



BI-MONTHLY LEGAL NEWS

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Updates from the UN

Secretary General appoints new UN Special Representative on Sexual Violence in Conflict

The Secretary General has appointed Zainab Hawa Bangura, currently the Minister of Health and Sanitation of Sierra Leone, as his new Special Representative on Sexual Violence in Conflict. She replaces Margot Wallström who served as the first envoy when the mandate was created two years ago. Zainah Hawa Bangura brings to the position over 20 years of policy, diplomatic and practical experience in the field of governance, conflict resolution and reconciliation in Africa. She has been instrumental in developing national programmes on affordable health as well as advocating for the elimination of genital mutilation. She is also experienced in meeting with interlocutors in diverse situations, including rebel groups, and is familiar in dealing with State and non-State actors relevant to issues of sexual violence while fighting corruption and impunity.

Source: <http://www.un.org/apps/news/story.asp?NewsID=42311&Cr=sexual+violence&Cr1=>

Working Group on the issue of discrimination against women in law and in practice presents its first report to the HRC

The Working Group on the issue of discrimination against women in law and in practice presented its first report to the Human Rights Council since it was established in October 2010. The report gives the background to the mandate and outlines the consultative process undertaken with a range of stakeholders aimed at defining the scope of its mandate. It also contains a conceptual framework for identifying and mapping good practices on the elimination of discriminatory laws, implementation of existing legislation on equality and human rights, and for identifying ways and means to achieve greater progress on gender equality, protection and empowerment of women. The report also highlights the thematic focus for the group in 2012-13 i.e. discrimination against women in law and in practice, in political and public life, and in economic and social life.

The report is available at:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-28_en.pdf

SR VAW releases report on the expert group meeting on gender-motivated killings of women

Special Rapporteur on violence against women, its causes and consequences released a thematic report in the twentieth session of the HRC on gender-related killings of women. The report holds gender related killings of women an ‘extreme manifestation of violence against women.’ The report lays down that “(such) killings are not isolated incidents that arise suddenly and unexpectedly, but represent the ultimate act of violence which is experienced in a continuum of violence.” The SR raises these killings as a concern because of the impunity furnished to them due to a perceived cultural and social rootedness. She calls on states to act with due diligence for ‘promotion and protection of human rights which is largely lacking as regards the killing of women.

The report is available here:

[http://daccess-dds-](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/136/00/PDF/G1213600.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/G12/136/00/PDF/G1213600.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/136/00/PDF/G1213600.pdf?OpenElement)

Summary report on the expert group meeting on gender-motivated killings of women:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add4_en.pdf

Rio +20 fails to address critical issues on women's human rights

Rio de Janeiro, Brazil hosted the UN Conference on Sustainable Development from 20th to 22nd June 2012. While governments were locked in their semantic battles in the Rio+20 process, women's and other social movements continued to fight on multiple fronts for human rights, justice and sustainability. Though the Outcome Document of Rio+20 recognised the importance of promoting gender equality and empowerment of women, women's groups remain unconvinced on these recognitions being converted into policy with regulated mechanisms to make the commitments a reality.

One of the main concerns in the Outcome Document is the 'green economy' concept. This concept will continue to marginalise rural, indigenous and migrant women. It will merely instrumentalise women for economic growth and the profit of the private sector. While the recognition of policy space and sovereignty over natural resources is important, there is a need to deeply question a development model that is based on extractivism and that fails to take into account social and ecological costs.

While the Rio principles are reaffirmed at Rio+20, the outcome is imbalanced across the three pillars of sustainable development without sufficient attention to gender and social justice, including women's rights.

Sources: <http://www.dawnnet.org/advocacy-cso.php?id=248>

http://gallery.mailchimp.com/118e22b87fa01f36b66ad923d/files/APWLD_Rio_20_Final_Statement_No_progress_without_women_in_the_post_Rio_process.pdf?utm_source=APWLD+News&utm_campaign=265fa4fab5-No+progress+without+women+in+the+post-Rio+process&utm_medium=email

International Developments

Asia

Human rights groups urge Pakistan to provide protection and investigate death threats to Asma Jahangir

Noted Pakistani human rights lawyer and activist, Asma Jahangir in conference in Lahore publicly revealed a threat to her life. The threats are reported to be in retaliation for her efforts to highlight human rights violations by security forces in Balochistan province, which is facing civil unrest. International and national human rights groups and activists have

drafted petitions and urged Pakistan to provide her protection and investigate the death threats. Among these have been the UN Secretary General, Ban Ki-moon and the High Commissioner for Human Rights Navi Pillay.

