

# BI-MONTHLY LEGAL NEWS

## Vol. 3(III) May-June 2010



*Partners for Law in Development*

<b>Updates from the UN</b>	
<ul style="list-style-type: none"> <li>▪ UN Creates New Structure for Promoting Women's Rights</li> <li>▪ Security Council Adopts Indicators for Implementation of SCR 1325</li> <li>▪ SRVAW presents her report on Reparations to Women Who Are Subjects of Violence in Peace and Post Conflict</li> <li>▪ The Independent Expert on Cultural Rights Presents her First Report</li> <li>▪ Kishore Singh Appointed New SR on Right to Education</li> </ul>	
<b>International Legal Developments</b>	
<i>Asia</i>	<i>Beyond Asia</i>
<ul style="list-style-type: none"> <li>▪ Timor-Leste Passes Law on Domestic Violence</li> <li>▪ ASEAN sets up Commission for Promotion and Protection of Rights of Women and Children</li> </ul>	<ul style="list-style-type: none"> <li>▪ European Court of Human Rights calls Attention to Gender Based Violence</li> <li>▪ President of Portugal Ratifies Law Allowing Same Sex Marriages</li> <li>▪ Nicaragua Institutes a Fund to Provide Credit to Rural Women to Own Property</li> <li>▪ <i>Gender Equality Law adopted in Georgia</i></li> <li>▪ Parliament of Lesotho Enacts Law Guaranteeing Free and Compulsory Education for all Children</li> <li>▪ Malawian Court Sentences Gay Couple; who are later pardoned as a result of international pressure</li> </ul>
<b>National</b>	
<i>Judgments/Orders</i>	
<ul style="list-style-type: none"> <li>▪ Supreme Court Restricts Use of Narco Analysis for Investigation</li> <li>▪ Bhopal Judgment: Abysmally Late, Abysmally Little</li> <li>▪ Delhi High Court Orders Compensation in Two Cases of Maternal Mortality</li> <li>▪ Supreme Court Issues Notice on Honour Killings</li> <li>▪ BJP MLA Sentenced to 7 years RI for Kandhamal Riots</li> </ul>	
<b>Resources</b>	
<ul style="list-style-type: none"> <li>▪ Commonwealth Games: Whose Wealth? Whose Commons?: Housing and Land Right Network</li> <li>▪ Women in the Middle East and North Africa: Agents of Change: Fatima Sadiqi, Moha Ennaji</li> <li>▪ Irregular Migration, Migrant Smuggling, Human Rights: International Council on Human Rights Policy</li> </ul>	
<b>Events</b>	
<ul style="list-style-type: none"> <li>▪ Saheli organizes protest meeting against honour killings</li> <li>▪ TARSHI re-launches hotline on sexuality and reproductive health related issues</li> <li>▪ Anhad organizes nationwide campaign 'Reservation Express'</li> <li>▪ 1st anniversary of the High Court judgment decriminalizing section 377 celebrated</li> <li>▪ International Day Against Homophobia and Transphobia (IDAHO) commemorated in Delhi</li> <li>▪ Child Rights Groups hold consultations to discuss legislation on sexual offences against children</li> </ul>	

# UPDATES FROM THE UN

## UN Creates New Structure for Promoting Women's Rights

The United Nations General Assembly has set up a separate organization for women called **UN Women: the United Nations Entity for Gender Equality and the Empowerment of Women**. UN Women will be headed by an under-secretary (USG). The existing four women's UN entities: the U.N. Development Fund for Women (UNIFEM); the Office of the Special Adviser on Gender Issues; the U.N. Division for the Advancement of Women; and the International Research and Training Institute for the Advancement of Women (INSTRAW) will fall under UN Women. The organization will start work from January 2011. UN Women will be at par with other UN bodies like UNICEF, UNDP and UNFPA and will have two key roles: it will support inter-governmental bodies such as the Commission on the Status of Women in their formulation of policies, global standards and norms, and it will help Member States to implement these standards, standing ready to provide suitable technical and financial support to those countries that request it, as well as forging effective partnerships with civil society. Secondly, it will also help the UN system to be accountable for its own commitments on gender equality, including regular monitoring of system-wide progress.

