citizens generally appears in the Immigration and Nationality Act (INA), which is codified as title 8 of the United States Code (USC). United States law does not use the term "expulsion". Instead, the process provided by INA is known as "removal", and the available grounds of removal for non-citizens depend upon whether they have been admitted to the United States. "Admission" is the lawful entry of the non-citizen into the United States after inspection and authorization by an immigration officer (see Immigration and Nationality Act § 101 (a) (13); 8 United States Code § 1101 (a) (13)). Non-citizens who arrive in the United States or who are present within the territory of the United States without having been admitted are inadmissible and may be removed. Non-citizens who have been admitted, including lawful permanent residents of the United States, may be removed if they fall within one or more grounds of "deportability".

2. There are 10 broad grounds of inadmissibility, each of which has a number of subcategories:

—Health-related grounds, such as communicable disease carriers (INA § 212 (a) (1); 8 USC § 1182 (a) (1));

—Criminal grounds, such as individuals who have been convicted of crimes involving moral turpitude or controlled substance offences (INA § 212 (a) (2); 8 USC § 1182 (a) (2));

—National security and related grounds, such as individuals believed to have engaged in espionage or terrorist activity or belonging to terrorist organizations and individuals who have participated in genocide, torture, or extrajudicial killings (INA § 212 (a) (3); 8 USC § 1182 (a) (3));

—Non-citizens a public charge (INA § 212 (a) (4); 8 USC § 1182 (a) (4));

—Non-citizens seeking employment in the United States without proper certifications (INA § 212 (a) (5); 8 USC § 1182 (a) (5));

—Non-citizens who have failed to comply with admission rules, such as those who have entered the United States without permission, procured or attempted to procure admission through fraud, or engaged in smuggling non-citizens into the United States (INA § 212 (a) (6); 8 USC § 1182 (a) (6));

—Non-citizens lacking valid immigration documents to enter or be present in the United States (INA § 212 (a) (7); 8 USC § 1182 (a) (7));

—Non-citizens who are permanently ineligible for United States citizenship (INA § 212 (a) (8); 8 USC § 1182 (a) (8));

—Non-citizens who have previously been removed from the United States or who have accrued significant periods of unauthorized presence (INA § 212 (a) (9); 8 USC § 1182 (a) (9));

—Non-citizens who have engaged in or intend to engage in certain other activities contrary to the public interest, such as polygamy, international child abduction, and renunciation of United States citizenship to avoid taxation (INA § 212 (a) (10); 8 USC § 1182 (a) (10));

3. There are six general grounds of deportability, which overlap to some degree with the grounds of inadmissibility. These include:

—Non-citizens who were admitted but were ineligible for admission at the time that they were admitted, such as those who procured admission because they concealed their inadmissibility. Non-citizens may also be deported where they become inadmissible because they fail to comply with the conditions of their admission, or engaged in certain types of illegal behaviour, such as smuggling of individuals into the United States or marriage fraud (INA § 237 (a) (1); 8 USC § 1227 (a) (1));

—Non-citizens who have been convicted of certain crimes following their admission, including crimes involving moral turpitude, certain controlled substance offences, certain particularly egregious crimes (these are defined as “aggravated felonies” in United States law at INA § 101 (a) (43); 8 USC § 1101 (a) (43)) and domestic violence offences (INA § 237 (a) (2); 8 USC § 1227 (a) (2));

—Non-citizens who failed to comply with registration requirements, falsified documents, or falsely claimed to be a United States citizen (INA § 237 (a) (3); 8 USC § 1227 (a) (3));

—Non-citizens who pose a threat to United States security or other interests, such as those who have engaged in espionage or terrorist activity, whose presence or activities are believed to have potentially adverse foreign policy consequences for the United States, or who participated in Nazi persecution, genocide, or acts of torture or extrajudicial killing (INA § 237 (a) (4); 8 USC § 1227 (a) (4));

—Certain non-citizens who have become public charges within five years of their entry into the United States (INA § 237 (a) (5); 8 USC § 1227 (a) (5));

—Non-citizens who have voted without authorization in any United States political election (INA § 237 (a) (6); 8 USC § 1227 (a) (6)).

4. Non-citizens determined to be “removable” from the United States (i.e. either inadmissible or deportable) may be able to qualify for certain waivers, immigration benefits and forms of humanitarian immigration protection to excuse their removability or withhold their removal. These forms of relief come in many varieties and may require a non-citizen to demonstrate a certain period of

physical presence in the United States, the existence of sponsoring employers or lawfully present family members, rehabilitation following criminal convictions, or a likelihood of persecution or torture if removed to a particular country.

2. Conditions and duration of custody/detention of persons who are being expelled in areas set up for that purpose

ANDORRA

With regard to the conditions and duration of detention for persons awaiting expulsion, it should be noted that anyone receiving an expulsion notice must leave the country immediately, failing which he or she will be held on grounds of failure to obey the administrative authority. The Andorran authorities then proceed as they would in the case of any other offence and the person is brought before a judge.

ARMENIA

According to the Law on Aliens in the Republic of Armenia, an alien may be detained and kept in a special premise, if there are enough grounds to suspect that he/she may escape until the case on expulsion is examined by the court and a decision on expulsion is implemented. Within 48 hours after detention and placement of the alien in a special premise, the authorized State body of the police must apply to the court for permission to detain the alien for up to 90 days.

BAHRAIN¹

Expulsion under the Alien Act of 1965 and amendments thereto

1. The General Directorate takes the following measures in respect of deportees placed in its custody:

(a) It ensures the receipt of wages due and signs a receipt to that effect;

(b) It verifies that there are no obstacles that might delay expulsion, such as criminal or civil orders prohibiting travel, or other judgements that have not been implemented.

2. The General Directorate provides for the needs of aliens against whom expulsion orders (deportation orders) have been issued until they are deported. It also provides them with means of communicating with their relatives and secures the assistance of foreign embassies.

3. Detainees, including foreign workers who have violated employment regulations and persons convicted of criminal offences, are transferred to the General Directorate by the police, the prosecution service and the competent courts. It should be noted that foreign workers fall under the authority of the Labour Market Regulatory Authority and that the General Directorate itself is authorized to detain persons.

¹ The text of relevant legislation has been provided to the Codification Division of the United Nations Office of Legal Affairs.

BELARUS

1. The Constitution of the Republic of Belarus provides that the restriction or deprivation of personal liberty is possible in the instances and in the procedure established by law.
2. The grounds for, and the duration of, administrative detention are laid down in articles 8.2 and 8.4 of the Code of Administrative Procedure and Enforcement.
3. With the approval of the prosecutor, administrative detention may be imposed for the period necessary to execute a deportation order in order to enforce an administrative penalty, namely deportation of the individual subject to this punitive measure.
4. The Code of Administrative Procedure and Enforcement details the rights of detainees, procedural formalities regarding detention and the duties of detention officials. The existence of such regulations in the Code provides significant additional guarantees that the rights and legitimate interests of individuals subject to the administrative procedure, including aliens, will be protected.
5. For example, detained aliens must be informed without delay, in a language that they understand, of the reasons for their detention and of the rights that they possess (part 4, article 8.2, of the Code of Administrative Procedure and Enforcement).
6. Detainees are notified that they are entitled to engage a defence lawyer and to have the services of an interpreter, if they are not proficient or insufficiently proficient in the language of the administrative procedure (articles 2.11 and 4.1 of the Code of Administrative Procedure and Enforcement). Notification of the location of individuals detained for a period of three hours for the commission of an administrative offence, at their request, is provided to adult members of their families, close relatives, their defence lawyer, the employer with whom detainees have employment relations and the administration of the establishment where they study (part 3, article 8.2, of the Code of Administrative Procedure and Enforcement).
7. For administrative detention over three hours, a record is drawn up which indicates: the date and location where it was drawn up; the position, surname, first name and patronymic of the person who drew up the record; and information on the identity of the detainee, the grounds for detention and the time and place of actual detention. The record is made known to the detainee and is signed by the official who drew up the record and also by the detainee (article 8.5 of the Code of Administrative Procedure and Enforcement).
8. The administrative detention of an alien for the execution of a deportation order may be carried out only by officials duly authorized by article 8.3 of the Code of Administrative Procedure and Enforcement, namely, officials of internal affairs bodies, border service agencies or State security bodies.
9. In accordance with article 63 of the Aliens Act, when a decision regarding forcible expulsion is made, the internal affairs or State security bodies, with the approval of the prosecutor, shall take steps to detain the alien for the period necessary for expulsion.
10. Furthermore, expulsion shall be enforced if there is reason to believe that the alien may fail to comply with the expulsion decision by means of voluntary departure, and if the alien has not left Belarus by the deadline stipulated in the expulsion decision by means of voluntary departure.
11. In accordance with the Regulation on procedures for the expulsion of aliens and stateless persons from the Republic of Belarus, approved by Decision No. 146 of the Council of Ministers dated 3 February 2006, the State body making a decision regarding forcible expulsion must notify aliens without delay, in a language that they understand, of the reasons for their detention and of their rights and duties. In addition, aliens detained for the purpose of enforcing their expulsion from Belarus are permitted, with the consent of the head of the competent body, or the person exercising those responsibilities, to meet and to have telephone calls with representatives of diplomatic missions or consular authorities of the State of their nationality or habitual residence. Following a review of the expulsion, an order is issued which indicates the time and place of issuance of the order; the surname, initials and position of the person from the State body that issued the order; information on the alien subject to the order; information on the interpreter (if the alien uses an interpreter's services); the grounds for the decision; the period of prohibition to enter Belarus; and the period and procedure for appeal. The order is signed by the official from the issuing State body and is approved by the head of that body. It is also signed by the alien and by the interpreter, where one is present.
12. In order to implement the Vienna Convention on Consular Relations, article 7 of the Aliens Act establishes that the body detaining an alien to execute a deportation order or to enforce an expulsion must report this detention within three days to the Ministry for Foreign Affairs so that the diplomatic mission or consular authorities of the State of the alien's nationality or habitual residence may be duly informed. Furthermore, in accordance with the new Aliens Act, information on the alien's detention, at his or her request, shall be sent to the Ministry for Foreign Affairs within 24 hours of his or her detention or arrest.
13. Detention measures, as a rule, are not applied to aliens who are under the age of 16 or over the age of 60, or to aliens who have clear signs of disability or are pregnant.
14. Analysis of the detention of aliens by internal affairs bodies for the purpose of executing a deportation order or enforcing an expulsion shows that a period of detention above 30 days is applied to aliens only when the documents for their travel abroad could not be obtained within this period. The late issuance of travel documents and transit visas by diplomatic missions and consular authorities is the main reason for delays in procurement. However, internal affairs bodies encounter situations where the diplomatic missions and consular authorities of some States are not interested in the return of their citizens.

15. Aliens detained for the purpose of executing a deportation order or enforcing an expulsion are held at special institutions of the competent body. Within the system of internal affairs bodies, such special institutions are temporary detention centres.

16. Procedures for detention at these centres were established by Decision No. 194 of the Ministry of Internal Affairs, dated 8 August 2007, "Establishing internal regulations for special institutions of internal affairs bodies discharging an administrative penalty in the form of administrative arrest".

17. Accordingly, persons detained at these centres are provided with individual sleeping places; a place for the storage of personal hygiene items, writing materials, documents and records, clothes and food; as well as bedding, dishes and cutlery. These items are provided free of charge for temporary use during the period of detention at the centres. Dishes and cutlery are handed out at the time of access to food.

18. In accordance with established rules and based on the number of detainees per cell, the following items are for general use in cells: domestic detergent; board games (draughts, chess and dominoes); products for cleaning cells; and sewing needles, scissors and knives used for cutting up food (which may be provided for short-term use under the supervision of staff at the centres). Women with children receive childcare products.

19. Cells are equipped with separate sanitary facilities, a place to access food, and radio and ventilation equipment. Where possible, cells have refrigerators and televisions.

20. Persons detained in these centres receive, free of charge, food of nutritional value adequate for health and strength. In addition, detainees can participate in religious practices, rituals and rites within their cells and, where possible, on premises equipped specifically for such purposes, in accordance with the traditions of their religious denominations, at the centres.

21. Detainees are permitted to receive packages, dispatches and parcels which contain articles of basic necessity as well as seasonal clothes and footwear. They can take daily walks and have access to a lawyer or to another person entitled to render legal assistance.

BOSNIA AND HERZEGOVINA

1. For the purpose of implementing the Law on Movement and Stay of Aliens and Asylum, pursuant to article 98 of this Law, an Immigration Centre, which is a specialized institution for the reception and accommodation of aliens against whom supervision measures have been imposed, was established.

2. Pursuant to article 99, paragraph (1), item (a) of the Law on Movement and Stay of Aliens and Asylum, an alien may be placed under supervision in order to secure the execution of a decision on expulsion. Based upon the decision of the Service for Foreigner's Affairs, an alien may be kept in detention as long as it is necessary to execute the purpose of supervision, or until the reasons for placing an alien in custody change, but not longer than 30 days.

3. Article 102 of the Law on Movement and Stay of Aliens and Asylum defines the execution of the decision placing an alien under supervision and the duration of supervision. The measure of placing an alien under supervision is carried out by accommodating the alien in an institution specialized for the reception of aliens (Immigration Centre). If a measure of expulsion from Bosnia and Herzegovina is imposed against an alien, he/she shall remain under supervision until the moment of his/her forcible removal from the country or as long as is necessary for execution of the purpose of the supervision. The Service for Foreigners' Affairs shall, as long as detention is in force, undertake all necessary measures in order to reduce the duration of the detention to as short a time as possible. The supervision may be extended for up to a further 30 days each time, at most if there exist conditions for imposing supervision. Hence, the total period of supervision imposed against an alien may not exceed 180 days. Decision extending supervision may be rendered not later than seven days prior to expiry of previous decision.

4. Exceptionally, in case that an alien fails to enable his/her removal from the country or it is impossible to remove an alien within 180 days for other reasons, the total duration of supervision may be prolonged for a period longer than 180 days.

BULGARIA

In accordance with article 44 of the Aliens in the Republic of Bulgaria Act, expulsion orders are subject to immediate enforcement (item 3 of para. 4). In cases where the alien on whom a coercive administrative measure has been imposed, has no established identity, obstructs the enforcement of the order, or there is a risk that the alien may abscond, an order on the coercive placement of the alien in a special area for temporary placement of aliens may be issued for the purpose of organizing the expulsion. Such special areas/centres are established within the Migration Directorate of the Ministry of the Interior for the temporary placement of aliens under order of forcible escort to the border of Bulgaria or under expulsion order. Placement continues for as long as the aforementioned circumstances exist or for six months, whichever of the two periods is longer. As an exception, when the person refuses to cooperate with the competent authorities, when receipt of the document necessary for expulsion is delayed, or when the person poses a threat to national security or to public order, the period of temporary placement may be extended additionally to a maximum of 12 months. The existing legislation does not provide for custody/detention of EU citizens and their family members in connection with the imposition of a coercive administrative measure of expulsion.

CANADA

Immigration detention within the Canadian context

(a) Legislative context

1. The framework for the detention programme is outlined in sections 55 to 61 of the Immigration and Refugee Protection Act, and in sections 244 to 250 of the Immigration and Refugee Protection Regulations. The

Act provides officers with the discretionary authority to detain foreign nationals¹ and permanent residents where the officer has reasonable grounds to believe the person is inadmissible to Canada, and:

—The person is considered to be a danger to the public; or

—The person is unlikely to appear (flight risk) for immigration processes, such as examination, hearing or removal.

2. Additionally, the officer may detain a foreign national where the person has not satisfied the officer as to his/her identity.

3. Finally, at a port of entry, a port of entry officer may detain a foreign national or a permanent resident where:

—It is necessary to complete the immigration examination; or

—The officer has reasonable grounds to suspect that the person is inadmissible on grounds of security or for violating human or international rights.

(b) *Legal rights*

4. The Canada Border Services Agency, as the detaining authority, is responsible for ensuring that those detained are informed of their legal rights under the Canadian Charter of Rights and Freedoms, including informing a detained person of the reasons for his or her detention and the right to retain and instruct counsel. In addition, a person detained is informed of his or her right under the Vienna Convention to have the nearest representative of the Government of his or her country of nationality informed of the arrest and detention.

(c) *Review process*

5. A Canada Border Services Agency officer's decision to detain a person under the Immigration and Refugee Protection Act is subject to an independent review by a Member of the Immigration Division of the Immigration and Refugee Board² on a regular basis, that is, after 48 hours, then within the next 7 days and every 30 days thereafter. The Canada Border Services Agency has the authority to release a detainee only prior to the 48 hour review. Thereafter, the authority to offer release rests with the Member of the Immigration Division.³

(d) *Refugee claimants and minors*

6. The Immigration and Refugee Protection Act does not preclude the detention of refugee claimants (asylum

seekers) or minors (children under the age of 18 years) under the aforementioned grounds for detention. In the case of minors, the Immigration and Refugee Protection Act stipulates that detention is to be used as a last resort and the best interests of the child must be considered by decision makers.