Asma Jahangir is the former United Nations Special Rapporteur on freedom of religion or belief and the President of the Supreme Court Bar Association of Pakistan

Source: <http://dawn.com/2012/06/08/un-chief-concerned-over-threats-to-asma-jahangir/>
<http://www.wluml.org/news/pakistan-petition-investigate-death-threats-asma-jahangir-former-unsr-freedom-religion-and-huma>
<http://www.apwld.org/act-now/assassination-plot-against-pakistani-women-human-rights-defenderthreatens-the-country%E2%80%99s-human-rights-commitments/>

Nepal's Constituent Assembly dissolved without creating a new Constitution for the country

Nepal's Prime Minister Baburam Bhattarai and his Cabinet dissolved the Constituent Assembly (CA) and announced fresh elections in November 2012. The formation of the CA for the first time in the history of Nepal was the key agenda of the people's movement, 2007 that put monarchy to an end by declaring the country as the democratic republic.

Initially the CA was mandated for two years to complete the task of constitution writing but due to the failure of the political parties to promulgate the constitution within stipulated time, the CA amended the interim constitution in the capacity of the legislature parliament and extended the deadline four times. The dissolution of the CA became inevitable as the Supreme Court of Nepal ruled out further extensions. Critics claim that the 601 CA members representing diverse ethnicities and constituencies spawned an identity politics discourse on federalism that obstructed consensus on the re-structuring of the state. It is hoped that the new CA constituted after the fresh elections will be one that overcomes the shortcomings that have plagued the former CA.

Source: <http://www.thehindu.com/news/international/article3463109.ece>
<http://www.nepalnews.com/archive/2012/may/may27/news20.php>

Maldives appoints new Ministry of Gender, Family and Human Rights

President Dr Mohamed Waheed has established a new Ministry of Gender, Family and Human Rights, and appointed Dhiyana Saeed of Goaranvila, S. Hulhudhoo as the Minister. Dhiyana Saeed served as Attorney General and SAARC Secretary General in the previous administration led by Nasheed. However, she expressed her displeasure with the fact that the mandate of the Ministry had been put forward to the Parliament without any discussion with her. She revealed that the government had requested her to take up the office after the notion to establish the new ministry had been submitted to the Parliament.

Source: <http://www.haveeru.com.mv/news/41861>, <http://sun.mv/english/3024>

Beyond Asia

Protests against Turkish PM's proposal to introduce legislation to restrict abortion

In a regressive step, the Turkish Prime Minister Recep Tayyip Erdogan declared plans to introduce a legislation to ban abortions that are not medically necessary and limiting medically necessary abortions to the first eight weeks after conception. This despite the fact that abortions were made legal in Turkey for up to 10 weeks after conception, with emergency abortions allowed for medical reasons after that in 1983. Calling abortions an “insidious plan to reduce Turkey’s population” and as there being “no difference in killing the fetus in a mother’s womb or killing a person after birth”, he also called for limits to caesarean births.

Groups in Turkey have protested against this proposed abortion ban as targeting gender equality, women’s rights over their bodies and sexuality. They have released a petition saying that banning abortion or further limiting the duration and conditions under which it can be performed; is violative of women’s human right to health and life, women’s human right to make decisions about their own sexual and reproductive health and rights, constitutes yet another manifestation of the conservative politics that does not view women as equal individuals.

Source: http://www.nytimes.com/2012/05/30/world/europe/turkish-premier-calls-for-more-abortion-restrictions.html?_r=1

Petition is available at: <http://www.wluml.org/news/turkey-organizations-rally-stop-ban-abortion-prime-minister-erdogan>

Uruguayan court legally recognizes foreign same sex marriage

In a welcome move, for the first time a court in Uruguay has legally recognized same sex marriage conducted between a Uruguayan and a Spaniard in Spain in 2010. The ruling grants the couple, the same rights and responsibilities as heterosexual couples in Uruguay. The case also sets a precedent and exposes the paradox in Uruguayan legal system which recognizes same sex marriages held abroad but non- heterosexual Uruguayans who wish to get married in their own country are not allowed to do so. Gay rights groups have used this opportunity to pressurize the Parliament to pass the Equal Marriage Bill introduced in June 2011. The bill was written by Uruguay’s first trans lawyer who also represented the couple in the case.

Source: <http://www.gaystarnews.com/article/uruguay-recognizes-its-first-foreign-gay-marriage110612>

<http://www.australianmarriageequality.com/wp/2012/06/12/uruguay-recognises-its-first-foreign-gay-marriage/>

German Regional court criminalizes circumcision of young boys in the name of religion

In a controversial move, the Cologne regional court (Landgericht Köln) of Germany ruled that circumcision of young boys is a criminal act, prohibited by law, even if parents have consented to the procedure. The decision is grounded on the reasoning that such circumcisions cause “illegal bodily harm” to the children, and that the child’s right to physical integrity supersedes parents’ rights and the freedom of religion.