Source: <http://www.unwomen.org>  
<http://www.ipsnews.net/news.asp?idnews=52024>  
[http://news.bbc.co.uk/2/hi/world/us\\_and\\_canada/10496864.stm](http://news.bbc.co.uk/2/hi/world/us_and_canada/10496864.stm)

## Security Council Adopts Indicators for Implementation of SCR 1325

On the occasion of 10<sup>th</sup> anniversary of Security Council Resolution 1325 the Security Council has adopted a comprehensive set of indicators towards improving accountability and implementation of UNSCR 1325. These indicators address the impact of war on women and stress the importance of women's involvement in conflict resolution and peace building in four key areas: women's participation in all aspects of conflict prevention and peace-making; prevention of violence against women; protection of women's rights during and after conflict; and women's needs in relief and recovery. The indicators were produced by 14 UN entities under the leadership of the Office of the Special Adviser on Gender Issues in collaboration with Member States, UNIFEM and women's civil society groups from around the world.

Report of the Secretary General enlisting the indicators:  
[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2010/173](http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/173)  
[http://www.unifem.org/news\\_events/story\\_detail.php?StoryID=1076](http://www.unifem.org/news_events/story_detail.php?StoryID=1076)

## SRVAW presents her report on Reparations to Women Who Are Subjects of Violence in Peace and Post Conflict

UN Special Rapporteur on Violence Against Women its causes and consequences, Rashida Manjoo presented her first thematic report at the 14th Human Rights Council on the topic of reparations to women who have been subjected to violence in contexts of both peace and post-conflict situations. The focus of her report is the obligation of the state to provide adequate reparations to victims of violence as laid out in Article 4 of CEDAW. The SRVAW also engages with other elements of reparation like restorative justice and the need to address the pre-existing inequalities, injustices, prejudices and biases or other societal perceptions and practices that enabled violations to occur, including discrimination against women and girls. Her report is significant as it coincides with the Security Council adopting indicators for SCR 1325, one of the aims of which is to provide relief and recovery to women.

The report is available at:

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.22\\_AEV.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.22_AEV.pdf)

## The Independent Expert on Cultural Rights Presents her First Report

The Independent Expert on Cultural Rights, Farida Shaheed presented her first report to the Human Rights Council at its 14th session. Focusing on the challenges regarding the scope and content of cultural rights she reviewed the relevant existing provisions in United Nations human rights instruments, and developed her initial thoughts on the interaction between the principle of universality of human rights, the recognition and implementation of cultural rights and the need to respect cultural diversity. The independent expert selected a list of priority issues she proposes to address. These issues relate to two main topics: (a) cultural rights, globalization of exchanges and of information, and development processes; and (b) participation, access and contribution to cultural life, without any discrimination.

The full text of the report is available at:

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.36\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.36_en.pdf)

## Kishore Singh Appointed New SR on Right to Education

Kishore Singh (India) has been nominated as the U.N. Special Rapporteur on the Right to Education. He will succeed Vernor Muñoz Villalobos from Costa Rica. The Special Rapporteur on the Right to Education has the thematic mandate to safeguard and promote the right to education.

Source:

<http://www.un.org/apps/news/story.asp?NewsID=35092>

<http://www.hindu.com/2010/06/22/stories/2010062262831200.htm>

# INTERNATIONAL LEGAL DEVELOPMENTS

## Asia

### Timor-Leste Passes Law on Domestic Violence

The National Parliament of Timor-Leste has passed its first and long awaited law on domestic violence. The new law gives power to people other than the victim to report incidents of domestic violence to the police and the police are bound to investigate domestic violence crimes. Victims will have access to emergency medical help, shelter, psycho-social and legal support services. Traditionally most cases of domestic violence have been resolved in Timor-Leste through customary practices where the perpetrator pays a fine to the victim's father. The new law provides for public awareness campaigns on domestic violence; developing a national action plan; setting up victim support centres and education on domestic violence education in the school curriculum.