(e) *Selective use of detention*

7. The detention policy guidelines state that officers need to consider alternatives to detention, including the imposition of conditions, such as the requirement to report to the Canada Border Services Agency offices or the requirement for cash deposits or financial guarantees.

(f) *Detention facilities*

8. The Canada Border Services Agency operates four immigration holding centres: three for low-risk detainees located in Toronto, Ontario; Montreal, Quebec; and Vancouver, British Columbia; and one for security certificate cases in Kingston, Ontario. Generally, low-risk detainees are those who do not have criminal backgrounds and the reasons for their detention are linked to concerns regarding flight risk or identity. Minors detained as a measure of last resort are held in low-risk immigration holding centres with their parents or guardians.

9. The Canada Border Services Agency relies on provincial correctional facilities to house high-risk detainees, in particular, those with criminality backgrounds as well as those considered to be a danger to the public. Included in the former group are those that move from a criminal hold after serving a criminal sentence to an immigration hold prior to removal, and included in the latter group are security certificate cases.

10. In addition, the Canada Border Services Agency relies on provincial facilities for low-risk cases in areas not served by an immigration holding centre. Co-mingling of immigration detainees exists in all provincial facilities with the exception of one facility located near Lindsay, Ontario, where the Canada Border Services Agency was able to negotiate with its provincial partners a dedicated space for 90 immigration detainees.

(g) *Security certificates*

11. The Kingston Immigration Holding Centre is a Canada Border Services Agency immigration holding centre that is located on the Correctional Service of Canada Federal Reserve at Millhaven Institution. Currently, there is one individual who is a foreign national, being held at the Centre. Four other active security certificate cases have been released on conditions by the federal court and are subject to monitoring by the Canada Border Services Agency. These individuals are subject of a security certificate issued pursuant to section 77 (1) of the Immigration and Refugee Protection Act and have been detained pursuant to paragraph 82 (2) of that Act for a period in excess of two years.

(h) *Independent detention monitoring*

12. In 1999, the Canadian Red Cross began monitoring immigration detention conditions in provincial correctional

¹ "Foreign National" is defined under subsection 2 (1) of the Immigration and Refugee Protection Act as a "person, who is not a Canadian citizen or a permanent resident, and includes a stateless person".

² The Immigration and Refugee Board is an independent and quasi-judicial tribunal.

³ The detention regime for the security certificate process differs (Immigration and Refugee Protection Act, sects. 76–85). Detention is reviewed by a Federal Court Judge. Please see Note on Security Certificate Process.

facilities in British Columbia. With the signing of a Memorandum of Understanding in April 2002, all Canada Border Services Agency facilities are also subject to independent monitoring by the Red Cross. Recently the Red Cross started monitoring immigration detention in Quebec and Alberta provincial facilities. The Canada Border Services Agency is supportive of the Red Cross desire to expand its monitoring programme to all provincial facilities, particularly in Ontario, which historically has the greater volumes across the spectrum of immigration activity, including enforcement. The current Memorandum of Understanding between the Canadian Red Cross and the Canada Border Services Agency was signed on 3 November 2006.

CHINA

1. Aliens who are being expelled independently of or supplementarily to the commission of a crime are detained in custody under different conditions before being expelled. Prior to sentencing, they are subject to forcible deprivation of personal liberty in accordance with the law, and are held in detention facilities. Following sentencing, they are held in prisons administered by judiciary administrative departments. The duration of custody is determined by how long it takes to investigate, prosecute and conclude the case, or by the decision of a court to impose a specific term of detention.

2. Prior to expulsion, aliens who are subject to arrest and investigation under the law for having illegally entered or established residence in China are held in detention facilities operated by the public security organs. The period of detention and investigation is not to exceed one month. For serious or complex cases, this period may be extended by one month by permission of the public security organ at the next higher level. For persons whose nationality is unclear or who cannot be promptly deported, and whose safety cannot be guaranteed following release, the period of detention and investigation may be extended until nationality has been established and the person is deported.

3. China does not have any detention facilities specifically intended for holding aliens; aliens being detained prior to expulsion are subject to the same conditions of detention as Chinese citizens. During their detention, the religious beliefs and cultural customs of aliens are respected.

CROATIA

1. The movement of an alien may be restricted by his/her accommodation at the Aliens Detention Centre if he/she has been arrested, or detained because of the enforced removal which has not started in a period of 24 hours since the apprehension took place, or 48 hours if the case relates to the implementation of an international agreement on readmission.

2. Moreover, the movement of an alien may be also restricted by accommodating him/her at the Aliens Detention Centre in cases when his/her identity needs to be established.

3. Croatia has one reception centre for aliens which may accommodate 96 persons. This centre is an organizational unit of the Croatian Ministry of the Interior.

4. An alien who may not be accommodated at the Aliens Reception Centre because of his/her health conditions, or because of some other specific reasons, shall be accommodated in some other appropriate manner.

5. Aliens shall be accommodated at the Centre for a period of up to 180 days, upon the decision issued by a police administration or a police station.

6. This decision may be appealed at the Republic of Croatia Administrative Court, within 30 days, by filing a complaint.

7. The accommodation of an alien at the Centre may be prolonged for another 180 days in cases where:

(a) His/her identity has not been established;

(b) An alien has, pending the expulsion procedure, applied for asylum or subsidiary protection in order to prevent further deportation procedure;

(c) Preparations for his expulsion have to be completed;

(d) He/she prevented the deportation in some other way.

8. An alien who has applied for asylum or subsidiary protection after having been accommodated in the Aliens Reception Centre shall remain in the Centre until the expiration of his/her accommodation period at the Centre, or until his asylum or subsidiary protection status has been approved.

9. At the Aliens Reception Centre, women are accommodated separately from men, minors stay together with their legal representatives and the members of the same family are accommodated together in separate rooms.

CZECH REPUBLIC

1. The rules for the execution of expulsion orders issued by courts, the detention of offenders awaiting expulsion and the waiver of expulsion orders are contained in section 350*b et seq.* of the Code of Criminal Procedure (Act No. 141/1961, as amended).

2. If the sentenced offender remains at liberty and there is no danger that he or she might abscond or otherwise obstruct the execution of the expulsion order, the judge presiding over the case may allow the offender reasonable time (not more than one month) to arrange his or her personal affairs. At the offender's request and subject to the conditions stated in section 350*b*, paragraph 3, this time can be repeatedly extended, but not for more than 180 days from the date on which the sentence became final.

3. The execution of the expulsion order may be suspended if the offender has applied for international protection in terms of special legislation (Asylum Act, No. 325/1999) and the application is not manifestly unsubstantiated (section 350*b*, paragraph 4), or if the offender has been granted additional protection in terms of section 15*a* of the Aliens Residence Act.

4. If there are substantial grounds for believing that the offender might abscond or otherwise obstruct the execution of the expulsion order, the judge presiding over the case may order the offender's detention. Alternatively, the judge may decide that the offender will be allowed to remain at liberty on bail, recognizance or surety bond. Where necessary, the presiding judge may ask the police to seize the travel documents which are necessary for the execution of the expulsion order.

5. The rules concerning detention, bail, recognizance and surety are contained in chapter four, part one, of the Code of Criminal Procedure (sections 67–74a of the Code).

6. If the offender is in prison or in detention awaiting expulsion, his or her departure from the Czech Republic is organized by the police of the Czech Republic. The police will take over the offender at the prison following an agreement with the presiding judge.

7. The police may detain an alien over 15 years of age who has been served with a notice of commencement of administrative expulsion proceedings or whose administrative expulsion order has become final, if there is a risk that the alien might endanger national security, seriously disrupt public order or obstruct or impede the execution of an administrative expulsion order, or if the alien has already engaged in such actions. If it is necessary to detain an unaccompanied minor alien (between 15 and 18 years of age), the police must appoint a guardian to ensure the protection of the alien's rights and interests.

8. Once the detention order becomes final, the police place the alien in an aliens detention centre (the centres are established and operated by the Ministry of the Interior of the Czech Republic). The police must immediately inform the alien, in a language in which he or she is able to communicate, that he or she is entitled to apply for a judicial review of the detention. The alien must not be detained longer than strictly necessary. The maximum detention period (calculated from the moment of detention) is 180 days for aliens over 18 years of age and 90 days for aliens under 18 years of age.

9. Throughout the detention period, the procedures necessary for the alien's departure from the Czech Republic must be in progress. In addition, the police must examine on a regular basis whether the grounds for detention still apply. If the grounds cease to apply, or if the detention order is cancelled by court, the alien must be released. Detailed rules on the rights and duties of detained aliens and the conditions of their detention are contained in chapter XII of the Aliens Residence Act.

EL SALVADOR

1. The Republic of El Salvador does not use the terms custody, detention and/or restriction of liberty in its procedures relating to the expulsion of aliens. Rather, it has a Centre for Comprehensive Assistance to Migrants. The Centre, which opened its doors on 7 July 2008, was set up to provide shelter/accommodation to aliens with irregular status until such time as their status is resolved. It is extremely important to note that entry into the Centre is voluntary. Aliens who do choose to enter the Centre have all their basic needs met. The Centre has specially designed

dormitories divided into sectors—one for family groups, one for women and one for men. It has also adopted appropriate hygiene measures. Aliens are given food and medical and psychological assistance. There is also an area for physical recreation. Lastly, aliens are allowed to speak to their relatives outside the country by telephone.

2. The procedure for repatriating aliens is dignified, safe, orderly and fast. The Ministry of Foreign Affairs is involved in the process to ensure that the persons concerned have the correct documentation.

3. The amount of time spent at the Centre depends on the person's country of origin, the speed with which the embassy/consulate of the person's country of origin—which may or may not be located inside El Salvador—issues their identity documents and the speed with which arrangements are made for the purchase of a return ticket for travel by air or by land. Such arrangements are usually made by the alien's family. If the family cannot pay for the ticket, these arrangements are made by the Ministry of Justice and Public Security.

FINLAND

1. Section 121 of the Aliens Act lays down the requirements for holding an alien in detention. According to this section, an alien may be ordered to be held in detention if:

1. Taking account of the alien's personal and other circumstances, there are reasonable grounds to believe that the alien will prevent or considerably hinder the issue of a decision concerning him or her or the enforcement of a decision on removing him or her from the country by hiding or in some other way;

2. Holding the alien in detention is necessary for establishing his or her identity; or

3. Taking account of the alien's personal and other circumstances, there are reasonable grounds to believe that he or she will commit an offence in Finland.

2. Holding the alien in detention on grounds that his or her identity is unclear requires that the alien gave unreliable information when the matter was processed or refused to give the required information, or that it otherwise appears that his or her identity cannot be considered established.

3. Section 124 of the Aliens Act provides that the official responsible for the decision on holding the alien in detention shall, without delay and no later than the day after the alien was placed in detention, notify the relevant District Court of the matter.

4. The District Court shall hear the matter concerning the detention of the alien without delay and no later than four days from the date when the alien was placed in detention. The court shall order the detained alien to be released immediately if there are no grounds for holding him or her in detention. The District Court shall, on its own initiative, always rehear the matter no later than two weeks after the detention decision.

GERMANY

Under German aliens law, detention is not possible simply on the grounds of an expulsion. Deportation custody

(section 62 of the Residence Act) must only be applied for and authorized if deportation would be rendered more difficult or obstructed without custody (for example, because there is reason to suspect that the alien wants to avoid deportation). Otherwise, short-term deportation custody (for a period of two weeks) is possible if the deadline for leaving the country has passed and it is certain that the deportation can be performed. Custody to secure deportation may only be authorized for up to six months. An extension of 12 months (to a longest possible duration of 18 months) is possible if the alien is impeding his/her deportation and this is attributable to him/her (for example, lack of cooperation on procuring travel documents).

ITALY

Provisions for the Expulsion of Foreigners from Italian Territory in the Consolidated Text on Immigration and the Condition of the Foreigner

1. Should immediate expulsion not be possible, the foreigner is detained in special Centres for Identification and Expulsion. There are currently 13 of these Centres in Italy.

—The criteria for detaining a person are: rescue of a foreigner; further verification of his/her identity or nationality; the acquisition of travelling documents, unavailability of means of transportation (art. 14, para. 1);

—The comprehensive duration of detention cannot exceed 180 days. The initial detention is for 30 days, which can be extended by judge's order or police chief's request for a further 30 days. Should the citizen resist obtaining the necessary travelling documents or encounter delays, the police chief can request from the judge a further extension of 60 days, to which a further 60 days can be added should the conditions persist (art. 14, para. 5, amended art. 1, para. 22, letter I; Law No. 94/2009);

—It is the judge's responsibility to authorize the detention order within 48 hours;

—The authorization hearing takes place in chambers, at which legal counsel given timely notice must be present; the subject must also be informed in a timely manner and accompanied to the place where the judge will conduct the hearing;

2. General and applicable provisions are:

—The translation of the provision, even in summary form, into a language understood by the subject, or when not possible, into French, English or Spanish, depending on the subject's preference (art. 14, para. 2, of the Consolidated Text);

—The assistance of an attorney of trust;

—Legal aid;

—Assigned legal counsel; and

—Assistance, when necessary, of an interpreter (art. 14, para. 4, of the Consolidated Text).

3. During detention, the foreigner is guaranteed respect for her/his fundamental rights, the freedom to speak with visitors, legal counsel, clerics, and the freedom to communicate even via telephone. She/he is also guaranteed basic health care, socialization programmes and freedom of religion. She/he also has the right to receive visits from household family members, legal counsel, clerics, diplomatic and consular representatives, members of bodies and associations offering social assistance (Presidential Decree No. 394/1999, art. 21).

KUWAIT

It should be noted that responsibility for giving an opinion on these matters lies with the Ministry of the Interior, the body that is the prison administrator and regulator.

LITHUANIA

1. In the presence of grounds for detaining an alien pursuant to the Law, the Police or other law enforcement entity official is entitled to detain the alien for no longer than 48 hours.

2. An alien may be detained for longer than 48 hours by court decision. In this case, aliens are accommodated at the Foreigners' Registration Centre of the State Border Guard Service under the Ministry of the Interior.

3. An alien who is under 18 years of age may be detained in exceptional cases only and considering his best interests.

4. The Foreigners' Registration Centre provides temporary accommodation for aliens who entered Lithuania or are staying in Lithuania unlawfully, as well as for aliens who submitted asylum applications in Lithuania. The Foreigners' Registration Centre performs an investigation of aliens' identity and circumstances of their arrival in Lithuania, and implements the return and expulsion of aliens from Lithuania. The Centre can simultaneously house up to 500 aliens: 300 illegal migrants and 200 asylum-seekers. Persons who receive accommodation at the Foreigners' Registration Centre are entitled to receive legal support guaranteed by the State, free necessary medical aid, and social and other services. The average duration of detention at the Centre of persons to be expelled is approximately two months.

MALAYSIA

1. A banishment order issued pursuant to section 5 of Act No. 79 shall be served on the person by the officer-in-charge of the prison in which the person may be confined, or by a senior police officer.

2. Section 6 of Act No. 79 further provides on the method of execution of the banishment order. Subsection 6 (1) specifies that a banishment order may be carried into execution at any time after the expiration of 14 days from the date of service of that banishment order. This is done upon the issue of a warrant of execution issued and signed by the Minister.

3. No specific time period is stated in Act No. 79 for the duration of custody or detention of the person being expelled. However, subsection 6 (3) requires that the person should be conveyed into the custody of a senior police officer and placed on such means of transport as may be expedient for conveyance to the country of which he is a citizen or to such other place as may be stated in the warrant. Subsection 6 (4) further provides that any banished person in the custody of a senior police officer may be received into and detained in any prison or other suitable place in Malaysia until he is placed for conveyance in accordance with subsection 6 (3).

4. Under section 34 of Act No. 155, a person who is ordered to be removed from Malaysia may be detained in custody for such period as may be necessary for the purpose of making arrangements for that person's removal. Similar to Act No. 79, no specific time period is set. Any person detained in custody may be so detained in any prison, police station or immigration depot, or in any other place appointed for the purpose by the Director-General.

5. Section 34 of Act No. 155 further provides that any person detained under this subsection who appeals under subsection 33 (2) against the order of removal may, in the discretion of the Director-General, be released, pending the determination of his appeal, on such conditions as to furnishing security or otherwise as the Director-General may deem fit.

6. However, subject to the determination of any appeal for removal of persons unlawfully remaining in Malaysia under section 33, any person who is ordered to be removed from Malaysia may be placed on board a suitable vessel or aircraft by any police officer or immigration officer, and may be lawfully detained on board the vessel or aircraft, so long as the vessel or aircraft is within the limits of Malaysia.

MALTA

Persons against whom a removal order has been issued are kept in places of custody as designated by the Minister responsible for immigration. The maximum period of detention in Malta is 18 months according to Government policy.

MEXICO

1. Article 209 of the Regulations of the General Population Act states that when an alien is held at an immigration office because he has violated the General Population Act, the following procedure is followed:

1. A medical examination shall be conducted in order to ascertain the person's physical and psychological condition;
2. He shall be allowed to communicate with a person of his choosing by telephone or by any other means available;
3. His accredited consular representative in Mexico shall be notified immediately and if he does not have a passport, a request for issuance of a passport or travel and identification document shall be made;
4. An inventory of the personal effects he is carrying shall be drawn up and they shall be deposited in a place designated for that purpose;

5. His statement shall be taken during administrative proceedings in the presence of two witnesses and he shall be informed of the accusations against him and of his right to submit evidence and to make any legitimate defence, provided that the immigration authority did not so inform him at the time of his arrest. If necessary, an interpreter shall be provided for this purpose.