The case involved the circumcision of a four-year-old Muslim boy that was performed by a doctor at the parents’ request. However, complications occurred with the operation that resulted in the Cologne public prosecutor bringing suit against the doctor. The district court, hearing the case in the first instance, acquitted the doctor, on the grounds that there was parental consent and that he had performed the procedure as a ritual act based on Islam. The Cologne regional court upheld the lower court’s ruling, but on different grounds; that the doctor had believed he would be acting lawfully, in the context of an unclear legal situation surrounding the practice. While the court held that religious circumcisions in fact are to be deemed illegal because they violate the child’s right to physical integrity and self-determination, it differentiated such acts from instances when a circumcision is medically necessary.

The move has typically sparked angry responses from Jewish and Islamic groups who have criticized the judgment as ‘infringing upon the right to freedom of religion’, defended by others who view this as a step towards regulating religiously motivated violence against children. Women’s groups have condemned the decision as it seeks to project male and female circumcision on the same footing when it is actually not so.

Source: http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403226_text
<http://www.dailymail.co.uk/news/article-2165431/Religious-groups-outraged-German-court-rules-circumcision-amounts-bodily-harm.html>
www.guardian.co.uk/world/2012/jun/27/circumcision-ruling-germany-muslim-jewish

United States Supreme Court upholds the validity of the Affordable Care Act

In a landmark decision the Supreme Court of the United States of America upheld the validity of the [Patient Protection and Affordable Care Act 2010](#). The healthcare law, passed in March 2010, increases women’s access to free preventive healthcare and also bars denial of coverage for pre-existing conditions. Chief Justice Roberts, in the 5-4 majority opinion observed that the “Affordable Care Act’s requirement that certain individuals pay a financial penalty for not obtaining health insurance may reasonably be characterized as a tax. Because the Constitution permits such a tax, it is not our role to forbid it, or to pass upon its wisdom or fairness.” With this Act, access to affordable health care has been broadened, thereby reinforcing a woman’s right to make her own decision in regard to inter alia reproductive health. The judgement can be accessed [here](#)

Source: <http://www.nytimes.com/2012/06/29/us/supreme-court-lets-health-law-largely-stand.html?pagewanted=1>

Argentina becomes the first country in the world to pass a gender identity law

In a promising development, Argentina became the first country to pass the gender identity law which enables people to change their gender on official documents without getting approval from a medical or judicial authority. The law, which was unanimously passed, came into force on 5th June 2012. According to this law, if individuals wish to change their sex, it shall be the duty of the insurance company to provide such individuals with the surgery or hormone therapy at no additional cost. Argentina was also the first Latin-American country to legalise same-sex marriage

In an emotional ceremony, the Argentina's president Cristina Fernandez de Kirchner handed out new identity cards, to several transgender leaders. Co-parenting certificates were also handed out to lesbian couples who started raising children before the Argentinean marriage equality law was passed in 2010. A legal loophole prevented such parents from registering their children. A new presidential decree, which was signed in the beginning of the month, gives such parents a year to register those children as their own.

Source: http://www.huffingtonpost.com/2012/06/05/argentina-gender-identity-law-takes-effect_n_1570830.html

http://www.washingtonpost.com/world/the_americas/argentine-leader-proudly-delivers-new-identity-cards-to-transsexuals-saying-equality-matters/2012/07/02/gJQAAQ7BJW_story.html

<http://www.nytimes.com/2012/05/25/world/americas/transgender-advocates-hail-argentina-law.html>

Op-ed: <http://feministing.com/2012/05/11/friday-feminist-fuck-yeah-argentina-makes-history-with-new-gender-identity-law/>

Video: <http://www.youtube.com/watch?v=lcJR4EHmQvg&feature=youtu.be>

New Zealand allows for separate gender code for trans people in passports without supporting documentation

Following Argentina's example, in a groundbreaking move, New Zealand Passport Office has proposed to change the gender code on the passports for trans people without submission of medical declarations or court papers. Currently trans people can get an X code on Kiwi passports, however that can only be after a Family Court declaration that allows you to change the birth certificate. In turn, that declaration is possible, only if the person has medical evidence showing that they are in transition from one gender to another, such as undergoing hormone replacement therapy, or have had gender reassignment surgery.

Some other countries to have included gender codes for the 'third sex' or separate category for indeterminate sex in their administrative documents are Nepal, India, Australia, Bangladesh, and the UK

Source: <http://transgriot.blogspot.in/2012/07/new-zealand-considering-trans-passport.html>

<http://www.worldpolicy.org/blog/2012/02/01/dividing-three-nepal-recognizes-third-gender>

Colombia upholds the choice of homosexuals to donate blood, while China lifts ban on Lesbians donating blood

In a positive move, the Constitutional Court of Colombia ruled that sexual orientation cannot be a criterion for donating blood. In a decision that came from a 2011 case where the Higuera Escalante testing laboratory in Bucaramanga refused to accept the blood being donated by a gay man, the Court observed that sexual behaviour and not orientation should be the criteria to donate blood. The Court directed the Higuera Escalante testing laboratory to instruct its personnel such that in the future, decisions shall not be made based on sexual orientation.