Source: <http://www.awid.org/eng/Issues-and-Analysis/Library/Timor-Leste-Passes-Groundbreaking-Domestic-Violence-Law>  
[http://www.unifem.org/news\\_events/story\\_detail.php?StoryID=1087](http://www.unifem.org/news_events/story_detail.php?StoryID=1087)

### ASEAN sets up Commission for Promotion and Protection of Rights of Women and Children

ASEAN inaugurated its Commission for Promotion and Protection of Rights of Women and Children (ACWC). The ACWC will work closely with ASEAN Intergovernmental Commission on Human Rights (AICHR). The Commission will promote the implementation of international and regional instruments related to the rights of women and children and develop policies, programs and strategies to promote and protect the rights of women and children.

Source:  
<http://www.aseanhrmech.org/news/ASEAN-commission-inaugurated.htm>  
<http://news.brunei.fm/2010/04/08/asean-body-on-rights-of-women-children-established/>

## Beyond Asia

### European Court of Human Rights calls Attention to Gender Based Violence

In a significant ruling concerning domestic violence against women, the European Court of Human Rights held that the Turkish government violated the European Convention on Human Rights and also failed to address gender-based domestic violence, which constitutes discrimination under CEDAW. The case pertained to regular and violent abuse by a husband on his wife for about a decade and mother-in-law (later killing his mother-in-law). The local authorities however, failed to protect her and her mother from violent abuse

and death threats. After exhausting all domestic remedies, in Turkey the woman sought relief before the European Court of Human Rights. The court held that domestic violence was a serious problem and the governments have to take all necessary measures to protect women from it. The court cited CEDAW and other regional instruments relating to gender-based violence and put on notice all European states to review their laws, reform law enforcement policies, pursue criminal proceedings, conduct effective criminal proceedings, and develop human rights education/training in the area of domestic violence and gender-based violence.

Source: <http://www.timesonline.co.uk/tol/news/world/europe/article7113490.ece>

## President of Portugal Ratifies Law Allowing Same Sex Marriages

Portugal's President has ratified a new law allowing same sex marriages in the country. The Bill was passed by the parliament in January but was pending with the President. The President while ratifying the Bill said he was doing so keeping aside his personal convictions and fearing an overturning of his decision by the liberals lest he return it. The President stated he did not see any merit in engaging in a debate on the Bill as he did not want to divert the attention of Parliamentarians from graver problems like unemployment and deepening poverty facing Portugal.

Source: <http://abcnews.go.com/International/wireStory?id=10668911>  
<http://www.tldm.org/News14/PortugalPresidentRatifiesGayMarriageLaw.htm>

## Nicaragua Institutes a Fund to Provide Credit to Rural Women to Own Property

The National Assembly of Nicaragua has instituted a special fund to provide credit to rural women to buy and own land. The fund is directed towards strengthening the initiative towards poverty reduction. It will be fed by national resources, international grants and loans. The fund will be administered in addition by a board with the participation of representatives from the Ministry of Agriculture and Forestry, the Nicaraguan Institute of Women, and the Coordinator of Rural Women.

Source:  
[http://www.wunrn.com/news/2010/05\\_10/05\\_10\\_10/051010\\_nicaragua.htm](http://www.wunrn.com/news/2010/05_10/05_10_10/051010_nicaragua.htm)  
<http://ipsnews.net/news.asp?idnews=51667>

## Gender Equality Law adopted in Georgia

The Parliament of Georgia has passed a new law called the Gender Equality Law which has been pending since 2006. The law lays down guidelines for establishment of a national women's machinery, sets in place measures for enhancement of women's security, guarantees equal labour rights and the right to political participation. The government also plans to introduce gender responsive planning and budgeting in its programme. While welcoming the new law, women groups, however say that the law does not provide for any

mechanisms for protection of women in the private sphere from domestic violence by the family members.