2. When the record of the proceedings is drawn up, the alien shall be informed of his right to appoint a representative or person of trust to assist him. The alien shall have access to the file on his case;

6. He shall be provided during his stay with proper accommodation, food, basic toiletries and, if needed, medical care;

7. During his stay, he shall be entitled to receive visits from family members and from his legal representative or person of trust;

8. When families are placed in detention, they shall be housed in the same facility and the authorities shall allow them to live together, in accordance with the applicable administrative provisions; and

9. When the alien is authorized to leave the immigration office, all the belongings taken from him upon admission shall be returned, except any forged documentation that he may have presented.

3. Article 210 of the Regulations provides that the Ministry of the Interior, as the agency of the executive branch responsible for formulating and implementing population policy and for the proceedings related to the implementation of article 33 of the Constitution, shall take a final decision regarding the status of persons subject to expulsion within 15 working days and shall inform the interested party in person, through his legal representative or by certified mail with recorded delivery.

NEW ZEALAND

Deportation

1. Criminal offenders facing deportation following conviction are liable for deportation upon release from imprisonment (including release on parole and home detention).

2. Order for deportation must be made before the expiry of a six-month period after release from imprisonment or date of conviction (if no imprisonment) (sect. 93).

3. The person can be arrested without warrant, placed in custody and can be detained for up to 48 hours (pending departure from New Zealand) under section 97.

4. If person is to be detained for longer than 48 hours then a warrant of commitment must be sought from a District Court judge for the detention of that person to continue (sect. 97).

5. A warrant of commitment allows the person to be detained for a period of 28 days pending that person's deportation from New Zealand. If the person cannot be removed during this period, a further warrant can be sought from a District Court judge for intervals of not more than seven days (sect. 100).

6. If no warrant is granted under section 99, the release shall be conditional upon the person residing at a specified address and complying with reporting conditions pending deportation from New Zealand (sect. 101).

7. Criminal offenders facing deportation following conviction, but not in custody, may be subject to reporting requirements and agreed place of residence pending deportation from New Zealand (sect. 98).

8. Criminal offenders facing deportation have the right of appeal to the Deportation Review Tribunal (sect. 104) for the order to be quashed if it held that it would be “unjust or unduly harsh” and that it would not be against public interest for the person to remain in New Zealand (sect. 105 (1)).

9. Criminal offenders facing deportation also have the right to appeal the legality of the Deportation Order at the High Court of New Zealand through judicial review (Judicature Amendment Act).

10. Persons whose deportation has been ordered on the basis of being a suspected terrorist (under section 73) may appeal to High Court against the Deportation Order (sect. 81).

Revocation

11. Persons who have had their residence permit revoked under sections 19–20 have an obligation to leave New Zealand immediately.

12. Such persons may appeal to the Deportation Review Tribunal to quash the Revocation Order (sect. 22) on humanitarian grounds and/or appeal to the High Court on grounds that decision was erroneous (sect. 21).

Removal of persons in New Zealand unlawfully

13. Such persons may appeal to the Removal Review Authority (under section 47) against their requirement to leave.

14. A person unlawfully in New Zealand and issued with a removal order (under section 53) may be arrested and detained for a period of up to 72 hours (pending departure from New Zealand).

15. If a person is to be detained for longer than 72 hours then a warrant of commitment must be sought from a District Court judge for the detention of that person to continue (sect. 60).

16. A warrant of commitment allows a person to be detained for a period of seven days pending that person’s deportation from New Zealand. If the person cannot be removed during this period a further warrant can be sought from a District Court judge for intervals of not more than seven days (sect. 60).

17. A person detained under section 128 can be detained for up to 48 hours (pending departure from New Zealand).

18. If a person is to be detained for longer than 48 hours, then a warrant of commitment must be sought from the Registrar of the District Court (or Deputy in the Registrar’s absence) for the detention of that person to continue (sect. 128 (7)).

19. A warrant of commitment allows the person to be detained for a period of 28 days pending that person’s deportation from New Zealand. If the person cannot be removed during this period an extension of the warrant can be sought from a District Court judge for intervals of not more than seven days or longer if the judge thinks necessary (sect. 128 (13B)).

20. Such persons may be released in certain cases (sect. 128AA), conditional upon the person residing at a specified address and subject to reporting conditions.

NORWAY

1. The conditions of custody/detention are stated in the Immigration Act, section 106:

A foreign national may be arrested and remanded in custody if

(a) the foreign national refuses to state his or her identity, or there are reasonable grounds for suspicion that the foreign national has given a false identity,

(b) it is most probable that the foreign national will evade the implementation of a decision requiring him or her to leave the realm,

(c) the foreign national fails to do what is necessary to comply with the obligation to obtain a valid travel document, and the intention is to present the foreign national at the foreign service mission of the country concerned in order to have a travel document issued.

2. Remand in custody pursuant to subparagraphs (b) and (c) may be decided for a maximum of four weeks at a time. The period of custody/detention may not exceed 12 weeks (cf. the Immigration Act, sect. 106, third para.). Exemptions can be made if there are particular reasons to exceed the 12-week limit. In all cases regarding arrest and custody a coercive measure may only be applied where there is sufficient reason to do so. A coercive measure may not be applied where doing so would constitute a disproportionate intervention in light of the nature of the case and other factors pursuant to the provisions of the Immigration Act, section 99. This means that arrest and custody should not be resorted to if imposing the seizure of a passport; an obligation of notification or a stay in a specific place pursuant to the provisions of sections 104 and 105, may be used instead.

PERU

1. In Peru, investigations related to violation of the Aliens Act are carried out by the Aliens Division of the Peruvian National Police Department of State Security, which respects human rights and, in this case, the rights of aliens prosecuted for violation of the Aliens Act. These individuals are not imprisoned; at the end of the administrative process they remain under summons. Peru has no detention centre for aliens who violate the Aliens Act.

2. Legal bases:

(a) The Political Constitution:

Article 2, paragraph 24 (a) and (b). Basic rights of the individual: everyone has the right to liberty and to security of the person; thus (a) no one is obligated to do what is not required by law or prevented from doing what is not prohibited by law; (b) no restrictions of personal liberty are permitted, except as provided by law.

(b) Legislative Decree No. 703:

Article 55. Aliens in the Republic have the same rights and obligations as Peruvians, with the exceptions established in the State Constitution, this Decree and other legal provisions of the Republic.

Article 73. The Department of Migration and Naturalization of the Internal Governance Authority (currently the Migration and Naturalization Authority) is responsible for enforcing the penalties established in this Decree and for monitoring the entry into, stay in and exit of aliens from the country, and the Aliens Division of the National Police is responsible for investigating migration violations in accordance with its Organization Act and other legislation.

PORTUGAL

1. A person who has been detained for illegal stay in the national territory has to be brought before a judge within 48 hours after being arrested, as established in the Portuguese Criminal Procedure Code. When brought before Court, the detained person is entitled to legal assistance and a translator if he/she cannot understand or speak the language. The person is entitled to be heard by the judge on the matter or to decline such right.

2. The detention in a temporary accommodation centre always results from a judicial decision and it may not exceed 60 days, as provided for in paragraph 3 of article 146 of Law 23/2007.

QATAR

1. A foreigner who is subject to a judicial deportation order or order to leave may be detained for a period of 30 days, which may be extended for the same period. That provision is made in the law which regulates the entry and exit, residence and sponsorship of visiting foreigners, article 38, which provides that the Minister may, as required, detain a foreigner who is subject to a judicial deportation order for a period of 30 days, which may be extended for the same period.

2. A foreigner who is subject to a judicial deportation order that is not executed may be obliged to reside in a particular place for a period of two weeks, which may be renewed. That provision is made in the law which regulates the entry and exit, residence and sponsorship of visiting foreigners, article 39, which provides that the Minister may order a foreigner who is subject to a judicial deportation order that is not executed to reside in a particular place for a period of two weeks, which may be renewed, rather than detain him. That foreigner must present himself to the security department responsible for that particular place at the times specified in the order issued in that regard until such time as he is deported.

3. Pursuant to the 2009 law that regulates penal and correctional institutions, article 76, special places have been designated for the detention of foreigners who are subject to deportation. That article provides that non-Qatari nationals who are to be deported must be kept temporarily in isolation within the institution until the order for their deportation is executed.

REPUBLIC OF KOREA

1. If it is impossible to immediately repatriate a person who is subject to a deportation order, the head of

the immigration office or a branch office, or the head of a foreigner internment facility may intern him in a foreigner internment room, foreigner internment facility or other place designated by the Minister of Justice until the repatriation is possible (art. 63 of the Immigration Control Act).

2. The Immigration Control Act, however, prescribes that the duration of "detention", that shall be 10 or fewer days (art. 52 of the Immigration Control Act).

ROMANIA

1. In the case of expulsion, as a general rule the order is either enforced when the alien has completed a sentence of imprisonment or, when the sentence is a fine, expulsion may be carried out immediately.

2. If enforcement is not immediate, the alien may be placed in the custody of the authorities and detained in an accommodation facility specially fitted out to meet the appropriate auditions for dealing with aliens. The maximum duration of such placement in an accommodation facility may not exceed two years.

3. In the case of a decision to return an alien, or of a declaration that an alien is an undesirable person, enforcement takes place under escort to the border of Romania (a border crossing point). In cases where enforcement is not possible, the person is assigned to the custody of the State and placed in an accommodation facility. Whereas the maximum duration of placement may not exceed six months in cases of return, in the case of undesirable persons the placement measure ceases when the alien is escorted to the border or to the State of origin.

4. Placement in an accommodation facility constitutes deprivation of liberty to the extent that such a facility is enclosed and specially fitted out and managed by the Romanian immigration authorities for the temporary housing of aliens assigned to the custody of the State.

5. Pursuant to the right to security in the case of deprivation of liberty, persons subject to an order of placement in an accommodation facility are immediately informed, in a language they speak or understand, of the reasons underlying the order and of their rights and obligations while they are housed in the facility. At the same time, that information is communicated to them in writing by the directors of the facility.

6. By law, accommodation facilities are equipped to offer suitable conditions of housing, food, medical care (free medication) and personal hygiene. Persons housed there are entitled to legal assistance, medical care and social services and to respect for their religion, beliefs and cultural values. Minors placed in an accommodation facility have the right to continue their education, with access at no cost to the forms of education compulsory in Romania.

7. Unimpeded communication with the diplomatic or consular personnel of the State of origin accredited in Romania is guaranteed at all times.

SERBIA

1. An alien who has been pronounced the protection measure of removal or the security measure of expulsion and an alien who is to be returned under an international treaty will be removed by force immediately. Exceptionally, if so required by reasons of ensuring removal by force, the alien may be held in custody/detention in the areas of the competent authority, but no longer than 24 hours.

2. The provisions of the Law on Police are applied to the custody/detention of an alien.

3. An alien whom it is not possible to remove by force immediately and an alien whose identity has not been established or who does not possess a travel document, as well as in other instances provided for by law, will have to stay, under increased police supervision, in the Detention Centre for Foreigners of the Ministry of Internal Affairs determined by a decision of the competent authority.

4. The stay in the Detention Centre will last until the removal of the alien by force, but no longer than 90 days. Upon the expiry of the period, an alien can have the stay extended, provided that: his/her identity has not been established; he/she impedes removal by force deliberately; he/she has submitted, during the removal proceedings, an asylum request in order to avoid removal by force.

5. The aggregate time of stay in the Detention Centre will last no longer than 180 days.

6. The time that an alien spent outside the Detention Centre, in prison or in custody/detention, is not included in the time of the stay in the Detention Centre.

SINGAPORE

Immigration Act

1. The legislative framework for the detention of a person being expelled from Singapore by the Controller of Immigration under the Immigration Act is provided for under section 34 of that Act. The main aspects of this framework are as follows:

(a) Such a person may be released at the Controller's discretion if he or she has appealed against the order for his or her removal, pending the determination of the appeal.

(b) Subject to the determination of an appeal against an order for removal, any person who is ordered to be removed from Singapore may be placed on board a suitable vessel, aircraft or train by a police officer or an immigration officer, and may be lawfully detained on board that vessel, aircraft or train, so long as the vessel, aircraft or train is within the limits of Singapore.

(c) Any person who is detained pursuant to an order for his or her removal may be so detained in any prison, police station or immigration depot, or in any other place appointed by the Controller of Immigration, as an interim measure, while the immigration authorities make travel arrangements for the person detained.

2. In addition, any person reasonably believed to be a person liable to removal from Singapore under the Immigration Act may be arrested and detained in any prison, police station or immigration depot for no more than 14 days pending a decision as to whether an order for his or her removal should be made (sect. 35).

3. Persons in custody or detention are accorded basic amenities and facilities, including provisions for personal hygiene, food, water and access to medical treatment. The authorities also ensure that the persons to be detained are medically fit for detention when they are received at the respective facility. Persons in detention or custody have access to legal and consular assistance as their request.

4. The duration of detention varies from case to case, and is influenced by factors including:

(a) The issuance of a travel document from the person's State of origin or citizenship;

(b) The availability of transportation to the State of origin, country of birth or citizenship or any place or port where the person is admissible.

5. As a Contracting Party to the Convention on International Civil Aviation, Singapore State practice on this issue is further guided by the Standards and Recommended Practices in the 12th edition of annex 9 (Facilitation) of the Convention which, regarding the custody of persons to be deported, states that state officers, during the period of custody, shall preserve the dignity of such persons and take no action likely to infringe such dignity.

Banishment Act

6. The legislative framework for the detention of a person being banished or expelled from Singapore under the Banishment Act is provided for under sections 5 to 8 of that Act:

(a) Such a person will be released from detention if he successfully applies to the High Court to set aside the order of banishment or expulsion, on the ground that he is a citizen of Singapore or an exempted person (sections 5 and 8; see also section 10).

(b) Otherwise, after 14 days from the service of the order, the person may be placed on board a ship or other means of transport as may be expedient for conveyance or, if necessary, be received into and detained in any prison or other suitable place in Singapore until he can be so conveyed (sect. 6).

(c) A person may also be released from detention if the Minister orders that the banishment or expulsion order be suspended, subject to certain conditions (sects. 7 and 8).

7. Section 9 of the Banishment Act also provides that, whenever a person detained under the Act appears to the Minister, on the certificate of a registered medical practitioner, to be mentally disordered, the Minister may direct the person's removal to any mental hospital or other fit place of safe custody within Singapore, to be kept and treated until the person is certified to have ceased to be mentally disordered.

Mental Health (Care and Treatment) Act 2008

8. Detention under the auspices of the Mental Health (Care and Treatment) Act 2008 must be in a designated psychiatric institution. Non-nationals so detained are accorded the same treatment as nationals detained under the Act, and are accorded their basic rights, including access to legal and consular assistance.

SLOVAKIA

1. According to section 62, paragraph 1 of the Act on Stay of Aliens, aliens may be detained only for such time as is necessary, but for not more than six months. The police department may decide to extend the detention period by a maximum of 12 months. The detention may be prolonged in case it is necessary to extend the expulsion procedure even if the steps have been taken to carry out administrative expulsion of the alien, either because of inadequate cooperation of the alien or because the alien has not been issued a substitute travel document within the six-month time limit by the diplomatic mission. The detention period may not be extended in case of families with children or vulnerable persons.

2. In the territory of Slovakia, aliens detained pursuant to section 62, paragraph 1 of the Act on Stay of Aliens are placed in one of the two Police Force establishments—Police Detention Centres for Aliens, at Medved'ov and Sečovce. The conditions of detention in Police Detention Centres for Aliens are laid down in sections 63a to 74 of the Act on Stay of Aliens. The details concerning the rights and obligations of aliens detained in the centres are laid down in internal rules of the Police Detention Centres for Aliens.

SOUTH AFRICA

Section 34 (1) of the Immigration Act 13 of 2002 as amended (the Act) provides:

Without the need for a warrant, an immigration officer may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at a place determined by the Director General of Home Affairs, provided that the foreigner concerned:

(a) shall be notified in writing of the decision to deport him or her and of his or her right to appeal such decision in terms of the Act;

(b) may at any time request any officer attending to him or her that his or her detention for the purpose of deportation be confirmed by a warrant of a Court, which, if not issued within 48 hours of such request, shall cause the immediate release of such a foreigner;

(c) shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when possible, practicable and available in a language that he or she understands;

(d) may not be held in detention for longer than 30 calendar days without a warrant of a Court which on good and reasonable grounds may extend such detention for an adequate period not exceeding 90 calendar days; and

(e) shall be held in detention in compliance with minimum prescribed standards protecting his or her dignity and relevant human rights.

SWEDEN

Detention of aliens is regulated in chapters 10 and 11 of the Aliens Act.