The Court has also directed the Colombian Ministry of Health to review the rules and regulations on the subject of blood donation with the purpose of eliminating the selection of donors based on sexual orientation as a criteria for qualifying the risk of infectious diseases such as HIV, and consequentially, focusing the regulation precisely toward making inquiries specifically as to risky sexual practices or conduct. Further, the Ministry has been directed to design guidelines, programs, and training plans directed toward health professionals and laboratories on the ways of carrying out surveys and interviews of possible donors, without using sexual orientation as a criteria.

In a somewhat similar case, China's Health Ministry lifted the ban on lesbian blood donation put in place in 1988. The lifetime ban on blood donation however will stand for gay men. Blood donations are an important component of the growing public health system in China and were thrown into the spotlight after the 2008 Sichuan earthquake. It was during this time when Xu, who goes by her nickname Xian, while trying to donate blood, learned about the ban and stated campaigning against it.

As blood screening improves, blood donation restrictions have lessened globally, with several countries instituting deferral periods in place of wholesale bans. In South Africa men are eligible to donate blood if they have not had sex with another man in past six months; In Australia, England, Scotland, Sweden, Japan, and Wales men must wait twelve months after sexual contact with another man, in New Zealand five years. While the lifetime ban on gay male blood remains in the United States the Red Cross, American Association of Blood Banks (AABB) and America's Blood Centers have advocated since 2006 for "deferral criteria for prospective male blood donors who have had sexual contact with another male."

Source: <http://www.gaystarnews.com/article/colombia-courts-say-clinics-cant-stop-gays-donating-blood060612>
<http://www.gaystarnews.com/article/china-lifts-ban-lesbians-giving-blood030712>
<http://edition.cnn.com/2012/07/06/world/asia/china-lesbian-blood-donors/index.html>

Swedish Court acquits man of rape charges, victim was transgender

In a case that may potentially hold legal precedence a district court in Sweden, acquitted the accused of charges of rape on the ground that victim was 'physically a man'. The accused had approached the victim, brutally beat her and ripped off her pants in an attempt to rape her. A witness rushed to the scene and intervened. The police came and arrested the attacker. While the court observed that the accused had attempted to rape the victim, they ruled that it was in fact a woman the man wanted to rape, not a 'physical man'. Although the fact that the

victim had undergone hormone therapy to change gender was considered, the court ruled there was no completed rape. The court however, did convict the accused of assault and battery.

The prosecution has filed an appeal in the Courts of Appeal. The district court Judge has stated that the law, on such situations is unclear and that he looks forward to the judgment of the higher court.

Source: <http://na.se/nyheter/orebro/1.1721191-valdtaktsforsok-blev-misshandel>
http://www.yourversion.com/index.php?p=viewpage&share_id=75933&kz=7faef681ef4a1ad89b08464c0503016202475086&cacheBust=1341350612.0831

National

Judgments/ Orders

Delhi HC holds that consent of Muslim girl is sufficient for a valid marriage under Muslim law, in a marriage of a minor Muslim girl against the wishes of her parents

The Delhi High Court upheld the right of a minor Muslim girl to marry a person of her choice once she has attained puberty. In the present case, a petition of habeas corpus was filed by the minor girl's (15 years and 10 months old) mother alleging that she was kidnapped by a youth, when in fact the girl had eloped to marry a man of her choice. The High Court's bench of Justice S Ravindra Bhat and Justice S P Garg, relying on various judicial precedents rejected the petition and held that "*In view of the above discussion, and also in view of the fact that the girl in this case, Shumaila, clearly expressed her choice of residing with her husband, this Court is of opinion that she ought to be allowed to exercise her option*". While noting that according to Mohammedan Law a girl can marry without the consent of her parents once she attains the age of puberty and that she has the right to reside with her husband even if she is below the age of 18, the court directed the couple and the either of her in-laws to appear before the Child Welfare Committee till she attained the age of 18.

While the focus of the judgment is on consent and choice in marriage, it has revived debates on age of marriage particularly with a view to address marriage of minors under religion based family laws. The need to reform religion based family law, including with respect to age of marriage remains a contentious within law, policy and activism. The judgment can be accessed [here](#).

Source: <http://www.indianexpress.com/news/muslim-girl-can-marry-at-15-if-she-attains-puberty-hc/958171/>

Op-Ed: <http://kafila.org/2012/06/12/consent-age-and-agency-reflections-on-the-recent-delhi-high-court-judgement-on-minors-and-marriage-flavia-agnes/>

Orissa HC directs the state government to take prompt action against increasing cases of witch hunting

In response to a PIL seeking directions to check the practice of targeting women as witches, the Orissa High Court, , has directed the State government to introduce a bill to 'tackle the

menace of witch hunting’ in the state of Orissa. A petition was filed by social activist, Sashiprava Bindhani inter alia praying for direction to the State Government for ‘framing guidelines to deal with the cases of witch-hunting and to protect women from such hunting till legislation is framed in this regard’. While taking note of the allegations, the Court also directed the state government to build awareness at the gram panchayat level, organize health camps to detect psychological disorder which may lead to a person being branded as a witch and record statements of witnesses in accordance with law in order to avoid them turning hostile.