Source:

[http://www.wunrn.com/news/2010/05\\_10/05\\_10\\_10/051010\\_georgia.html](http://www.wunrn.com/news/2010/05_10/05_10_10/051010_georgia.html)  
<http://www.iwpr.net/report-news/georgia-combating-violence-home>  
[http://www.unifem.org/news\\_events/story\\_detail.php?StoryID=1070](http://www.unifem.org/news_events/story_detail.php?StoryID=1070)  
<http://www.saynotoviolence.org/join-say-no/georgia-parliament-adopts-gender-equality-law>

## Parliament of Lesotho Enacts Law Guaranteeing Free and Compulsory Education for all Children

In an effort to advance universal primary education, the Government of Lesotho has enacted its Education Act 2010 guaranteeing free and compulsory education to all children. The Act is the outcome of a widely held consultative process which aimed at reviewing the Education Act of 1995. One of the primary goals of the Act (apart from improving quality of education) is making the education system more responsive to the impact of HIV, AIDS and poverty on children and helping them take informed decisions for a safer and healthier life.

Source:

[http://www.unicef.org/media/media\\_53653.html](http://www.unicef.org/media/media_53653.html)  
[http://www.melodika.net/index.php?option=com\\_content&task=view&id=28675&Itemid=55](http://www.melodika.net/index.php?option=com_content&task=view&id=28675&Itemid=55)

## Malawian Court Sentences Gay Couple; who are later pardoned as a result of international pressure

A court in Malawi sentenced a gay couple to 14 years imprisonment and hard labour for 'gross indecency' and 'unnatural acts against the law of nature'. The Government of Malawi supported the verdict as protecting the culture and traditions of Malawi. The sentence and the Malawian government's support to homophobia was condemned by activists and governments from all over the world, they said that the ruling was a setback to justice and human rights in Malawi and will further marginalise and stigmatise the homosexual community. As a consequence of international pressure and a threat of decrease in aid to Malawi, the President of Malawi pardoned the gay couple.

Source:

[http://www.womenwontwait.org/index.php?option=com\\_content&task=view&id=203&Itemid=1](http://www.womenwontwait.org/index.php?option=com_content&task=view&id=203&Itemid=1)  
<http://www.afrol.com/articles/36158>  
<http://thehill.com/blogs/blog-briefing-room/news/100619-white-house-applauds-pardon-of-malawi-gay-couple-facing-prison-term->

## Judgements/Orders

### Supreme Court Restricts Use of Narco Analysis for Investigation

In a significant judgment, the Supreme Court has directed that it is illegal to forcibly use narco-analysis, brain-mapping and polygraph tests during investigation. The court said subjecting a person to such techniques amounts to intrusion of personal liberty under Article 21 of the Constitution and held that even if the tests were conducted upon the consent of the accused, the results would not be admissible as evidence. The order follows a batch of petitions challenging investigation techniques like brain mapping, lie detection and narco-analysis as being illegal and unconstitutional, especially in cases where accused are opposed to them. The verdict is significant as it will curtail the misuse and indiscriminate use of these tests by investigating agencies.

Source: <http://www.indianexpress.com/story-print/615471/>  
<http://beta.thehindu.com/opinion/op-ed/article449164.ece>  
<http://www.dailypioneer.com/253765/Narco-analysis-brain-mapping-illegal-SC.html>

### Bhopal Judgment: Abysmally Late, Abysmally Little

A trial court in Bhopal on 7th June 2010 found Union Carbide Corporation (UCC) and 7 senior officials of UCC guilty of criminal negligence for the gas leak in Bhopal in 1984. The gas leak killed thousands and crippled generations of victims. The former members of UCC's senior management in India have been sentenced to two years in jail and fined Rs.100,000. Following the verdict there were countrywide protests against the inadequate sentence as being too late and offering too little relief to the victims and their families. The verdict is blamed on a decision taken by the Supreme Court in 1996 which reduced the charges against the accused from culpable homicide not amounting to murder to causing death by negligence; and on the government which provided allowed the ex-UCC chief Warren Anderson to leave the country soon after the gas leak.