*Chapter 10. Detention and supervision of aliens**Detention**Section 1*

An alien who has attained the age of 18 may be detained if

1. The alien's identity is unclear on arrival in Sweden or when he or she subsequently applies for a residence permit and he or she cannot establish the probability that the identity he or she has stated is correct; and

2. The right of the alien to enter or stay in Sweden cannot be assessed anyway.

An alien who has attained the age of 18 may also be detained if

1. It is necessary to enable an investigation to be conducted on the right of the alien to remain in Sweden;

2. It is probable that the alien will be refused entry or expelled under chapter 8, section 1, 2 or 7; or

3. The purpose is to enforce a refusal-of-entry or expulsion order.

A detention order under the second paragraph, points 2 or 3, may only be issued if there is reason on account of the alien's personal situation or the other circumstances to assume that the alien may otherwise go into hiding or pursue criminal activities in Sweden.

Section 2

A child may be detained if

1. It is probable that the child will be refused entry with immediate enforcement under chapter 8, section 6, or the purpose is to enforce a refusal-of-entry order with immediate enforcement;

2. There is an obvious risk that the child will otherwise go into hiding and thereby jeopardize an enforcement that should not be delayed; and

3. It is not sufficient for the child to be placed under supervision under the provisions of section 7.

A child may also be detained if

1. The purpose is to enforce a refusal-of-entry order in other cases than those in the first paragraph or an expulsion order under chapter 8, section 7 or 8; and

2. On a previous attempt to enforce the order it has not proved sufficient to place the child under supervision under the provisions of section 7, second paragraph.

Section 3

A child may not be separated from both its custodians by detaining the child or its custodian. A child that does not have a custodian in Sweden may only be detained if there are exceptional grounds.

Section 4

An alien may not be detained for investigation pursuant to section 1, second paragraph, point 1, for more than 48 hours.

In other cases an alien who has attained the age of 18 may not be detained for more than two weeks, unless there are exceptional grounds for a longer period. If, however, a refusal-of-entry or expulsion order has been issued, the alien may be detained for at most two months unless there are exceptional grounds for a longer period.

Section 5

A child may not be detained for more than 72 hours or, if there are exceptional grounds, for a further 72 hours.

*Supervision**Section 6*

Subject to the conditions set out in section 1, an alien who has attained the age of 18 may be placed under supervision instead of being detained.

Section 7

Subject to the conditions set out in section 2, first paragraph, points 1 and 2, a child may be placed under supervision.

A child may also be placed under supervision when a refusal-of-entry order has been issued in cases other than those referred to in section 2, first paragraph, or when an expulsion order has been issued under chapter 8, section 7 or 8.

Section 8

Supervision means that the alien is obliged to report to the police authority in the locality or to the Swedish Migration Board at certain times. A supervision order may also require the alien to surrender his or her passport or other identity document.

*Re-examination of detention and supervision**Section 9*

A detention order under section 4, second paragraph, shall be re-examined within two weeks from the date on which enforcement of the order began. In cases where there is a refusal-of-entry or expulsion order, the detention order shall be re-examined within two months from the date on which enforcement of the order began.

A supervision order shall be re-examined within six months from the date of the order.

If the alien is retained in detention or is to remain under supervision, the order shall be re-examined regularly within the same intervals. A detention or supervision order shall be set aside immediately if there are no longer any grounds for the order.

Section 10

A detention or supervision order that is not re-examined within the prescribed period expires.

Section 11

Each re-examination of a detention order shall be preceded by an oral hearing. This also applies to a re-examination of a supervision order, unless it appears obvious in view of the nature of the investigation or other circumstances that an oral hearing is of no importance.

The provisions that apply to oral hearings at a Government authority are set out in chapter 13, sections 1 to 8. Provisions concerning oral hearings in a court are set out in chapter 16.

In cases concerning detention that are handled by the Government, the Government Minister responsible for cases under this Act or the official designated by the Minister may order an oral hearing and instruct a migration court to hold the hearing. The provisions of chapter 13 apply to the hearing, where relevant. A representative of the Government Offices shall attend the oral hearing. The Government Offices may order that other persons shall be heard at the hearing, in addition to the alien. In security cases, what applies is instead that the task of holding an oral hearing may be assigned to the Higher Migration Court.

*Decision-making authorities**Section 12*

Decisions on detention or supervision are taken by the authority or court handling the case.

If an alien who has been detained or placed under supervision is refused entry or expelled, the authority or court that takes this decision shall examine whether or not the alien shall be retained in detention or remain under supervision.

Section 13

The police authority is the case-handling authority

1. From the time when an alien requests to be allowed to enter the country until a case that is to be examined by the Swedish Migration Board is received by the Board or until the alien has left the country; and

2. From the time when the authority receives a refusal-of-entry or expulsion order for enforcement and until enforcement has been carried out, even if the case is subject to examination under chapter 12, sections 18 to 20, but not during the time when the order may not be enforced due to a stay of enforcement order.

Section 14

The Swedish Migration Board is the case-handling authority

1. From the time when the Board receives a case that the Board is required to examine until the Board takes a decision or the alien has left the country or the police authority has received the case or, if the case is appealed, until the case has been received by the migration court or the Migration Court of Appeal; and

2. From the time when the Board receives a refusal-of-entry or expulsion order for enforcement until the order has been enforced or the case has been turned over to the police authority.

The Swedish Migration Board is the case-handling authority for orders with immediate effect, even if the order has been appealed, until the court issues a stay of enforcement order.

Section 15

The Government is the case-handling authority when the case has been received by the ministry responsible for preparing the case.

Decisions in questions of detention and supervision are taken by the Government Minister responsible for the case. The Government may not take a decision to detain or retain anyone in detention or to place anyone under supervision. The Government may, however, set aside a detention or supervision order.

In a case where a stay of enforcement order can be issued pursuant to chapter 12, section 11, first paragraph, section 12 or section 20, the Government shall not be held to be the case-handling authority until a stay of enforcement order has been issued.

Section 16

In security cases the Migration Court of Appeal is the case-handling authority from the time when the Court receives a case until the ministry responsible for preparing the case receives it.

Section 17

A police authority may, even if it is not the case-handling authority, take a decision to detain an alien or place him or her under supervision, if there is no time to wait for an order from the case-handling authority. Such a decision shall be notified promptly to the case-handling authority and this authority shall then immediately examine whether the detention or supervision decision shall remain in force.

Under section 11 of the Police Act (1984:387), a police officer may take an alien into custody in certain cases pending the decision of the police authority on detention.

If an alien is being subjected to controls with the assistance of the Swedish Customs Service or the Swedish Coast Guard or with the assistance of a specially appointed passport control officer, the customs officer, the Swedish Coast Guard officer and the passport control officer have the same right to take the alien into custody as a police officer has under the second paragraph. The custody shall be reported as promptly as possible to a police officer for examination of whether the measure shall remain in force.

*General provisions on enforcement of detention orders**Section 18*

The Swedish Migration Board is responsible for the enforcement of detention orders.

Section 19

When so requested by the authority or court that has made a detention order the police authority shall provide the assistance needed to enforce the order.

If the Swedish Migration Board so requests, the police authority shall also provide the assistance needed to move an alien being held in detention.

Section 20

The Swedish Migration Board may order that an alien being held in detention shall be placed in a correctional institution, remand centre or police arrest facility if

1. The alien has been expelled under chapter 8, section 8, for a criminal offence;
2. The alien is being held in isolation under chapter 11, section 7, and cannot for security grounds be kept in special premises referred to in chapter 11, section 2, first paragraph; or
3. There are some other exceptional grounds.

Children who are being held in detention may not be placed in a correctional institution, remand centre or police arrest facility.

*Chapter 11. How an alien held in detention shall be treated**Section 1*

An alien who is being held in detention shall be treated humanely and his or her dignity shall be respected.

Activities that concern detention shall be organized in a way that results in the least possible infringement of the alien's integrity and rights.

Section 2

An alien who is being held in detention under this Act shall be kept in premises that have been specially arranged for this purpose. The Swedish Migration Board is responsible for such premises.

The Swedish Migration Board is responsible for the treatment and supervision of an alien who is being held in detention.

The relevant parts of the Act on the Treatment of Detained and Arrested Persons, etc. (1976:371), are applicable to the treatment of an alien who has been placed in a correctional institution, remand centre or police arrest facility under chapter 10, section 20, of this Act. In addition to what follows from the above Act, the alien shall be granted the facilities and privileges that can be permitted taking into consideration good order and security in the institution, remand centre or police arrest facility.

Section 3

An alien who is being held in detention shall be given the opportunity for activities, recreation, physical training and time outdoors.

Section 4

An alien who is being held in detention shall be given the opportunity to receive visits and have contact with persons outside the premises except if the visit or contact would hamper activities concerning the detention in a particular case.

If necessary for reasons of security, a visit may be monitored. A visit by a public counsel or a lawyer who is a member of the Swedish Bar may only be monitored if the counsel or the lawyer personally requests this.

Section 5

An alien who is being held in detention shall have access to the same level of health and medical care as a person who has applied for a residence permit under chapter 4, section 1 or 2, even if the alien has not applied for such a permit.

If an alien who is being held in detention needs hospital care during the period of detention, he or she shall be given the opportunity for such treatment.

The head of operations of the hospital where the alien is being treated shall ensure that the Swedish Migration Board or the person in charge of the premises where the alien shall be kept is notified immediately if the alien wishes to leave or has already left the hospital.

Section 6

An alien who is being held in detention may be prevented from leaving the premises where he or she is being held and may otherwise be subject to the restriction of his or her freedom of movement which is required to achieve the purpose for which the alien is being detained or is necessary for good order and security in the premises.

An alien's freedom of movement may also be restricted if he or she constitutes a serious danger to himself or herself or to others.

Section 7

An alien who is being held in detention and who has attained the age of 18 may be held in isolation from other persons being held in detention if this is necessary for good order and security in the premises or if he or she constitutes a serious danger to himself or herself or to others.

The decision to hold someone in isolation is taken by the Swedish Migration Board. The decision shall be reviewed as often as there is reason to do so, but at least every third day.

An alien who is being kept in isolation because he or she is a danger to himself or herself shall be examined by a doctor as soon as possible.

Section 8

An alien who is being held in detention may not without permission possess alcoholic beverages or other intoxicating substances or anything else that can harm anyone or be detrimental to good order in the premises.

Section 9

If there are reasonable grounds to suspect that an alien who is being held in detention is carrying something on his or her person that the alien is not permitted to possess under section 8 or under the Penal Law on Narcotics (1968:64), a personal search of the alien may be carried out to check this.

When a personal search is carried out, the provisions of chapter 9, section 2, third and fourth paragraphs, are applicable.

Section 10

An alien who is being held in detention may not receive mail without it being examined first, if there are reasonable grounds to suspect that it contains anything that the alien may not have in his or her possession under section 8 or under the Penal Law on Narcotics (1968:64).

If an alien does not permit the opening of the item of mail in his or her presence, the item of mail shall be held on behalf of the alien, but it may not be opened.

An examination may not concern the written content of letters or other documents. Mail from public counsel, lawyers who are members of the Swedish Bar, the United Nations High Commissioner for Refugees or other international bodies that are competent to examine complaints from individuals may never be examined.

Section 11

If property possession of which is forbidden under section 8 or under the Penal Law on Narcotics (1968:64) is found in premises where an alien is being held in detention or on the person of an alien, the property may be retained.

If it can be assumed that an alien has committed an offence by being in possession of or receiving such property or if there is no known owner, the property shall be turned over to the police promptly.

In other cases the property shall be held on behalf of the alien.

Section 12

Property that has been retained under section 10, second paragraph, or section 11, third paragraph, shall be returned to the alien when the order to hold the alien in detention has expired.

Section 13

An alien who is being held in detention is entitled to the daily allowance and the special allowance referred to in sections 17 and 18 of the Act on the Reception of Asylum Seekers, etc. (1994:137).

SWITZERLAND

1. In Switzerland, administrative detention related to the law of aliens falls into three areas: detention at the preparatory stage (Federal Act on Foreign Nationals of 16 December 2005, article 75, *Recueil systématique du droit fédéral* (RS 142.20), detention pending deportation (art. 76) and coercive detention (art. 78).

Detention at the preparatory stage

2. Detention at the preparatory stage ensures removal is enforced. During the preparation of a decision on the residence of a foreign national who has no short-stay, residence or permanent residence permit, detention at the preparatory stage may be ordered for up to six months, if the person concerned:

(a) Refuses during the asylum or removal procedure to disclose his or her identity, submits several applications for asylum using various identities, repeatedly fails to comply with a summons without sufficient reason, or ignores other instructions issued by the authorities in connection with the asylum procedure;

(b) Leaves a designated area or enters a prohibited area;

(c) Enters Swiss territory, despite a ban on entry, and cannot be immediately removed;

(d) Submits an application for asylum after being removed—after a legally binding revocation or non-renewal of a permit—for undermining or endangering public security and order or for constituting a threat to internal or external security;

(e) Submits an application for asylum after expulsion;

(f) Stays unlawfully in Switzerland and submits an application for asylum with the obvious intention of avoiding the imminent enforcement of a removal or expulsion order. Such an intention shall be presumed when the timing of an application for asylum, even when it would have been possible and reasonable earlier, is closely connected with detention, criminal proceedings, the enforcement of a penalty or the issuance of a removal order;

(g) Is criminally prosecuted for or found guilty of posing a serious threat to other persons or seriously endangering their life or physical integrity;

(h) Has been convicted of a crime.

Detention pending deportation

3. After notification of a removal or expulsion order by a court of first instance, the competent authority may

detain the person concerned to ensure enforcement of the order if that person has been previously detained at the preparatory stage. Notice of detention pending deportation may also be given if:

(a) The person leaves a designated area or enters a prohibited area;

(b) The person enters Swiss territory despite a ban on entry, and cannot be immediately removed;

(c) The person is criminally prosecuted for or found guilty of posing a serious threat to other persons or seriously endangering their life or physical integrity;

(d) The person has been convicted of a crime;

(e) The Federal Office for Migration has issued a non-entry decision related to asylum;

(f) Specific evidence or the behaviour of the person leads to the conclusion that he or she refuses to comply with the instructions of the authorities;

(g) The removal decision related to asylum is notified at a registration centre.

4. Detention pending deportation cannot last for more than three months under current legislation but may, if specific obstacles prevent enforcement of the removal or expulsion order, be extended for up to a maximum of 15 months for adults, subject to the agreement of the judicial authorities. It may be extended for up to a maximum of nine months for minors from 15 to 18 years of age. The decision to order detention pending deportation is taken by the cantonal authorities. The Confederation is only competent to order 20 days' detention in cases of asylum if the registration centre reaches a non-entry decision.

Coercive detention

5. If the foreign national has not obeyed the order to leave Switzerland by the established deadline and if the legally enforceable removal or expulsion order cannot be executed because of that person's behaviour, the person may be detained to ensure he or she will actually leave the country.

6. Coercive detention, by its very nature, is subsidiary to detention pending deportation and to other less coercive measures that would achieve the intended objective. It may be initially ordered for one month and extended for two months, subject to the agreement of the judicial authority, if the person is still not willing to change his or her behaviour and leave the country. The maximum length of coercive detention is 18 months for adults and 9 months for minors from 15 to 18 years of age.

7. In addition to the three types of administrative detention, the law provides for the possibility of custody for three days (notification of the order and establishment of identity or nationality), and detention pending deportation in cases of non-cooperation in obtaining travel documents for up to 60 days. In addition, a person may have a place

of residence designated and be prohibited from entering a given area if he or she disturbs or threatens public security and order or does not respect the deadline established for leaving the country.

8. In Switzerland, the cantons are responsible for enforcing removal orders. Coercive measures are therefore ordered by the authorities of the canton enforcing the removal or expulsion. The cantons ensure that a person in Switzerland designated by the detainee is notified. The detainee may meet and correspond with his or her legal representative.

9. Administrative detention must take place in appropriate facilities, care being taken not to place persons to be removed with persons in preventive detention or serving a sentence. Persons in detention must, to the extent possible, be able to engage in suitable activities. The legality and appropriateness of detention are reviewed within 96 hours by a legal authority after an oral hearing. During the review of the decision to issue, extend or revoke a detention order, the legal authority takes into account the detainee's family situation and conditions of enforcement of the detention. In no event may an order of detention prior to removal or expulsion be issued in cases involving children and young people under 15 years of age.

10. Detention at the preparatory stage, detention pending deportation and coercive detention may not last for more than 24 months in total. Detention of minors from 15 to 18 years of age may not last for more than 12 months in total. Furthermore, the competent authority must reach a decision without delay regarding the right of residence of a person placed in administrative detention (principle of expeditiousness).

UNITED STATES OF AMERICA

Conditions of custody

1. The United States is committed to safe, humane and appropriate detention of individuals who must be detained for reasons relating to their removal from the United States.

2. The former Immigration and Naturalization Service, the authorities of which were transferred to the Department of Homeland Security in March 2003, initially drafted and published 36 National Detention Standards in September 2000 to facilitate its provision of consistent conditions of detention, access to legal representation and safe and secure operations across its detention facilities nationwide. Simultaneously, those standards also served to establish a clear baseline for the agency's review of detention operations in the field, so that each detention facility housing aliens who are expelled from the United States after being found to be removable could be held accountable for any non-compliance with those standards.