While the protection gaps on violence against women targeted as witches need urgent attention, there is a need for legal interventions to be grounded in a multi state evidence based understanding of the practice. The trend of seeking instant remedies based on news reports alone, without developing a full understanding of the specific gender based violations that are reported in at least 17 states in India leads to tokenistic and partial remedies. Recourse to ‘strong’ laws and hasty judicial interventions may in fact be counterproductive to holistic responses to women targeted as witches.

Source:http://www.telegraphindia.com/1120518/jsp/odisha/story_15499452.jsp#.T-BgCBdzUZo

Op-ed:<http://kractivist.wordpress.com/2012/05/18/orissa-high-court-for-law-to-check-witch-hunting-cases/>

SC ‘grants bail’ to paraplegic victim of custodial sexual abuse on grounds of dignity

Supreme Court granted interim bail to a victim of custodial sexual torture, who had been named an accused in a counter case filed by the Jaipur police. The Court observed that the victim was a ‘living corpse and she deserved dignity and not custody’. This order, comes after much struggle by the victim, who became 80% paraplegic, after attempting suicide following custodial sexual abuse.

Earlier in the case, the Judicial Magistrate, taking cognizance of the offence of kidnapping, had sent the victim to jail early this year. The Additional Judicial Magistrate had denied the victim bail on the ground that her pulse and blood pressure were normal.

The victim’s nightmare had started when she had been brought into the Pratab Nagar police station in Jaipur for questioning in an alleged kidnapping and sexual abuse case in 2011. While her father waited outside the police station, the victim was beaten and sexually assaulted by a constable. Pursuant to such brutality, the victim attempted suicide by jumping in front of a moving train. Though she survived, her spinal cord was damaged which had left her a paraplegic. The 3 policemen accused of the custodial sexual abuse, after much protest and uproar by activists, were arrested and sent to jail. Their bail applications were rejected. However, in a shocking turn of events, the police, thereafter, implicated the victim in the kidnapping case, for which she had been brought in for questioning, and arrested her on 29th February 2012. She had been in police custody since.

The Press Release by the Petitioner can be accessed [here](#)

Sources: <http://www.thehindu.com/news/states/other-states/article3374768.ece>

Pinki Pramanik's case exposes protection gaps for gender non-conforming and intersex persons

Pinki Pramanik, India's female gold medalist at the 2006 Asian Games, was arrested on charges of habitual rape and assault by a woman claiming to be her live-in girlfriend, who further alleged that Pinki was in fact male. The legal process following her arrest brought into sharp relief the interplay of legal and social prejudice related to gender non conforming persons and their vulnerability to violations by the legal process. With no legal precedent to guide pre trial procedures, the police and the media enacted a public spectacle that compromised Pinki's dignity and civil liberties at every step. As rape provision is applicable against men only, the police took upon itself the job of ascertaining Pinki's sex, subjecting her to a series of sex verification medical examinations, while lodging her in a male prison for 25 days; she was handled by male police – with photographic evidence of a police man groping her breast. A secretly taken MMS of Pinki's medical examination was posted on the internet, and details of her inconclusive chromosomal tests made public on a daily basis.

While this case threw up the fragility of legal protections available to intersex and gender non conforming accused - it also brought out uncertainty of human rights responses necessary for a case such as this: Was an independent intervention seeking accountability for civil liberties violations possible in a situation where Pinki declined support offered by queer rights groups? Was the absence of precedent in conducting 'gender' determination as part of medico forensic investigation for rape sufficient to challenge executive action, and seek judicial opinion on the matter? Can Pinki be lodged in a male jail when her official status remains that of a woman and there is no judicial view to the contrary? Can activists publicly protest the violations arising from sexual orientation and gender identity standpoint, when Pinki's defence is compromised by any such association?

With protests by some sections of the civil society and media, and a petition filed against the humiliation and harassment of Pinki Pramanik, the Calcutta High Court directed the West Bengal government to file an affidavit in response to the allegations. The Court also directed the State to produce the case diary on the next date of hearing. Following this, Pinki has been granted bail. Her medical reports continue to be made public however.