In response to the public reaction against the judgement, the Centre has approved enhanced compensation for Bhopal gas leak victims, made by the Group of Ministers; a central package of Rs 1,265.56 crore will include compensation and environmental cleanup. The Cabinet has also agreed to make fresh efforts to seek extradition of Warren Anderson and for restoration of a stronger case against the accused.

Source:  
<http://www.expressindia.com/latest-news/GoM-on-Bhopal-tragedy-discusses-legal-options/635927/>  
<http://www.indianexpress.com/news/solution/631005/>  
<http://www.indianexpress.com/news/cong-joins-chorus-on-bhopal-verdict-gom-reconstituted/631864/0>  
<http://www.indianexpress.com/story-print/636564/>  
<http://www.indianexpress.com/story-print/635623/>  
<http://www.indianexpress.com/story-print/631005/>

## Delhi High Court Orders Compensation in Two Cases of Maternal Mortality

In a significant decision, the Delhi High Court ordered the state government to compensate two women for violation of their constitutional and reproductive rights. In the first case, the woman died during child birth due to delay in medical assistance while in the second case the woman was forced to give birth under a tree due to a lack of availability of medical services and nutritional supplements. The court said that the cases demonstrated a denial of right to health and life and complete failure of the public health system in implementation of government schemes, including the National Maternity Benefit Scheme (NMBS), Integrated Child Development Scheme (ICDS) and Janani Suraksha Yojana (JSY) which have been designed to reduce maternal and neo-natal mortality by encouraging institutional delivery for poor pregnant women.

The court also underlined the fact that women have the right to control their body and decide when they wish to conceive. Further in many cases, poor women are asked to prove their BPL status while trying to access health facilities, in this regard the court ordered the authorities to ensure that all pregnant women are provided with medical treatment regardless of their socio-economic status throughout the country.

Source:

[http://www.wunrn.com/news/2010/06\\_10/06\\_14\\_10/061410\\_india.htm](http://www.wunrn.com/news/2010/06_10/06_14_10/061410_india.htm)  
<http://www.ahrchk.net/pr/mainfile.php/2010mr/746/>

## Supreme Court Issues Notice on Honour Killings

Taking cognizance of the increasing number of cases of honour crime, the Supreme Court has issued notices to the Centre and eight states (Haryana, Punjab, Bihar, Uttar Pradesh, Jharkhand, Himachal Pradesh, Rajasthan and Madhya Pradesh) to take immediate steps to curtail the honour killings. The Supreme Court was responding to a petition filed by an NGO *Shakti Vahini*, which called attention to the intense pressure on young couples wanting to marry according to their own choice which has led some to commit suicide out of fear of not being accepted in their communities. There have also been cases where couples married for many years have been publicly humiliated, declared brothers and sisters and ostracized or killed in the name of honour. The court held the centre for not taking enough action against such crimes and has demanded national and state level plans of action.

Source: <http://www.hindu.com/2010/06/22/stories/2010062253951300.htm>  
<http://timesofindia.indiatimes.com/India/Honour-killing-SC-notice-to-Centre-Haryana-and-6-other-states/articleshow/6073756.cms>

## BJP MLA Sentenced to 7 years RI for Kandhamal Riots

A fast track court in Kandhamal district of Orissa sentenced a BJP MLA to 7 years rigorous imprisonment for his role in the 2008 Kandhamal riots. Fourteen cases had been filed against him for his involvement in violence, but he was acquitted in six for lack of

evidence and this is the first case where he has been convicted. While his trial was one, he fought and won 2009 state election from jail. The judgment has been challenged in the Orissa High Court.