3. Several years later, in 2008, after the dissolution of the legacy Immigration and Naturalization Service and the formation of United States Immigration and Customs Enforcement (ICE), ICE reviewed and redrafted those standards based on lessons learned during the implementation of the National Detention Standards. Evidencing progression since the drafting of the original 2000 National

Detention Standards, the revised detention standards, now known as the Performance-Based National Detention Standards, were drafted in consultation with different ICE components and the Department of Homeland Security's Office of Civil Rights and Civil Liberties. As part of the revision process, hundreds of concerns that were raised by non-governmental organizations, among other interest groups, were reviewed and addressed.

4. Although the Performance-Based National Detention Standards are again currently under review and revision, based on additional feedback that ICE received from non-governmental organizations and legal rights groups, among other stakeholders, the revision and prospective nationwide implementation of the Performance-Based National Detention Standards is evidence of the United States Government's ongoing commitment to ensuring that all detained non-citizens are humanely treated.

5. United States law also affords particular protections for unaccompanied non-citizen children who arrive in the United States but are not admissible. In those circumstances, the Department of Health and Human Services' Office of Refugee Resettlement is responsible for placing such non-citizen children in the appropriate and least restrictive setting during any detention prior to removal.

Duration of custody

6. Although the Department of Homeland Security generally may detain non-citizens to ensure their appearance during the pendency of their immigration proceedings, in many instances non-citizens need not be physically detained by the Department throughout those proceedings (see INA § 236 (a)).

7. For certain classes of non-citizens (such as those who pose a threat to the national security), United States law requires that they be detained pending issuance of an administrative order of removal (see INA § 236 (c)).

8. Non-citizens arriving in the United States without a valid entry document may be subject to expedited removal (see INA § 235 (b)). If, however, the non-citizen establishes a credible fear of persecution or torture, the non-citizen will be afforded a normal removal hearing and, if he or she adequately establishes his or her identity and poses neither a flight risk nor a danger to the community, will be released from custody, save in exceptional circumstances.

9. If a non-citizen, through the administrative process, is found to be in violation of United States immigration laws, in general they must be detained until they are removed (which generally must occur within 90 days of the final completion of the administrative process) (see INA § 241 (a) (1) (A), (2)).

10. Beyond these statutory parameters, United States Supreme Court precedent mandates that a non-citizen's detention (for purposes of removal) cannot be for an indefinite duration. More specifically, upon receipt of an administratively final order of removal, a non-citizen generally can only be detained so long as his or her removal is deemed significantly likely in the reasonably foreseeable future. Once it has been established that this

condition cannot be met, the Supreme Court held that a non-citizen generally may not be further detained (see *Zadvydas v. Davis*¹).

¹ *Kestutis Zadvydas v. Christine G. Davis*, 533 U.S. 678, at p. 699.

3. Whether a person who has been unlawfully expelled has a right to return to the expelling State*

ANDORRA

If, following administrative or judicial review, the expulsion order is found not to be in conformity with the law, the legal situation of the person concerned reverts to what it was immediately prior to the issuance of the expulsion measure and, as a result, the person can enter the Principality of Andorra.

ARMENIA

The fact of unlawful removal of an alien cannot serve as grounds for entry visa rejection. If an expulsion decision is appealed and the appellate court overturns the decision of the lower court, all the rights, which the alien had possessed prior to his/her initial expulsion decision, are restored.

BELARUS

1. The Constitution of the Republic of Belarus establishes the right of all persons concerned, in accordance with the established procedure, to seek redress in the courts to protect their violated or disputed rights or their interests protected by law.

2. In accordance with the Aliens Act, the decision of a State body regarding expulsion may be appealed against by aliens or their representatives before a higher State body and/or a court within 30 days of notification of the decision. However, it should be noted that under the new Aliens Act a judicial review of the decision of a State body regarding expulsion takes place only following the appeal against such a decision before a higher State body. An appeal against the expulsion decision must be brought before a higher State body within one month of notification of such a decision.

3. An expulsion order is annulled where there are circumstances indicating that the expulsion decision was unlawful or unjustified.

4. In accordance with the Code of Administrative Procedure and Enforcement, a deportation order may be appealed before a higher body, or before a court, by the person for whom it was issued, by his or her representative or defence lawyer, or by the prosecutor, within five days of receipt of a copy of the order and within one day of notification if the order was issued in the presence of the person to be deported. Furthermore, the appeal decision delivered by a higher body may be reviewed by a court upon appeal by the aforementioned persons or by the prosecutor and the appeal decision delivered by a court may be reviewed

by the president of a higher court within six months of the entry into force of a deportation order.

5. Deportation orders are annulled where it is established that there has been unilateralism, incompleteness or a biased investigation of the facts of an administrative violation; a substantive violation of the Code of Administrative Procedure and Enforcement; and misapplication of the rules establishing administrative responsibility. Furthermore, deportation orders may be annulled or amended if the administrative penalty imposed does not correspond to the gravity of the administrative violation committed.

6. The annulment of deportation or expulsion orders implies the revocation of restrictions related to the prohibition of entry to Belarus by aliens subject to these decisions. Accordingly, such aliens are removed from the list of persons whose entry into the Republic of Belarus is prohibited or undesirable. They are consequently entitled to return to Belarus.

BOSNIA AND HERZEGOVINA

1. In accordance with the Law on Movement and Stay of Aliens and Asylum, an appeal may be filed against the decision on expulsion of an alien from Bosnia and Herzegovina to the Seat of the Ministry of Security within eight days from the receipt of the decision. An appeal shall stay the execution of the decision. The Ministry of Security (in its Seat) shall render a decision on the appeal and shall serve the party without delay and within 15 days at the latest from the day of reception of the appeal.

2. Until the decision becomes enforceable, the alien shall not be removed from Bosnia and Herzegovina. He/she may be placed under supervision or his/her movement may be restricted to a certain area or location and he/she may be ordered to report in specified intervals to the organizational unit of the Service for Foreigner's Affairs in the territory of residence of an alien.

3. Only after enforceability of the decision on expulsion may an alien be removed from Bosnia and Herzegovina. Bringing a civil action has no suspensive effect and shall not stay the execution of the decision on expulsion. If a decision on expulsion is cancelled by the court having jurisdiction over civil action and if an expulsion measure is not pronounced in renewed procedure upon the court's instructions from judgement, there are no legal consequences for the alien regarding the prohibition of new entry or stay in Bosnia and Herzegovina for the period which has been defined as the period of prohibition of entry in the first degree decision.

CHINA

No cases of unlawful expulsion of aliens have occurred in China.

CROATIA

If the decision on removal has been abolished, an alien has the right to re-enter the Republic of Croatia and to stay in the country under the general conditions of entry and stay of aliens.

* See also section A.5 above.

CZECH REPUBLIC

1. In the case of court-ordered expulsions, the expellee's right to return depends on the result of his or her appeal (if any) from the judgement which included the expulsion order. The administrative expulsion order is subject to the general laws and regulations governing the administrative procedure. An alien who does not accept the first-instance decision may file an appeal with a higher administrative authority within the statutory deadline. Second-instance administrative decisions are reviewable by court. This procedure offers sufficient safeguards against wrongful administrative expulsions.

2. During the period for which the alien is barred from re-entry, the police may, at the alien's request, subject to conditions set by law:

(a) Grant the alien a single entry visa in case he or she is summoned to appear before a public authority in the Czech Republic, e.g., before a court (the Aliens Residence Act makes additional provisions for other serious situations, such as funerals of relatives in the Czech Republic); or

(b) Annul the administrative expulsion order.

3. The administrative expulsion order may be annulled at the alien's request if:

(a) The grounds for expulsion have ceased to apply, but not earlier than upon the expiry of one half of the period for which the alien is barred from re-entry; or

(b) The alien had been placed in alternative care, has reached the age of 18 years and the authority responsible for social and legal protection of children is satisfied that he or she is making an effort to integrate in the Czech Republic.

EL SALVADOR

1. Article 5 of the Constitution of the Republic states the following: "All persons shall have freedom to enter, to remain in and to leave the territory of the Republic, subject to any limitations that the law may establish".

2. These limitations include:

(a) *Participation in domestic politics*: The second paragraph of article 97 of the Constitution of the Republic states the following: "Aliens who directly or indirectly participate in the country's domestic politics shall lose the right to reside in the country".

(b) *Judicial order*: Article 60 of the Penal Code states the following: "The sentence of expulsion from the national territory for aliens shall include immediate enforced departure from the national territory once the main sentence has been served and a ban on returning to the national territory for a maximum of five years, at the judge's discretion".

(c) Article 2 of the Aliens Act states the following: "All persons shall have freedom to enter and to leave the territory of the Republic, subject to any limitations that this law may establish".

(d) Article 4 of the Migration Act states the following: "The Ministry of Justice and Public Security may close maritime, air and land entry points and prohibit the entry and exit of aliens when national needs so require".

FINLAND

A decision on removal from Finland may not be enforced until a final decision has been issued on the matter. Applying for leave to appeal from the Supreme Administrative Court does not prevent the enforcement of the removal decision unless otherwise ordered by the Supreme Administrative Court. The deported alien may return to Finland if the removal decision has been enforced and the Supreme Administrative Court, after the enforcement, has quashed it.

GERMANY

1. This constellation is only conceivable if the expulsion decision is not yet final and absolute, and it emerged during principal proceedings conducted abroad that the expulsion was unlawful.

2. A final and absolute expulsion (that is, an expulsion against which the alien concerned did not, within the prescribed period, lodge an appeal) also constitutes grounds for a prohibition on entry and residence if it is lawful; a right to return only arises if the effects of the expulsion were limited in time (which under German law occurs regularly upon application of section 11, para. 1, third sentence, of the Residence Act), this deadline has passed and there is a legal basis for re-entry (for example, the issuing of a visa).

3. This principle always applies unless the expulsion is null and void, for example, if it contains a particularly grave and clear error. If an appeal procedure is successfully pursued within the set period, the expulsion is revoked; insofar as the person was previously in possession of a residence permit which was to be nullified by the expulsion, the person can re-claim his/her residence permit, thereby making re-entry possible.

ITALY

Provisions for the Expulsion of Foreigners from Italian Territory in the Consolidated Text on Immigration and the Condition of the Foreigner

1. Appeals of administrative expulsion measures can be brought before judicial (judge or court) or the regional administrative court authorities, depending on which authority ordered the measure (art. 13, paras. 5 *bis*, 8 and 11 of the Consolidated Text, art. 3, para. 4, of Law No. 155/2005 and Law No. 271/2004). The filing of an appeal does not automatically halt the expulsion process. It can be presented to an Italian diplomatic or consular authority. Should the judicial authority grant the appeal by final decision, the foreigner has the right to return to Italy.

2. Expulsion sentences issued as an alternative or substitute for detention can be appealed to a court of appeal and are subject to general legislation on criminal procedures.

KUWAIT

1. The general principle informing the Kuwaiti Constitution and national legislation is that all persons, whether nationals or foreigners, have the same right to bring lawsuits and appeal against judgements and decisions. Therefore, a foreigner who was unlawfully expelled may appeal against any expulsion order that is supplementary to a criminal judgement. However, a differentiation must be made between criminal and administrative expulsion, as follows:

Criminal expulsion

2. The Kuwaiti Constitution and national legislation certainly grant the same rights with regard to litigation to all persons in Kuwait. Those rights include the right to appeal against criminal judgements and any supplementary penalties, including expulsion. The Constitution, in article 166, guarantees those rights for all, stating that the necessary procedures are laid down in the law.

3. On the same issue, the Code of Criminal Procedure and Judicial Proceedings (decree No. 60/17), sets forth a number of ways in which an appeal may be brought against a criminal judgement, including one passed *in absentia*. Article 187 of that Code provides that an appeal may be brought against a sentence passed *in absentia* for a crime or misdemeanour. Such an appeal must be brought before the court which passed the sentence.

4. In article 199, the Code also gives a person on whom judgement has been passed the right to appeal against a preliminary ruling of culpability or innocence that is passed by the criminal courts or the misdemeanour courts, whether that ruling was passed in the defendant's presence or *in absentia*, when an appeal was lodged or when the term has elapsed with no appeal having been brought.

5. In all cases, if a criminal ruling is to be executed, it must, as provided in article 214 of the Code, have been determined to be enforceable, other than in exceptional cases where the judge believes that there is a need to execute the criminal judgement in the first instance.

6. With regard to the possible return of a foreigner whose criminal expulsion was not in accordance with the law, the final outcome depends on the judgement that is passed on the appeal that is brought against his expulsion by the deportee.

Administrative expulsion

7. It should be noted that in article 1, Law No. 20 of 1981, concerning the establishment of a department within the Full Court to consider administrative disputes, provides that requests presented by individuals with respect to the repeal of final administrative decisions passed on the residence and expulsion of non-Kuwaitis do not fall within the remit of the department of administrative disputes. It is therefore not possible for a deportee to lodge an appeal against expulsion directly with that department of the Full Court, notwithstanding the fact that the Constitution, in article 169, set forth a general principle with regard to administrative disputes and appeals. The article provided that, under the law, administrative disputes are to

be settled in a special room or court, using procedures that are set forth in the law. That room or court has authority to repeal or provide compensation for wrongful administrative decisions.

8. In view of the foregoing, it can be said that, with regard to administrative expulsion, the alien may return if the proper procedures were not observed, unless the administrative authorities decide otherwise.

LITHUANIA

1. The decision regarding expulsion from Lithuania may be appealed against to the Vilnius Regional Administrative Court within 14 days from the day of service of the decision. In this case, the implementation of the decision taken is suspended.

2. The decision regarding the expulsion of an alien or a decision regarding the possibility of implementing a decision taken by another State, which has not come into effect, may be implemented only in the case where the alien declares in writing that he agrees with the decision taken regarding his expulsion or with the decision regarding the possibility of implementing the decision taken by another State and agrees to be expelled prior to the expiry of the term set for appealing against the said decisions.

3. If the alien does not agree to being expelled prior to the expiry of the term set for appealing against a decision and appeals against the decision in court, the expulsion of the alien is possible only after the coming into effect of the relevant court ruling.

4. The situation where an alien is expelled unlawfully is not possible and no such instances have ever occurred.

5. An alien who was obliged to leave Lithuania, was expelled from it or returned to the country of origin or another foreign country, may be prohibited from entering Lithuania for a limited or unlimited time period. The prohibition from entering Lithuania may be disregarded in cases where the alien voluntarily agreed and was returned to the country of origin or another foreign country which he had the right to enter.

MALAYSIA

1. Section 8 of Act No. 79 provides that the Minister may, if he thinks fit, in place of issuing a warrant of arrest and detention or in place of making a banishment order, make an order requiring any person who he is satisfied is not a citizen or an exempted person to leave Malaysia before the expiration of a period of 14 days from the date of service of the order. Section 8 (4) of Act No. 79 further provides that a copy of the expulsion order shall be served on the person against whom it is made by a senior police officer, or by any other person authorized by the Minister to serve the order and shall be served personally on that person in the same manner as a summons is required to be served under the Criminal Procedure Code [Act No. 593], and the officer or person serving the copy shall notify the person against whom it is made that he may at any time within 14 days of the service apply to the High Court for an order that the expulsion order be set aside on the ground that he is a citizen or an exempted person.

2. Section 10 of Act No. 79 provides that any person in respect of whom an expulsion order has been made may within 14 days of the service of a copy of the expulsion order under section 8 (4), apply to the High Court for an order that the expulsion order be set aside on the ground that he is a citizen or an exempted person; and if it be proved on that application that the person is a citizen or an exempted person, the High Court shall set aside the expulsion order, as the case may be, and direct that the applicant be set at liberty.

3. It must be noted that the above situation applies when the person is actually still in Malaysia at the moment when he succeeds in setting aside the expulsion order and eventually is set at liberty.

4. However, it must be noted that when a person is banished and leaves Malaysia, even if he manages to set aside the expulsion order within 14 days of the order, he does not have the right of return to Malaysia. This is because he will now be subjected to section 6 of Act No. 155. In other words, he will only be allowed to enter Malaysia if he possesses a valid entry permit or pass.

5. Further, under section 36 of Act No. 155, any person who, having been lawfully removed or otherwise sent out of Malaysia, unlawfully enters Malaysia or unlawfully resides in Malaysia, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 10,000 ringgit or to imprisonment for a term not exceeding five years or to both and shall also be liable to whipping of not more than six strokes, and shall, in addition to any penalty for the offence, be removed or again removed, as the case may be, from Malaysia.

MALTA

1. Persons who are removed following the issue of a removal order have the right to appeal from this decision and they are not removed until the Immigration Appeals Board decides on their claim. This is considered to be a safeguard in order to avoid having cases of "unlawfully expelled" migrants.

2. Whoever is expelled may request re-entry to the Principal Immigration Officer.

MEXICO

1. Article 126 of the General Population Act empowers the National Immigration Institute, the federal agency responsible for immigration movements, to readmit an alien after expulsion.