Sources:

<http://tribune.com.pk/story/394227/indian-female-athlete-in-gender-row-after-rape-arrest/>

<http://www.thehindu.com/news/national/article3609826.ece>

<http://www.thehindu.com/news/national/article3623730.ece>

<http://www.thehindu.com/news/national/article3626771.ece?homepage=true>

Op-ed: <http://www.thehindu.com/opinion/editorial/article3602997.ece>

[http://www.timescrest.com/society/male-female-and-the-third-option-](http://www.timescrest.com/society/male-female-and-the-third-option-8164?fb_action_ids=10150983955289820&fb_action_types=og.likes&fb_source=timeline_o)

[8164?fb_action_ids=10150983955289820&fb_action_types=og.likes&fb_source=timeline_o](http://www.timescrest.com/society/male-female-and-the-third-option-8164?fb_action_ids=10150983955289820&fb_action_types=og.likes&fb_source=timeline_o)

[g](http://www.timescrest.com/society/male-female-and-the-third-option-8164?fb_action_ids=10150983955289820&fb_action_types=og.likes&fb_source=timeline_o)

http://articles.timesofindia.indiatimes.com/2012-07-09/edit-page/32589114_1_gender-identity-pinki-pramanik-gender-test

News

India's 2nd UPR highlights of GoI's apathetic approach to human rights challenges

India was reviewed for the second time under the Universal Periodic Review process conducted by the HRC on 24 May 2012. India's attorney general, GE Vahanvati, who led India's official delegation to Geneva, acknowledged in the opening statement of his presentation that India continued to face challenges in meeting its human-rights obligations. He also added that with this, India also had the "ability to self correct and has redressal mechanisms available". Civil society groups have expressed disappointment at the Indian governments 'general lack of acceptance of human rights challenges in the country and a mere reiteration of domestic laws, policies and Constitutional provisions by the Government of India (GoI)'. The press release issued by the Working Group on Human Rights in India and the UNN (WGHR), which was active in the UPR process noted that the answers of the government did not address critical issues related to gaps in implementation of laws and enjoyment of rights.

80 countries participated in India's Second UPR and made a total of 169 recommendations. Some of the major recommendations made to India included: that India ratify the UN Convention against Torture and the UN Convention on Enforced Disappearances; repeal the Armed Forces Special Powers Act (AFSPA); adopt the Prevention of Communal and Targeted Violence Bill; enact comprehensive reforms to address sexual violence and all acts of violence against women; improve human rights training of police officers; consider abolishing the death penalty; ban all forms of child labour; strengthen efforts towards addressing maternal and child mortality; strengthen efforts to combat trafficking; and address the inequities based on the rural-urban divide.

Draft Report of the Human Rights Council

http://www.wghr.org/pdf/A_HRC_WG.6_13_L.8_India.pdf

Press release on UPR: www.thehindu.com/news/national/article3449886

www.indianexpress.com/news/search-me/953003/0

<http://www.thenational.ae/news/world/south-asia/indias-human-rights-submission-is-disappointing-says-working-groups>

WGHR Press Release: <http://www.wghr.org/pdf/Post-UPR%20Press%20Release.pdf>

http://www.wghr.org/pdf/WGHR%20Press%20Release_01.06.12_final.pdf

Justice Dalveer Bhandari becomes first Indian as ICJ Judge in 20 years

In recognition of his contribution to the Indian legal system, Justice Dalveer Bhandari of Supreme Court of India has been appointed as a Judge at the International Court of Justice. He became the first Indian to be appointed to the ICJ panel in more than 20 years.

The press release by the General Assembly can be accessed [here](#)

The by the ICJ can be accessed [here](#).

Source: <http://www.thehindu.com/news/national/article3361739.ece>

Parliament passes the Protection of Children from Sexual Offences Bill, 2012

The Parliament has passed the controversial Protection of Children from Sexual Offences Bill, 2012. The Bill, though highly welcomed, has created a lot of stir among child rights, women's rights and human rights groups for increasing the statutory age of consent to 18 years, thereby making it an offence for anyone below the age of 18 indulging in any form of consensual sexual activity. Such a provision disregards sexuality of young persons, besides facilitating harassment and moral policing of young couples between the ages of 16 to 18 years. In a context where families are known to misuse the law to punish and obstruct adult offspring from the exercise of choice in marriages and intimate relationships, the dangers of the new law are all too evident to be ignored. The law creates a new offence of 'culpable intention' that potentially strikes agencies and persons, including NGO's and family members who hesitate to report a child sexual abuse case to the police .

Despite its severity, the law remains silent on the issue of marital rape in marriages of minors. By implication therefore, the Indian Penal Code (IPC) shall continue to apply to marital rape, which views marital rape of minor wife as an offence only when the wife is below 15 years. The bill is widely critiqued as being moralistic rather than helpful and enabling redress for children and young persons from sexual abuse.

‘What is required is to address behaviour among young people in various appropriate ways and break the silence around intimacy and sexuality. Otherwise the law would only be misused to criminalise a natural process of growing up.’

The draft bill can be accessed [here](#).