Source:

<http://www.indianexpress.com/news/kandhamal-riots-bjp-mla-sentenced-to-7-years-ri/640026/>

<http://www.financialexpress.com/printer/news/640265/>

## **RESOURCES**

### **The 2010 Commonwealth Games: Whose Wealth? Whose Commons? Housing and Land Right Network (HLRN)**

The HLRN study questions the rationale for spending thousands of crores of rupees on a one-time sporting event, which instead of delivering any benefits to the masses is resulting in multiple violations of human rights, especially of the most marginalized sections of society. The full text of the report is available at:

[http://www.hic-sarp.org/documents/Whose%20Wealth\\_Whose%20Commons.pdf](http://www.hic-sarp.org/documents/Whose%20Wealth_Whose%20Commons.pdf)

### **Women in the Middle East and North Africa: Agents of Change edited by Fatima Sadiqi, Moha Ennaji**

This book examines the position of women in the contemporary Middle East and North Africa region. The book is an edited volume with articles by writers both from within the region and from outside that provide theoretical debates and case studies on the historical, socio-cultural, political, economic, and legal issues in the region based on their fieldwork from Egypt, Oman, Palestine, Israel, Turkey, Iran, Tunisia, Algeria, Morocco, and Spain.

See <http://www.routledge.com/books/details/9780415573214> for details

### **Irregular Migration, Migrant Smuggling, Human Rights by International Council on Human Rights Policy**

The report examines the factors influencing migration policies and the human rights protection available to migrants. The report is available at:

[http://www.ichrp.org/files/reports/56/122\\_report\\_en.pdf](http://www.ichrp.org/files/reports/56/122_report_en.pdf)

## EVENTS

### Saheli organizes protest meeting against honour killings

Saheli organized a protest meeting on 15 May, 2010 to condemn honour killings and to ask the Government to protect the fundamental rights of the citizens as laid down in the Constitution. The protest was organized in Central Market, Lajpat Nagar.

### TARSHI re-launches hotline on sexuality and reproductive health related issues

TARSHI has re-launched an Interactive Voice Response Systems (IVRS) service. The helpline will offer free, accurate and concise information on sexuality and reproductive health related issues.

Phone: 011- 26472229

Timings: 9:30am - 5:30pm

Days: Monday – Friday

### Anhad organizes nationwide campaign ‘Reservation Express’

Anhad organized a national level campaign called ‘Reservation Express’ in support of the Women’s Reservation Bill. As part of the campaign fifty five women travelled for 20 days across northwest, northeast and southern parts of India and met thousands of men and women to generate support for 33 per cent reservation for women in Parliament. The campaign culminated on June 6<sup>th</sup> in Delhi, when the delegation met Sonia Gandhi and handed over more than 10,000 signed postcards to her demanding immediate passage the bill in its current form in the upcoming monsoon session in Lok Sabha.

### Ist anniversary of the High Court judgment decriminalizing section 377 celebrated

On 2<sup>nd</sup> July, 2010 queer groups across the country organized festivals, rallies, gatherings, performances to celebrate the first anniversary of the High Court ruling against section 377. While Kerela organized its first Pride March called Queer Pride Kerelam, festivities were organized in Azad Maidan in Mumbai, Jantar Mantar in Delhi and Bangalore. The evening began with sections of the judgment being read out which was followed by music and dance performances, fashion shows, one act plays etc.

### International Day Against Homophobia and Transphobia (IDAHO) commemorated in Delhi

To commemorate the International Day Against Homophobia and Transphobia (IDAHO), an informal discussion on the status of LGBT in India was organised in Delhi on 19 May 2010. IDAHO is celebrated every year on May 17<sup>th</sup> to mark the day when WHO removed homosexuality from its list of mental illnesses. Apart from Canada, similar events are also held in Belgium, France and United Kingdom.

Information about IDAHO is available at:

<http://www.homophobiaday.org/default.aspx?scheme=1204>

## Child Rights Groups hold consultations to discuss legislation on sexual offences against children

Child Rights groups have been holding nation wide consultations (in Delhi, Chennai, and Mumbai) to discuss the recommendations pertaining to children in the Criminal Amendment Bill, 2010 and a new legislation to address sexual offences against children. The last consultation was held on July 4th 2010.

See <http://www.hindu.com/2010/07/05/stories/2010070560611100.htm> for more details