2. The readmission process shall be conducted through a readmission agreement issued by the Ministry of the Interior or the respective department.

NEW ZEALAND

1. Persons expelled from New Zealand by means of a Deportation Order are exempt from returning to New Zealand indefinitely (sect. 7 (1) (d)).

2. Persons expelled from New Zealand by means of a Removal Order are exempt from returning to New Zealand for five years while the Removal Order is still in force (sect. 57).

NORWAY

An expelled person may lodge an administrative appeal to the Immigration Appeals Board, submit a complaint to the Parliamentary Ombudsman or bring the case before the courts. If the expulsion is found unlawful, the consequence as a main rule is that the prohibition on entry is lifted. The person may return to Norway if the general conditions to entry pursuant to the Immigration Act are fulfilled.

PERU

1. In order for a sentence to have legal effect, it must be the outcome of an administrative procedure conducted according to the principle of due process (established in Act No. 27444, the Administrative Procedure Act).

2. An alien faced with expulsion may enter an administrative appeal (Act No. 27444), on the grounds of fact or of law, through a Peruvian consulate abroad. The competent administrative authority shall decide whether to confirm the judgement or to annul the effect of the administrative sentence of expulsion so that the individual can re-enter Peru.

3. The Aliens Act does not establish the number of years that an alien must remain outside Peru, following expulsion, before being eligible to return to the country.

PORTUGAL

An unlawful expulsion cannot have the same legal effect as that of a lawful expulsion, meaning the prohibition to return to the State that expels a person for a certain period. When an unlawful expulsion of an alien with a valid stay visa in Portugal takes place, the alien has the right to return to Portugal and must be duly informed of such right.

QATAR

1. The law which regulates the entry and exit, residence and sponsorship of visiting foreigners, article 40, provides that any foreigner in respect of whom a judicial deportation order was issued or who was otherwise expelled may only return at the decree of the Minister.

2. Such a foreigner may also return if he fulfils the conditions necessary for entry that are provided for in the law which regulates the entry and exit, residence and sponsorship of visiting foreigners, article 41:

Any foreigner who does not obtain a residence permit, or whose permit has expired, shall leave the country and may return provided he fulfils the conditions necessary for entry that are provided for in this law.

REPUBLIC OF KOREA

1. There are no provisions under the Immigration Control Act for the right of an expelled person to return to the expelling State.

2. However, a person who has been unlawfully expelled may challenge the expulsion using local remedies such

as administrative appeals and administrative litigation (First periodic reports of States Parties under the International Covenant on Civil and Political Rights: Republic of Korea).

Administrative appeals

3. *Definition.* Administrative measures to relieve citizens from any infringement of rights or interests due to an illegal or unreasonable disposition or other exercise or non-exercise of public power by administrative agencies to achieve a proper operation of administration (art. 1 of Administrative Appeals Act).

4. *Conditions.* An appeal in writing for revocation may be filed by a person having legal interests to seek the revocation or alteration of a disposition, against the administrative agencies that have made the disposition, within 90 days from the date on which the appellant knows that a disposition has been made (arts. 13, 17, 27 and 28 of the Administrative Appeals Act).

5. *Binding force.* A ruling shall be binding to the administrative agency, which is an appellee, and other administrative agencies concerned (art. 49 of the Administrative Appeals Act).

Administrative litigation

6. *Definition.* Legal procedures to relieve citizens from the infringement of their rights or interests by the illegal dispositions of administrative agencies and the exercise or non-exercise of public power, and settle properly disputes over the rights involved in public law or the application of law (art. 1 of the Administrative Litigation Act).

7. *Conditions.* The revocation litigation may be instituted by a person having legal interests to seek the revocation of a disposition against the administrative agency that has made the disposition, within 90 days from the date a disposition is known, regardless of the institution of administrative appeals (arts. 12, 13, 18 and 20 of the Administrative Litigation Act).

8. *Binding force.* A final judgement revoking a disposition shall be binding on the parties, and other administrative agencies involved in the case. The judgement shall also have effect on a third person, as appropriate (arts. 29 and 30 of the Administrative Litigation Act).

ROMANIA

1. In the case of expulsion, the order may be contested in the national appeals courts, as may a guilty verdict. If the judges of a higher court decide to revoke the order, the final disposition will retain no reference to the order and the person will remain in Romanian territory, regardless of the decision reached as to guilt.

2. If the order is annulled or revoked through a special appeals procedure after expulsion is carried out, the judge is competent to rule on how to respond to the situation, granting the best available redress. In principle, in the event of annulment or revocation of an expulsion order,

Romanian legal practice is that the alien must be allowed entry (pertinent domestic practice may be found in the *Kordoghliazar* decision).¹

3. In the case of return, the decision may be contested and introduction of the appeal automatically suspends the enforcement of the order. In this case, no irreversible action may be taken.

4. An appeal against being declared as an undesirable alien does not automatically suspend enforcement of the order, but in the event of a well-founded claim by the alien, the court may decide to suspend its enforcement so as to prevent the causing of irreparable harm.

5. In the case of annulment or revocation of the order after its enforcement, annulment or revocation will expunge its effects, that is, the removal from the territory and the harm caused by the enforcement of such an order.

¹ ECHR, *Kordoghliazar v. Romania*, Application No. 8776/05, decision of 20 May 2008.

SERBIA

1. Upon the expiry of the protection measure of removal, security measure of expulsion and the ban of entry into Serbia, an alien may return.

2. If, following a complaint, a decision brought in the first-instance court proceedings (protection measure of removal or a security measure of expulsion) and in the administrative proceedings (denial of stay and a ban of entry) has been overturned or altered to the benefit of the complainant, he/she has a right to return.

SINGAPORE

Immigration Act

1. To avoid unlawful expulsions, Singapore law provides for the right of appeal and/or review by persons being expelled before actual removal/expulsion takes place, under section 33 (2) of the Immigration Act.

2. For persons already expelled, if it can be shown that the removal/expulsion was unlawful, legal mechanisms exist for the revocation of the order for removal.

3. However, revocation of the order does not give rise to any automatic right of return to Singapore, as eligibility to enter Singapore would still be subject to Singapore law governing immigration, specifically, the Immigration Act. In the case of refusal of permission to enter Singapore, the Immigration Act also provides recourse for a person to appeal. The appeal should be lodged within seven days of receiving notice of such a refusal, by making a petition in writing to the Minister for Home Affairs through the Controller of Immigration.

Banishment Act

4. As with the Immigration Act, to avoid unlawful expulsions, the Banishment Act provides that a person

subject of a banishment or expulsion order may, at any time within 14 days of being served with such order, apply to the High Court for the order to be set aside on the ground that he is a citizen of Singapore or an exempted person (sects. 5 and 8; also see section 10).

5. Assuming that the banishment order is not for the duration of the banished person's natural life, a person who has been banished or expelled from Singapore under the Act (as the case may be) is not prohibited from entering or residing in Singapore after the expiry of the term of the order, or if the order has been cancelled or revoked, or if the Minister has subsequently exempted that person from the prohibition on entry and residence in Singapore (sect. 14).

6. In any event, there is no automatic right of return to Singapore, as eligibility to enter Singapore would still be subject to Singapore law governing immigration, specifically, the Immigration Act. In the case of refusal to enter Singapore, the Immigration Act provides that an appeal against any refusal of permission to enter Singapore may be lodged within seven days of receiving notice of such a refusal.

Mental Health (Care and Treatment) Act

7. Under section 19 of the Mental Health (Care and Treatment) Act, persons who have been removed from Singapore under section 17 of the Act may only return to Singapore with the permission of the Minister of Health.

SLOVAKIA

1. The provision of section 61 of the Act on Stay of Aliens provides for the possibility of revoking the prohibition of entry to the territory of Slovakia for aliens subject to administrative expulsion who present a proof of having left Slovakia within the deadline fixed in the police department's decision or under the voluntary return regime.

2. Moreover, the above provision of the Act on Stay of Aliens lays down the possibility of entry to Slovakia based on individual entry permits for aliens subject to administrative expulsion or to the prohibition of entry. Aliens subject to administrative expulsion may enter the territory of Slovakia under the following exceptional circumstances:

(a) On humanitarian grounds, in particular death of a significant other or visiting a significant other who is seriously ill; or

(b) If the alien's stay is in the interest of Slovakia and the matter cannot be dealt with abroad.

3. In the above-mentioned cases, the decision on granting the permit to enter Slovakia is made by the Office of Border and Alien Police of the Ministry of Interior of Slovakia.

4. The citizens of the countries of the EEA or third-country nationals with preferred status may request that the decision on administrative expulsion be revoked on

the basis of evidence confirming that there has been a substantial change in the circumstances leading to their administrative expulsion and to the determination of the prohibition of entry. The Office of Border and Alien Police will decide on the application within a period of 180 days of its service.

5. If it is proven that expulsion of the alien from the territory of Slovakia was unlawful (reversal of the decision on administrative expulsion by the police department, court judgement reversing the decision on administrative expulsion in its entirety), the alien may enter the territory of Slovakia subject to the fulfilment of the conditions set out in the Act on Stay of Aliens.

SOUTH AFRICA

There is no specific legislation in South Africa regarding a right to return after an alien has been unlawfully expelled in the form of deportation.

SWEDEN

An expulsion order may not be enforced until it has become final.

SWITZERLAND

See reply contained in *Yearbook ... 2009*, vol. II (Part One), document A/CN.4/604, section A.5.

UNITED STATES OF AMERICA

1. While the United States endeavours to ensure that removals always occur in strict accordance with the law, infrequent errors can occur. In such cases, an individual's ability to return to the United States will depend upon the facts and circumstances of the individual case. Where United States authorities determine that a non-citizen's removal did not occur in keeping with the law and the individual otherwise had a right to reside in the United States, they may undertake efforts to facilitate the individual's return to the United States. This could include the issuance of a travel permit. However, in cases where removal of a non-citizen without any underlying right to reside in the United States was not affected in accordance with the law, facilitation of the individual's return would be less likely. Additionally, non-citizens who illegally re-enter the United States after removal may have limited ability to challenge their prior removal.¹

2. In general, prior to removal from the United States, non-citizens have access to an administrative and judicial review process that takes into account the particular facts and circumstances surrounding their cases. Some non-citizens, including those encountered by authorities upon their arrival in the United States (or shortly thereafter), non-citizens who have been convicted of particularly egregious offences, or non-citizens who have been previously removed from the United States, may be subject to removal under streamlined processes.

¹ See also *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 498 (9th Cir. 2007) (*en banc*).

However, like the standard administrative and judicial review process, such streamlined processes are designed to comply with United States *non-refoulement* obligations by screening these groups of non-citizens for any potentially legitimate claims for humanitarian immigration protection consistent with United States obligations under the Protocol relating to the Status of Refugees and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see, e.g., INA § 235 (b) (1) (A) (ii); 8 USC § 1225 (b) (1) (A) (ii) (establishing a “credible fear” process for recently arrived non-citizens otherwise subject to expedited removal based upon fraud or a lack of valid immigration documents); 8 CFR §§ 208.31 and 1208.31 (establishing a “reasonable fear” process for non-citizens subject to expedited removal based on “aggravated felony” convictions and non-citizens who unlawfully re-entered the United States following a prior removal)).

3. For those individuals not subject to a streamlined process, the United States administrative and judicial processes to determine non-citizens’ removability and eligibility for relief from removal include administrative hearings and review by immigration judges, a Board of Immigration Appeals, United States Circuit Courts of Appeals and the United States Supreme Court. The statutory provisions detailing the scope of administrative proceedings and judicial review are INA §§ 240 and 242; 8 USC §§ 1229 (a) and 1252. Non-citizens may not be removed until administrative proceedings are complete. Non-citizens with administrative orders of removal who elect to pursue judicial review may do so from outside the United States or seek a judicial order staying their removal (see *Nken v. Holder*² (explaining the four-part test courts should apply in deciding whether to stay removal: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies)). Where it is available, non-citizens who successfully pursue judicial review from outside the United States generally may return to the United States.

4. A non-citizen whose administrative removal proceedings have concluded may seek to reopen those proceedings for a variety of reasons related to changes in the individual’s circumstances or other developments affecting his or her removability or eligibility for relief from removal. Regulations generally require that an individual pursue reopening before removal from the United States (see 8 CFR § 1003.2 (d)). However, in the limited circumstance where a non-citizen did not receive proper notice of the proceedings and was ordered removed *in absentia* on that basis, he or she may pursue reopening after removal (see *Matter of Bulnes*³). In the event that a motion to reopen the removal proceedings of a removed non-citizen is granted, United States authorities may take appropriate measures to facilitate the individual’s return to the United States.

4. The nature of the relations established between the expelling State and the transit State in cases where an expelled person must pass through a transit State

ARMENIA

Issues relating to the expulsion of an alien through a transit country are regulated by bilateral agreements with that country. Currently, Armenia has such agreements with Germany, Latvia, Sweden, Switzerland, Denmark and Estonia.

BELARUS

1. Where the person being expelled must pass through the territory of a transit State, the State body executing the alien’s deportation or expulsion order takes steps to organize his or her departure.

2. Where necessary, the State body executing the deportation or expulsion order requests the Ministry for Foreign Affairs of Belarus to provide assistance, through diplomatic channels, for the issuance of the necessary transit visas by the diplomatic missions or consular authorities of the relevant States.

3. When deporting or expelling an alien who is a citizen of a State with which Belarus has established a visa entry and exit regime, the relevant internal affairs body issues the alien being deported or expelled with an exit visa from Belarus, or with a travel document, for the period necessary to execute the deportation or expulsion order.

4. In consultation with the competent bodies of the State from which the alien is being deported, or in accordance with the international treaties to which Belarus has acceded, deported aliens may be transferred at crossing points on the State border (except for the section of the State border between Belarus and the Russian Federation). However, such transfers require the presence of representatives of Belarus border service agencies and representatives of the competent body of the State from which the alien is being deported or expelled, as well as the corresponding transfer document for the alien.

5. In the course of 2009, the internal affairs bodies deported 1,161 aliens from the territory of Belarus (including 435 aliens deported forcibly) and expelled 856 aliens (including 490 aliens expelled forcibly). The border service agencies deported 267 aliens from Belarus in 2009.

6. Furthermore, 70 migrants from 13 countries were repatriated in 2009 under IOM’s voluntary return programme, including citizens of Afghanistan, Georgia, Lebanon, Pakistan, Viet Nam and other countries.

BOSNIA AND HERZEGOVINA

1. During the execution of the decision on expulsion, a written notice shall be sent to the transit country. The notice indicates the manner, time and country in which the alien is to be sent, and all the data relating to the alien. If the alien is accompanied by a security officer, the notice shall also include his/her details. An effective removal of the alien may be carried out only upon receipt of the approval of the transit State.

² 556 U.S. 418, 129 S. Ct. 1749 (April 2009).

³ Department of Justice, 25 I&N Dec. 57 (BIA 2009).

2. If there is an Agreement on readmission between Bosnia and Herzegovina and the State through which transit is to be carried out, the provisions of that Agreement are to be applied.

BULGARIA

1. Relations between the expelling State and transit States are considered matters of international cooperation and in accordance with the existing practice are governed by the applicable provisions of bilateral agreements on readmission of nationals and third-country nationals residing without authorization within the territories of the States of the respective contracting parties.

2. Section I.A of chapter five of the Aliens in the Republic of Bulgaria Act deals with a request for assistance in cases of transit for removal by air of an alien from the territory of Bulgaria, issued by the authorities of the Ministry of the Interior or the other competent authorities of another EU member State, and section I.B of the same chapter deals with providing assistance to the competent authorities of another EU member State in cases of air transit of an alien through the territory of Bulgaria.

CHINA

1. When a person is being repatriated via a third country, the Chinese immigration and border inspection authorities will make sure that the person possesses valid international travel documents (with the exception of those who were discovered to be in possession of counterfeit documents at the time of entry and are being repatriated by the original [discovering] authorities) as well as valid tickets for travel to the country of repatriation via that third country.

2. China will provide the necessary facilitation and assistance for aliens who must transit China after having been lawfully expelled by other countries, in accordance with the request of the expelling country and on condition that so doing contravenes no relevant domestic legislation.

CROATIA

1. The Aliens Act lays down that the Ministry of the Interior of Croatia will, upon the accession of Croatia to the EU, render assistance in the course of transit for the purpose of forced removal by air, if so require competent authorities of an EEA member State.

2. Aside from the above-mentioned, the Ministry of the Interior of Croatia is currently rendering assistance in forced removal transiting across Croatian territory and is also using such assistance from other countries when forced removal involves transiting other countries.

CZECH REPUBLIC

1. In the case of court-ordered expulsion, the relations between the expelling State and the transit State are regulated by the readmission treaties. The departure of aliens who are not granted asylum or international protection is regulated by the Asylum Act.

2. The rules on the transit of expellees are contained in chapter XIII of the Aliens Residence Act. "Transit by land" means the expellee's entry and stay in and departure from the territory of the transit State. "Transit by air" means the expellee's entry and stay in and departure from the transit area of an international airport.