Sources: http://www.telegraphindia.com/1120523/jsp/nation/story_15521691.jsp#.T-fvTxcS0hE

<http://www.thehindu.com/news/national/article3447054.ece>

Op-ed: <http://www.thehindu.com/opinion/editorial/article3456804.ece>

RESOURCES

‘Gujarat’s Internally Displaced: Ten Years Later’: Janvikas

Janvikas, has published a survey on Gujarat’s internally displaced peoples colonies based on information collected from an extensive research. While over 200,000 people were displaced during the 2002 violence in Gujarat, over 16,000 people are still living in 83 refugee camps. The survey tracks their conditions, 10 years after the riots.

The survey is available at http://janvikas.in/download/Status_report_IDPs.pdf

Gender Report Card 2011: International Criminal Court

Women’s Initiative for Gender Justice released its seventh report titled ‘Gender Report Card’ for the year 2011. The report assesses ‘the implementation by the International Criminal Court (ICC) of the Rome Statute, Rules of Procedure and Evidence (RPE) and Elements of

Crimes (EoC) and in particular the gender mandates they embody, in the nine years since the Rome Statute came into force’.

The Report is available at <http://www.iccwomen.org/documents/Gender-Report-Card-on-the-International-Criminal-Court-2011.pdf>

Catalogue on Human Rights and Gender Identity: ILGA-Europe and TGEU

As a follow up to the Council of Europe Commissioner for Human Rights, Thomas Hammarberg’s issue paper (which can be accessed [here](#)), ILGA-Europe and TGEU have published a best practice catalogue on Human Rights and Gender Identity, presenting ‘a number of policy, legal and practical inspirations from countries in Europe and beyond’ on how the recommendations as provided in the issue paper could be implemented.

The catalogue can be downloaded from:

http://www.tgeu.org/best_practice_catalogue_human_rights_gender_identity

Thematic report on discrimination against trans and intersex people on the grounds of sex, gender identity and gender expression: European Commission

The European Commission has published a report titled ‘Trans and Intersex people: Discrimination on the grounds of sex, gender identity and gender expression’. The report addresses complex issues related to discrimination on the grounds of gender identity and gender expression, as well as discrimination on grounds of sex vis-à-vis intersex people. This study highlights the obstacles and negative attitudes faced by the trans community and the difficulties with regard to legal recognition and rights. The report also extensively examines the influence of EU law, including case law, on trans discrimination and provides case studies of national legislation and case-law on gender identity and gender expression discrimination of some Member States where there are promising approaches which can and should serve as models for others to follow.

The report can be viewed at:

http://ec.europa.eu/justice/discrimination/files/trans_and_intersex_people_web3_en.pdf

‘Strengthening the United Nations Human Rights Treaty Body system’: Report by the UN High Commission for Human Rights

The UN High Commission for Human Rights has released a report titled ‘Strengthening the United Nations Human Rights Treaty Body system’ inter alia addressing recommendations to stakeholders, namely treaty bodies, States parties, national human rights institutions, civil society and United Nations entities. Each of the recommendations provided in the report, though is implementable independently, if taken together ‘would be mutually reinforcing and thus would have much greater impact’.

The report is available at:

<http://www2.ohchr.org/english/bodies/HRTD/docs/HCTBReportTBStrengthening.pdf>

EVENTS

North-East and North and West Region Consultation on Violations Relating to Women Targeted as Witches: PLD and NCW

In continuation to the regional consultations on violations relating to women targeted as witches, PLD organised two more for the North East and North and West region. The North East region was co-organised by North East Network (NEN) on 1st June 2012 at Guwahati, Assam. It was attended by the states of Assam, Meghalaya, Tripura, Manipur, Arunachal Pradesh, Nagaland and Sikkim. The North and West Region consultation was held in Ajmer, Rajasthan on 29th June and was co-organised by Mahila Jan Adhikar Samiti (MJAS). Participants included states of Rajasthan, Gujarat, Maharashtra, Uttar Pradesh, Himachal Pradesh and Uttarakhand.

The Consultations, supported by the National Commission for Women, were held to map prevalence and practices and new trends of witch hunting.

Tara Ahluwalia, a prominent activist, and working on the issue of witch hunting for 2 decades, released her study on witch hunting in Bhilwara, Rajasthan at the North and West Region consultation in Ajmer.

The study can be accessed at: <http://jagori.org/wp-content/uploads/2007/02/dyan-report.pdf>

Third anniversary of the Delhi High Court judgment decriminalizing homosexuality celebrated

The third anniversary of the landmark Delhi High Court judgment reading down Section 377 of IPC was celebrated at India Gate with a Candle Light Vigil. Over 70 people had gathered for the vigil. The judgement, pronounced on 2nd July 2009, marked a historic victory for queer rights activists, ending an eight year old legal battle for gay rights. The case is now at the Supreme Court.