3. In cases of transit through the Czech Republic, the required assistance is provided by the police pursuant to an international treaty or at the request of the competent authority of an EU member State or of another State applying the procedure laid down in Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air.¹

4. The police may refuse the transit in cases provided for in international treaties, or in cases where:

(a) The alien is charged with a crime in the Czech Republic or is placed on the wanted list for the purpose of execution of a sentence;

(b) Transit through other States or admission by the country of destination is not feasible;

(c) The transit operation would involve a transfer to another airport in the Czech Republic;

(d) The requested assistance is not feasible at the given moment for practical reasons; or

(e) The alien would pose a threat to national security, public order, public health or other similar interests protected under a commitment arising from an international treaty.

5. In cases of expulsion from the Czech Republic, the police may request transit through the territory of another State on the basis of an international treaty. If the transit operation is effected by air and requires a stopover in the territory of another EU member State or another State applying the procedure laid down in Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, the police may ask the competent authority of such State for assistance during the stopover.

6. The above rules are general. Specific rules may be laid down in bilateral readmission treaties or in European Community readmission agreements.

¹ Official Journal of the European Union, L 321, 6 December 2003, p. 26.

EL SALVADOR

At the present time, there are no bilateral or multilateral agreements allowing transit States to participate in the expulsion process. In practice, however, they do participate in the process, in the form of direct *démarches* by the migration authority, with the support of the Ministry of Foreign Affairs.

FINLAND

Transit through a third State to the State of destination is subject to a permit issued by the transit State. Such a permit must be requested well in advance. If the permit is refused, no transit is possible, whether it necessitates only a change of plane at an airport in the transit State or *de facto* transit through this State.

GERMANY

For Germany, deportations from the country are primarily conducted by air. In 2008, for example, some 2,700 were performed by air via transit airports, most of which were within the EU. The procedures to be applied in such cases are laid down in the Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, which entered into force on 6 December.¹ The sovereign rights of the member States, especially the right to apply immediate force, are not affected by this, nor is the Convention on offences and certain other acts committed on board aircraft, particularly with regard to the authority on board of the pilot-in-command, or the briefing of the airlines on the carrying out of removals in line with annex 9 to the Convention on International Civil Aviation. Removals via transit States outside the EU are normally avoided. Should such removals be nevertheless necessary in individual cases, the German mission abroad in the country is informed to help resolve potential problems in the transit State.

¹ *Official Journal of the European Union*, L 321, 6 December 2003, p. 26.

ITALY

Provisions for the Expulsion of Foreigners from Italian Territory in the Consolidated Text on Immigration and the Condition of the Foreigner

In cases of foreigners transiting through third countries pursuant to an expulsion order, Italy abides by the international rules contained in the conventions it has ratified (Convention relating to the Status of Refugees), ratified by Law No. 722 of 24 July 1954, international conventions on human rights and fundamental freedoms, and international conventions on extradition). Italy also observes bilateral agreements with non-EU third countries as well as Italian law implementing EU regulations, valid within the borders of EU member States, without prejudice to obligations under international law (e.g. Legislative Decree No. 24 of 25 January 2007, entitled "Implementation of Directive 2003/110/EC, regarding assistance to persons in air transit under an expulsion order", published in the *Official Gazette*, issue 66, of 20 March 2007, which defines assistance provisions between competent authorities in cases of expulsion via air travel, with or without escort, to transit airports of member States, pursuant to Directive 2003/110/EC¹ of 25 November 2003).

¹ *Official Journal of the European Union*, L 321, 6 December 2003, p. 26.

KUWAIT

This issue is governed by the frameworks of the bilateral relations as well as by the agreement that exist between the expelling State to the transit State. The main principle in such matters is determined by the scope of the mechanisms of bilateral cooperation between the two concerned States. Therefore, it is fair to say that the administrative matter in this regard differs from one case to another, depending on the nature of the relation of cooperation between the concerned States.

LITHUANIA

1. An alien may be transferred from one foreign State through the territory of Lithuania to another foreign State pursuant to an international treaty ratified by Lithuania or pursuant to EU legislation, if proof is provided that he has the right to enter the foreign State and the data about the necessity of the transit through the territory of Lithuania is presented.

2. When implementing Council Directive 2003/110/EC¹ on assistance in cases of transit for the purposes of removal by air, the State Border Guard Service under the Ministry of the Interior of Lithuania acts as the central institution responsible for the provision of mutual assistance to EU member States in transit airports of Lithuania in connection with removal by air with or without accompanying persons and in connection with consideration of the related requests. The State Border Guard Service or the Police Department under the Ministry of the Interior of Lithuania are responsible for the presentation of requests to EU member States in connection with the organization and implementation of the transit of third-country nationals present in Lithuania.

3. When implementing Council Decision 2004/573/EC of 29 April 2004 on the organization of joint flights for removal, from the territory of two or more member States, of third-country nationals who are subjects of individual removal orders,² the Police Department, and the State Border Guard Service, act as the institutions responsible for the organization of and/or participation in the joint flights and for the provision of the related information to other member States. The Foreigners' Registration Centre is responsible for the implementation of this function within the State Border Guard Service. When organizing and implementing the expulsion of aliens from Lithuania, the Foreigners' Registration Centre is entitled, in accordance with the set procedure, to undertake direct (or following arrangement with the Foreign Ministry of the Republic of Lithuania) cooperation with foreign diplomatic representations or consular entities, and international and non-governmental organizations.

¹ *Official Journal of the European Union*, L 321, 6 December 2003, p. 26.

² *Ibid.*, L 261, 6 August 2004, p. 28.

MALAYSIA

1. There is no specific relation established between Malaysia and the transit State for purposes of expulsion of a person who has to travel through that transit State.

2. However, in the case of any person being expelled to the country of origin passing through a transit State, Malaysia ensures that such persons have onward tickets passing through such transit States.

Such instances are avoided in the majority of cases but, should the use of the services of a transit State be needed, Malta abides by Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air.¹

¹ *Official Journal of the European Union*, L 321, 6 December 2003, p. 26.

NEW ZEALAND

1. There is no specific relationship established between New Zealand and the transit State, however, New Zealand endeavours to meet all obligations that the transit State requires. Such obligations may include a request from the transit State that the expelled person is accompanied by escorts during his or her transit through their State. The transit State may also require the expelled person to hold a visa for that transit State.

2. With the possible exception of Australia, New Zealand has no formal relations with the authorities in transit States when a person is being turned around to retrace their journey back to their original point of embarkation via that transit State.

3. The documentation that accompanies an undocumented person being turned around, however, is addressed to the authorities at transit points and at the final destination. The documentation explains the full circumstances of the passenger and their travel and the reasons why that person was found inadmissible in the first place. The carrier is also provided with copies of this documentation.

4. In most instances, it is the carrier that fulfils the role of communicator between New Zealand and receiving/transit States.

5. In the majority of instances, persons being turned around will meet the immigration requirements of the transit State. However, when the person being turned around does not meet those requirements, chapter 5 of annex 9 to the Convention on International Civil Aviation obligates transit States to facilitate transit. However, as the Convention is non-binding this obligation is not always honoured.

NORWAY

There are established routines between Norway, as the expelling State, and transit States within the Schengen Area when an alien must pass through a transit State. The procedures are based on the Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Schengen Agreement). Norway sends an advanced notification to the transit State regarding the return. Some Schengen countries, e.g. Germany, must accept the transit stay beforehand. There exist no

procedures when an alien must pass through a transit State outside of the Schengen Area, nor is it necessary to notify the transit State beforehand. However, if the expelled alien has been imposed a penalty pursuant to the Norwegian Criminal Code, both the transit State(s) and the country of destination will be notified of the return through the INTERPOL system.

PERU

Advance coordination with the transit State concerning an expelled alien's travel to a third State is not necessary. Land border migration practice is that expelled aliens are accepted if the person in question is entering or exiting the transit country.

PORTUGAL

1. In accordance with Law No. 23/2007—which implements the Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air¹ into the Portuguese legal system—where a third State national is removed by air, the use of a direct flight to the country of destination should be considered.

2. If the use of a direct flight is not possible, a request may be submitted to the competent authorities of the other member State for the purpose of transit by air, as long as there is no need to change from one airport to another in the territory of the requested member State.

3. The request of transit by air, with or without an escort and related support measures, is made in writing and must be forwarded to the requested member State as soon as possible and in any case with no less than two days' notice. A transit operation cannot start without the authorization of the required member State. Where no reply is provided by the requested member State within the deadline it must comply with, the transit operations may be started by means of a notification by the requesting member State.

4. The third State national is immediately readmitted into Portuguese territory if:

(a) The transit by air authorization was refused or revoked;

(b) The third State national entered the requested member State without authorization during the transit;

(c) Removal of the third State national to another transit country or to the country of destination, or boarding of the connecting flight, was unsuccessful; or

(d) Transit by air is not possible for another reason.

5. The *Serviço de Estrangeiros e Fronteiras* (Aliens and Borders Service) is the central authority responsible for receiving requests for transit by air support. The Director General of the Service appoints, for all pertinent transit airports, focal points who can be contacted during all transit by air operations.

¹ *Official Journal of the European Union*, L 321, 6 December 2003, p. 26.

6. Portugal can also authorize, whenever necessary, transit by air in its territory following a request by the competent authorities of a member State removing a third State national.

7. Portugal may refuse transit by air if:

(a) The third State national, under national legislation, is charged with criminal offences or is wanted to serve a sentence;

(b) Transit through other States or admission by the country of destination is not feasible;

(c) The removal measure requires a change of airport on the national territory;

(d) The requested assistance is impossible at a particular moment for practical reasons; or

(e) The third State national will be a threat to public policy, security or health, or to international relations of the Portuguese Republic.

8. In the context of bilateral relations, Portugal has also concluded readmission agreements aiming at persons in an irregular situation that regulate this issue, amid others, with the following States: Estonia, France, Germany, Hungary, Lithuania, Romania and Spain.

QATAR

In such cases, the need to respect the rules in force in the transit country governs the relationship between the deporting country and the transit country.

REPUBLIC OF KOREA

1. There appears to be no general rule in international law governing the transit of expelled foreigners. However, some bilateral or multilateral treaties on civil aviation stipulate that the domestic law of the territorial State applies to the case.

2. In the cases where a foreign State requests the Minister of Justice of the Republic of Korea to approve the transit through the Republic of Korea of a person who is being extradited from another foreign State, if such request is deemed justified, the Minister of Justice (the transit State) has the discretion to approve it. However, if the person committed a crime that does not constitute any crime under the acts of the Republic of Korea or the person is a national of the Republic of Korea, the Minister of Justice shall not approve it (art. 45 of the Extradition Act).

ROMANIA

The relations established between Romania as an expelling State and the transit State are governed by international law, in the case of States non-members of the EU, namely the bilateral readmission agreements that provide the modalities for transit of persons expelled from the territory of contracting parties, or by international law in conjunction with community law, in cases where the transit State is another member of the EU. In the latter case, the issue is related to the assistance of transit States in enforcement of the removal measure.

SERBIA

The nature of the relations between the expelling State and the transit State is defined by the Transit Procedure set forth in article 14 of the Agreement between the Republic of Serbia and the European Union concerning the readmission of persons staying unlawfully.¹

¹ *Official Journal of the European Union*, L 334, 19 December 2007, p. 46.

SINGAPORE

1. As a Contracting Party to the Convention on International Civil Aviation, Singapore State practice on this issue is guided by the Standards and Recommended Practices in the 12th edition of annex 9 (Facilitation) of the Convention on International Civil Aviation.

2. For instance, recognizing the annex 9 obligations of Contracting States, Singapore State practice is on the basis that transit States (if Contracting Parties to the Convention on International Civil Aviation), will facilitate the transit of persons being removed from Singapore, and extend necessary cooperation to the aircraft operator(s) and escort(s) carrying out such removal. When presenting a deportee for removal, Singapore ensures that all official travel documentation required by any transit and/or destination State is provided to the aircraft operator. Also, Singapore ensures that the escort(s) accompanying the deportee remain with him or her to his final destination, unless suitable alternative arrangements are agreed, in advance of arrival, by the authorities and the aircraft operator involved at the transit location.

SLOVAKIA

1. The relations between the States in case of forced returns of aliens from the territory of Slovakia through the territories of the neighbouring countries or in case of their transit are provided for in international agreements, the so-called readmission agreements.

2. Readmission agreements provide, *inter alia*, for the rights and obligation of State parties in case of so-called forced return (transit) of aliens—third-country nationals—to their country of origin or a country ready to admit such aliens. The forced return procedure is laid down in readmission agreements, and forced return is always carried out in the form of escort, either by air or by police transport.

3. The requirements for police transport connected with forced returns under relevant readmission agreements are laid down in section 75, paragraphs 1 to 6 of the Act on Stay of Aliens. According to the above provision, the authority entitled to carry out police transports is the Police Detention Centres for Aliens and the transport is carried out exclusively on a request from a State party with the aim of transporting the alien to the State border between Slovakia and the State party. Moreover, the above provision lays down the rights and obligations of aliens and defines the responsibility of the police department in carrying out the police transport. The costs connected with police transports are borne by the requesting State.

4. The procedure of air transit connected with the expulsion of aliens is provided for in sections 75a and 75d of the Act on Stay of Aliens, based on the transposition of Council Directive 2003/110/EC of 25 November 2003 on the assistance in case of air transit with purposes of return.²

5. Air transit may be carried out exclusively on the basis of a written request from another EEA country or on the basis of a submission, written application filed by the Slovak Republic with another EEA country. Air transits to third countries are governed by international agreements (such as readmission agreements).

² *Official Journal of the European Union*, L 321, 6 December 2003, p. 26.

SOUTH AFRICA

If South Africa decides to deport an alien, ordinarily a direct flight or direct ground transport is found for that alien (from South Africa to his or her country of origin). This is done with a view to avoiding a situation where such an alien must pass through a transit State.

SWEDEN

1. In Sweden, two authorities are responsible for expulsions of aliens. The Swedish Migration Board is responsible for aliens who voluntarily return and the Swedish Police Authority is responsible for forced return.

2. Due to Sweden's geographical location, a person being expelled must often pass through transit States. If the transit State is a member State of the EU, the procedure is stipulated by Council Directive 2003/110/EC of 25 November 2003 on assistance in case of transit for the purpose of removal by air.¹

3. Concerning transit States outside the EU, Sweden has general understandings with these countries, when required. The understandings normally stipulate what measures Sweden has to take as an expelling State in order for the transit State to accept the transit. Certain transit States do not require any special measures and, in these cases, there is normally no contact between Sweden and the State in question.

¹ *Official Journal of the European Union*, L 321, 6 December 2003, p. 26.

SWITZERLAND

1. Switzerland's accession to the Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Schengen Agreement) was accompanied by the adoption of elements of European law, including Council Directive 2003/110/EC of 25 November 2003 on assistance in case of transit for the purpose of removal by air,¹ which calls for mutual assistance by member States

¹ *Official Journal of the European Union*, L 321, 6 December 2003, p. 26.

in the matter of expulsion to take their common objective into account, that being to end the illegal residence of the citizens of third countries obliged to leave the country.

2. In accordance with that directive, we request a form from the competent transit authorities for each citizen of a third country in transit in the Schengen area. The details of the transit form are given in the aforementioned Directive, but different States (Switzerland included) use their own forms.

UNITED STATES OF AMERICA

1. Prior to the removal of a non-citizen from the United States through a transit country, appropriate personnel at the United States Embassy in that transit country are electronically notified of the planned removal by United States immigration authorities. And, consistent with the cooperative principles underpinning the Convention on International Civil Aviation, United States Embassy personnel, in turn, generally provide notification to the transit country Government of the removal.

2. Beyond these general parameters, two unique scenarios bear mentioning. First, non-citizens arriving at a land border from a foreign country contiguous to the United States may be returned to that country, unless they have a credible fear of persecution or torture in that country, pending a determination by an immigration judge whether they were properly deemed inadmissible and whether they are eligible for a waiver or other immigration relief (INA § 235 (b) (2) (C); 8 USC § 1225 (b) (2) (C)). Secondly, under article 5 (b) of the Agreement between the Government of the United States of America and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries, sometimes referred to as the United States-Canada "Safe Third-Country Agreement", a person being removed from the United States in transit through Canada who makes a refugee status claim in Canada will only be permitted onward movement to the country of removal by Canadian authorities if the person's refugee claim has already been rejected by the United States.

3. Where a non-citizen is expelled by a third country and will transit through the United States, the non-citizen must have valid documentation (such as a transit visa) for his or her travel through the United States. Depending on the facts and circumstances, the Department of Homeland Security may take appropriate measures to provide the necessary assistance and security to ensure that the non-citizen exits the United States in accordance with his or her travel documents.

C. Comments and information on other issues relating to the topic

ANDORRA

There are limitations to this administrative measure which provide important guarantees for the individual concerned. In this regard, the Constitution of the Principality of Andorra of 14 March 1993 establishes in article 22 that the expulsion of a person residing legally in Andorra can be granted only for the reasons and according to the terms

provided by law, and as a result of a definitive judicial ruling in the case of a person exercising the right to a hearing. In addition, the Immigration Act establishes that foreign children, foreign adults born in Andorra who have lived there continuously since birth, and foreign adults residing legally in Andorra continuously for a period of 20 years, cannot be subject to expulsion. An exception to these cases can be made if there is an overriding need in the interest of the security of the State, persons, property or public order.