A tribute to an icon democracy and independence of judiciary: Justice H.R. Khanna Centenary Memorial Lecture

Recognised for his sole dissenting opinion in a 5 judge bench of the Supreme Court, Justice Khanna upheld the right to life, including the remedy of habeas corpus to illegal detainees during the emergency in the *Habeas Corpus case* (1976), that eventually cost him elevation to the post of chief justice. The Justice H.R. Khanna Centenary Memorial Lecture held on 4th July in New Delhi commemorated his iconic contribution through continuing discussion on the contemporary challenges to democracy and judicial independence. The discussion, 'Independent Judiciary and Responsible Media: Twin Pillars of Democracy', was presided by former Attorney General of India, Mr. Soli Sorabjee. The panel for the discussion consisted of Mr. Justice J.S. Verma, former Chief Justice of India and MR. B.G. Verghese, Senior Journalist.

‘State of Human Rights in India’: Side event and book release at the UPR Working Group, Geneva

The side event to the 13th Session of the UPR Working Group, a panel discussion on the state of human rights in India was organised by WGHR and was held at Geneva on 21st May 2012. The panel presented some of the major human rights challenges faced by people and communities in India. The discussion covered issues ranging from critical human rights themes and obstacles in implementation of existing laws and policies to constructive recommendations.

During the event, a new comprehensive report on the state of human rights in India, specially prepared by WGHR as a reference document for India's second UPR, was launched.

To download the report: <http://www.wghr.org/pdf/Status%20report%2023.05%20version.pdf>

To view the Side event details:

<http://www.wghr.org/pdf/WGHR%20Side%20Event%20to%20Indias%20UPR%20in%20Geneva.pdf>

LABIA and RCWS released 14th issue of SCRIPTS

LABIA, Lesbians and Bisexuals in Action, in collaboration with Research Centre for Women's studies (RCWS), released the 14th issue of SCRIPTS, the annual magazine on 30th June at Mumbai. The highlight of the evening, though, was the LGBTQIHKP food counters, à la carte narrations/recitations and the premier of Vani Subramanian's film 'STIR. FRY. SIMMER'.

FORTHCOMING EVENTS

Workshop on identity of Muslim Women, 12-14 July, Mumbai: Aawaaz-e-Niswaan

Aawaaz-e-Niswaan, a feminist group working on issues of Muslim women will be holding a 3 days training program from 12th July to 14th July at Mumbai. The program will be conducted in hindi and will deal with the complexities of the 'Muslim identity in Secular India'. It aims at covering issues such as fundamentalism, religious impositions, communalism and right over one's own body.

For further information, contact niswaan@gmail.com.

Sex Worker Freedom Festival 21-26 July: Alternative International AIDS Conference in Kolkata

Since a travel restriction imposed by the US government does not allow sex workers to travel to US, Durbar Mahila Samanwaya Committee (DMSC) and the Global Network for Sex Work Projects (GNSWP) are organising the Alternative International AIDS Conference in

Kolkata. The conference, called the ‘Sex Worker Freedom Festival’, is being held from 21st July to 26th July.

US’s strident refusal to let sex workers enter the country as per their stated visa policy forced DMSC and GNSWP to organise this conference. The original event, a biannual conference, the International AIDS Conference is being held in Washington DC.

Though as per the US Immigration and Nationality Act, anyone engaged in prostitution within the last 10 years, is not eligible for a visa, the same can be waived in certain conditions. However, the authorities refused to consider this conference an exception, rendering most of the delegates ineligible for a visa.

The US, one of the largest donors for HIV/AIDS programmes, has a clear policy not to work with prostitutes — in contrast to India where the NACO emphasises the importance of involving sex workers for HIV/AIDS initiatives.

Source: <http://www.indianexpress.com/news/denied-visa-by-us-sex-workers-to-hold-parallel-meet-at-kolkata/971985/0>

More information on the event is available at: <http://www.nswp.org/page/iac-2012-kolkata>

AALI releases two publications in Delhi: 20 July

AALI, Association for Advocacy and Legal Initiatives, is releasing two of its latest publications on 20th July in Delhi. The two releases are, ‘Legal Compendium on the Right to Choice and Decision-making in a Relationship’ and ‘Control and Freedom: Women and the Age of Sexual Decisions’, which is an analysis on the age of consent.

Obituary

Writer and activist Cassandra Balchin passes away

Cassandra Balchin, freelance journalist, researcher, writer and human-rights advocate, passed away in London on 12th July 2012. Her life and work are defined by her passionate commitment to advancing women’s rights. She made a significant contribution towards challenging relativist discourses that justify inequality in Muslim family law, and co-founded several organisations dedicated towards the same: Women Living Under Muslim Laws (WLUML), Musawah, Muslim Women’s Network-UK. Cassandra’s research and writing had mostly focused on Muslim family laws and law-reform processes, and more recently on critiques of international development policy and practice regarding religion. Cassandra’s untimely death leaves a void in activism and sisterhood in Asia and beyond.

Condolence messages may be sent to Cass.Friends@gmail.com.