BAHRAIN¹

Expulsion in implementation of a court order

1. Expulsion may take place only after verifying that copies of the following items have been made available:

- A definitive judgement or an expulsion order;
- Documents pertaining to the alien and his property;
- Reports and communications concerning it.

2. Official documents and travel tickets must also be verified.

3. Expulsion orders are executed in the same manner as other court judgements. Should any impediments arise, the matter is referred to the judge responsible for the execution of the order, who will decide on an appropriate course of action. The order is then transmitted to the Directorate for execution.

Expulsion of foreign workers under the Labour Market Regulation Act (No. 19 of 2006)

4. Under article 27 of the Act, employers are required to bear the costs of repatriation. Should the Authority bear the costs of repatriation in order to facilitate the expulsion and deportation of a foreign worker, it may reclaim them from the worker's last employer. The Minister of the Interior has issued Implementing Decree No. 122 (2007) concerning regulations and procedures for the deportation of foreign workers or the transportation of their corpses.

5. Foreign workers who are to be expelled are transferred to the General Directorate of Nationality, Passports and Residence, which will then take all the measures required for implementing the deportation order.

¹ The text of relevant legislation has been provided to the Codification Division of the United Nations Office of Legal Affairs.

BOSNIA AND HERZEGOVINA

1. The expulsion procedure of aliens in Bosnia and Herzegovina is prescribed by the Law on Movement and Stay of Aliens and Asylum, which was adopted by the Parliamentary Assembly on 16 April 2008. The Law on Movement and Stay of Aliens and Asylum was published in the *Official Gazette*, No. 36/08, and entered into force on 14 May 2008.

2. The aforementioned Law defines expulsion as a measure ordering an alien to leave Bosnia and Herzegovina

and prohibiting him/her to enter and stay in Bosnia and Herzegovina for a certain further period, which cannot be shorter than one year or longer than five years. The period of prohibition to enter shall commence from the day of leaving the territory of Bosnia and Herzegovina. The decision on expulsion of aliens from the territory of Bosnia and Herzegovina, along with the prohibition to enter and stay in Bosnia and Herzegovina in a certain period, shall be issued by the Service for Foreigner's Affairs (Organizational Unit within the Ministry of Security having operational independency in carrying out tasks and duties within the scope of its competence), at the proposal of the court or based on substantiated proposal of other organizational unit of the Ministry, law enforcement authority or other authority.

3. An appeal may be filed against the decision on expulsion of an alien from Bosnia and Herzegovina issued by the Service for Foreigner's Affairs to the Seat of the Ministry of Security, within eight days from the receipt of the decision. If the decision on expulsion was rendered on the basis of article 88 (Reasons for imposing the expulsion measures), under paragraph (1), item i) therein, the deadline for appeal shall be 24 hours as of the receipt of the decision. An appeal shall stay the execution of the decision. The seat of the Ministry of Security shall render a decision on the appeal and shall serve the party without delay and within 15 days the latest from the day of reception of the appeal. Until the decision becomes enforceable, the alien may be placed under supervision or his movement may be restricted to a certain area or location and he may be ordered to report in specified intervals to the organizational unit of the Service for Foreigner's Affairs in the territory of residence of an alien.

4. Until termination of the proceedings, all travel documents that may be used to cross the State border of Bosnia and Herzegovina shall be seized from an alien, who will receive the receipt on seizure, unless he voluntarily agrees to leave the territory of Bosnia and Herzegovina prior to the termination of the proceedings. In accordance with the Law on movement and stay of aliens and asylum, the collective expulsion of aliens is prohibited. The expulsion measure may be pronounced only to an individual.

5. The decision on expulsion may specify the deadline for voluntary execution of the decision, which may not exceed 15 days. In case the alien fails to leave Bosnia and Herzegovina voluntarily within the deadline set for execution of the decision, the final decision on expulsion shall be executed by the Service for Foreigner's Affairs through measures of forceful removal of an alien from the territory of Bosnia and Herzegovina. After the decision on expulsion becomes final, the Service shall make a conclusion on authorization of the enforcement without any delay, and at the latest within seven days from the date when the requirements for the forcible removal of an alien from Bosnia and Herzegovina were met. The conclusion on authorization establishes that the decision on expulsion became enforceable and shall specify the manner, time and place for enforcement of the decision. An appeal against the conclusion may be filed to the Seat of the Ministry of Security within eight days from the date of its delivery. The appeal does not stay the execution pending.

6. An alien against whom is imposed an expulsion measure shall register himself to the official authorized to control the crossing of the State border, while leaving Bosnia and Herzegovina. The Bosnia and Herzegovina Border Police shall enter in the alien's passport the fact that he/she left Bosnia and Herzegovina and shall also notify the Service of Foreigner's Affairs and the Ministry of Security. If the alien does not have a passport, an official note shall be made, and the concerned alien shall be issued a certificate that he/she has left Bosnia and Herzegovina. The Border Police shall immediately, and within the same day, notify the Service of Foreigner's Affairs and the Ministry of Security of any alien who left Bosnia and Herzegovina, and against whom has been imposed a measure of expulsion from Bosnia and Herzegovina.

BULGARIA

1. The basic legal framework regarding expulsion of aliens as a coercive administrative measure under the Bulgarian national legislation is contained in item 3 of article 39a of the Aliens in the Republic of Bulgaria Act and in item 2 of article 23 (1) of the Act on Entry into, Residence in, and Exit from the Republic of Bulgaria by European Union Citizens and Family Members Thereof. Due account should also be taken of the provisions of the Convention relating to the Status of Refugees (promulgated in the *State Gazette* No. 88 of 1993), Council Directive 2003/110/EC of 25 November 2003 on assistance in case of transit for the purpose of removal by air,¹ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents,² Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification,³ and Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals.⁴

2. The authorities of the Ministry of the Interior or of the State Agency for National Security have the authority to expel an alien who has been granted a long-term residence permit in another member State of the EU; who qualifies to be granted a long-term residence permit for Bulgaria, if the said person is a factory or office worker or a self-employed person in Bulgaria or for the purpose of study, including vocational training, if the said person or his or her family members represent a serious threat to national security or to public order, following consultations with the competent authorities of the other EU member State for which they hold a long-term residence permit. In case of expulsion, the length of the alien's residence within the territory of Bulgaria, the age, the health status, the marital status, the social integration, as well as the existence of a relationship with the State of residence or the lack of a relationship with the State of origin of the person are taken into consideration. The authorities of the Ministry of the Interior or of the State Agency for National Security are required to notify the competent authorities of the respective EU member State for the implementation of the expulsion decision.

¹ *Official Journal of the European Union*, L 321, 6 December 2003, p. 26.

² *Ibid.*, L 16, 23 January 2004, p. 44.

³ *Ibid.*, L 251, 3 October 2003, p. 12.

⁴ *Ibid.*, L 149, 2 June 2001, p. 34.

3. An alien on whom a coercive administrative measure of expulsion is imposed may not be expelled to a State where his or her life and freedom will be jeopardized and where he or she will be exposed to persecution, torture, inhuman or degrading treatment (art. 44a of the Aliens in the Republic of Bulgaria Act).

4. When immediate expulsion is impossible or the enforcement of the measures must be postponed for reasons of a legal or technical nature, the authority that issued the order imposing the coercive administrative measure could defer its enforcement until the impediments to its enforcement are eliminated. When the period of temporary protection under the Asylum and Refugees Act has elapsed, the expulsion is impossible or there is a need to postpone the enforcement of the measures for reasons of health or humanitarian nature, the authority which issued the order is entitled to defer its enforcement until the impediments to its enforcement are eliminated.

5. According to the Aliens in the Republic of Bulgaria Act, expulsion orders are subject to appeal before the Supreme Administrative Court, but an appellate review does not suspend their enforcement.

6. According to the provisions of the Aliens in the Republic of Bulgaria Act and the Act on Entry into, Residence in, and Exit from the Republic of Bulgaria by European Union Citizens and Family Members Thereof, upon imposition of a coercive administrative measure of expulsion, a coercive administrative measure of a mandatory ban on entry into Bulgaria is also imposed on the person for a period referred to in article 42h (3) of the Aliens in the Republic of Bulgaria Act:

A ban on entry into the Republic of Bulgaria shall be imposed for a period not exceeding five years. The ban on entry into the Republic of Bulgaria may be imposed for a period exceeding five years where the person concerned poses a serious threat to public order or to national security.

Also, according to article 26 (2) of the Act on Entry into, Residence in, and Exit from the Republic of Bulgaria by European Union Citizens and Family Members Thereof:

A ban on entry into the Republic of Bulgaria shall be imposed for a period not exceeding ten years.

CUBA

1. Cuba considers that the codification of the human rights of persons who have been or are being expelled would be useful, provided that such a codification is guided by the principle of comprehensive protection of the human rights of the person who has been or is being expelled, and does not infringe on the sovereignty of States.

2. As a general consideration regarding the aforementioned draft articles, Cuba believes it necessary to include an article of a general character, equivalent to a declaration of principles, requiring respect for domestic legislation, the maintenance of public security of each State, and respect for the principles of international law, as well as the non-use of expulsion as a xenophobic and discriminatory practice.

3. In this regard, Cuba also considers that account should be taken of the fact that the person expelled is exonerated of legal or criminal liability in the expelling State and that, in consequence, the person should not be tried again for the same reason in the receiving State, in line with the general legal principle that a person shall not be penalized twice for the same illegal act.

4. Moreover, Cuba notes that the articles do not mention an obligation to notify the receiving State prior to the implementation of an expulsion, and therefore proposes the inclusion of an article requiring States to inform the receiving State that a person is being expelled to it. In that regard, our country considers it appropriate to include in the draft articles a mention of the right of persons who have been expelled or are being expelled to communicate with representatives of the corresponding consulate.

5. Further, in connection with draft article 13, “Specific case of vulnerable persons”, the concepts of “child” and “older persons” need to be defined, as these terms are imprecise and ambiguous, given that in neither case is a range of ages provided which could serve as a basis for evaluating the vulnerability of such persons.

6. Cuba is of the view that the protection of pregnant women provided for under draft article 13 should be extended to all women and to girls. We propose the following wording for paragraph 1: “Boys and girls, women, older persons and persons with disabilities who have been or are being expelled shall be considered, treated and protected as such, irrespective of their status”. Paragraph 2 of draft article 13 should also include a mention of girls.

7. Cuba considers that the language of draft article 14 on the “Obligation to ensure respect for the right to life and personal liberty in the receiving State of persons who have been or are being expelled” should be made consistent with the draft as a whole. This draft article uses the term “returned” (*refoulé*) and establishes the possibility of “return” (*refoulement*) as a category distinct from expulsion, creating ambiguity and inconsistencies in the language of the text.

8. In our understanding, the concept of the stateless person as the target of expulsion arises in draft article 14 paragraph 3, without consideration of the very real possibility that this measure could be applied to a person whose country of origin is not recognized. This must be modified in the interest of obtaining greater clarity and coherence in the draft articles and avoiding ambiguities.

9. In the specific case of article 15.1, “Obligation to protect persons who have been or are being expelled from torture and inhuman or degrading treatment”, Cuba considers it necessary to include the obligation to demonstrate the so-called “real risk”, since what is currently stipulated is inadequate. The expression “where there is a real risk” is liable to subjective interpretation. Cuba further proposes that the following wording be appended to the paragraph: “... without first obtaining guarantees that his or her rights would not be violated thereby”.

10. Cuba has no objections or observations to advance with regard to the formulation of the remaining draft

articles, although it would like to reiterate its position that the human rights of persons who have been or are being expelled cannot constitute a limit on the exercise of the right of a State to carry out expulsions.

PERU

1. Legislative Decree No. 703, adopting the Aliens Act, lays down the legal provisions on aliens’ entry into, stay and residence in and exit from Peru. It also sets out the grounds, the punishments applicable to aliens who violate the relevant provisions and the competent authorities.

2. The administrative procedures for enforcing sentences of expulsion begin with information obtained by the Aliens Division of the Peruvian National Police Department of State Security (the information is consolidated in a certified statement or police report). This information is sent to the Migration and Naturalization Authority. The Authority’s Office of Legal Counsel issues the required opinion on the legality of the sentence, which will be executed by the Commission on Alien Affairs.

3. This Commission consists of the General Director for Consular Policy of the Ministry of Foreign Affairs, the General Director for Migration and Naturalization of the Ministry of the Interior, and the Chief of the Aliens Division of the Peruvian National Police, who, by means of an agreement supported by meeting minutes, order the expulsion of the alien. Depending on the grounds, this may be done by court order or as a result of an administrative violation of the Aliens Act.

4. The Migration and Naturalization Authority prepares a draft ministerial resolution to be signed by the Minister of the Interior.

5. The Aliens Division notifies the alien to appear at the police station, serves the official expulsion document and escorts the alien to the border, if that is the determined point of departure from the country, or to the international airport if travel will be by air.

6. The Migration and Naturalization Authority records the expulsion in its database so that the border authorities do not allow the offending alien to enter.

REPUBLIC OF KOREA

Limitations on the right of expulsion: Protection of human rights

(a) *Dignity, pursuit of happiness and equality*

1. All persons in the Republic of Korea shall be assured of human worth and dignity and have the right to pursue happiness. The right also applies to foreigners, and discrimination based on sex, religion or social status is prohibited (arts. 10 and 11 of the Constitution).

(b) *Principle of non-refoulement*

2. As a contracting party to the Convention relating to the Status of Refugees, the Republic of Korea shall not “expel or return (*refouler*)” a refugee in any manner

whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (art. 33 of the Convention).

3. As a contracting party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Republic of Korea shall not “expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” (art. 3 of the Convention).

(c) *Due process of law*

(i) Decision on expulsion

4. *Investigation.* The immigration control official may investigate foreigners suspected of violating the Immigration Control Act (arts. 47–50 of the Immigration Control Act).

5. *Examination.* When the immigration control official has finished the investigation of a suspect, the head of the immigration office or a branch office, or the head of a foreigner internment facility shall examine and make a determination on the expulsion without delay (art. 58 of the Immigration Control Act).

6. *After examination.* If the suspect is found not to have violated the Immigration Control Act, the head of the immigration office or a branch office, or the head of a foreigner internment facility shall inform the suspect of the result without delay, and if the suspect is interned, the head shall immediately release the suspect from the internment (para. 1 of art. 59 of the Immigration Control Act).

7. If the head of the immigration office or a branch office, or the head of a foreigner internment facility determines after examination that the suspect has violated the Immigration Control Act, he may issue a deportation order. In the case where the head of the immigration office or a branch office or the head of a foreigner internment facility issues a deportation order, the head shall inform the suspect of the fact that the suspect may object to the Minister of Justice (paras. 2 and 3 of art. 59 of the Immigration Control Act).

(ii) Execution of deportation orders and repatriation

8. A deportation order shall be executed by an immigration control official. The head of the immigration office or a branch office or the head of a foreigner internment facility may entrust any judicial police official to execute a deportation order (art. 62 of the Immigration Control Act).

9. To execute a deportation order, the order shall be presented to the person who is subject to it, and he shall be

repatriated without delay to the country in which he has a nationality or citizenship (arts. 62 and 64 of the Immigration Control Act).

10. There are no provisions about the responsibility to inform the country of repatriation of the reason for expulsion. Except those who have committed a serious crime, most illegal foreigners, without informing their national embassies, will be given a sealed data stamp with relevant provisions on their passport after examination.

(iii) Internment of persons subject to deportation orders

11. If it is not possible to immediately repatriate a person who is subject to a deportation order, the head of the immigration office or a branch office or the head of a foreigner internment facility may intern him in a foreigner internment room, foreigner internment facility or other place designated by the Minister of Justice until the repatriation is possible (para. 1 of art. 63 of the Immigration Control Act).

(iv) Objection

12. If a person subject to a deportation order desires to object to the order, he shall file an objection with the Minister of Justice through the head of the immigration office or a branch office, or the head of a foreigner internment facility within seven days after the person receives the deportation order (art. 60 of the Immigration Control Act).

SOUTH AFRICA

1. South Africa’s right to expel foreign nationals is inherent in its sovereignty as a State. The immigration laws of South Africa prefer the term “deportation” to “expulsion”. South Africa’s right to expel in the form of deportation can only be found within the four corners of the Immigration Act No. 13 of 2002 as amended. South Africa’s right to expel aliens includes the right to control admission to its territory and to establish grounds for expulsion of aliens in terms of its immigration laws and regulations. The intention of the drafters of the Act was to put in place a system of immigration control which is compatible with the Constitution and the international obligations of South Africa.

2. In the event of being an expelling State, South Africa has a general obligation to respect the human rights of the person being expelled. It is bound to respect the limits deriving from international law, including international human rights law. The international human rights, whether in the provisions of the African Charter on Human and Peoples’ Rights or the International Covenant on Civil and Political Rights, are designed to ensure that individuals have recourse available to them when their rights are violated by Governments.