

# Bi-Monthly Legal News

## Partners For Law In Development, Issue XI, October 2009

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# **INTERNATIONAL**

## **UPDATES FROM THE UN**

### **UN General Assembly approves new agency for women**

United Nations General Assembly has adopted a historic resolution aimed at creating a new U.N. agency for women. The agency will be a separate powerful body and will deal exclusively with gender-related activities. At present, there are four existing women's U.N. entities in the world body: 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). However, none of them is as politically powerful and financially stable as full-fledged U.N. agencies. The resolution will consolidate these four bodies into a composite entity headed by an under-secretary-general (USG). The new agency will have the potential to streamline decision-making and programming related to women's rights under one overarching agency. Women's groups all over the world have welcomed the resolution as "a great victory for women's rights".

Source: [www.ipsnews.net](http://www.ipsnews.net)

### **Ms. Rashida Manjoo appointed the new UN SRVAW**

The term of the former Special Rapporteur on violence against women, its causes and consequences, Dr. Yakin Ertürk, came to an end in July 2009. Ms Rashida Manjoo from South Africa has been appointed as the new UNSRVAW. The Special Rapporteur investigates and reports to the Human Rights Council on violence against women, makes recommendations to eliminate violations and suggests measures to remedy its consequences. While ending her mandate, Dr. Ertürk, described the establishment of the mandate as a milestone in history, which at one level monitored violations against women, at another, mobilised women around the world and gave them support to break the silence on violence.

Source: <http://www.ohchr.org/EN/NewsEvents/Pages/ViolenceWomen.aspx>

### **Farida Shaheed appointed the Independent Expert on Cultural Rights**

In March 2009, the Human Rights Council created a new mandate of the UN Independent Representative on Protection and Promotion of Cultural Rights. The mandate involves working with States to foster multi-level measures, examining ways of overcoming existing/emerging obstacles, identifying gaps and undertaking studies to clarify the content and scope of cultural rights. On October 2, the Human Rights Council appointed Ms. Farida Shaheed from Pakistan as the Independent Expert on Protection and Promotion of Cultural Rights. Ms. Shaheed is known for her outstanding work in the area of women's human rights in relation to culture, and women's groups widely welcome her appointment.

Source: <http://www.un.org/apps/news/story.asp?NewsID=32407&Cr=palestin&Cr1=>

## **UN Security Council expands criteria of violations against children during conflict**

In August, The UN Security Council adopted Resolution 1882 for compliance and progress in ending six grave violations against children during conflict: the recruitment and use of children; killing and maiming of children; rape and other grave sexual violence; abductions; attacks on schools and hospitals; and denial of humanitarian access to children. The Resolution calls upon Member States to take decisive and immediate action against persistent perpetrators and to bring those responsible for violations prohibited under applicable international law before national or international justice systems. The Council also requested enhanced communication between the Working Group on Children and Armed Conflict with the relevant Council sanctions committees.

In June, the UN Department of Peacekeeping Operations (DPKO) had adopted the Child Protection Policy, adopted by which responds to the call for greater mainstreaming of child protection across the UN system by ensuring the presence of child protection advisers in the field, training and advocacy, and a lead role for peace operations in monitoring for resolution 1612.

Text of the Resolution:

<http://www.un.org/apps/news/story.asp?NewsID=31674&Cr=child+soldiers&Cr1>

## **INTERNATIONAL NEWS**

### **Aung San Suu Kyi convicted**

The Court in Myanmar found Aung San Suu Kyi guilty of violating the terms of the house arrest under which she has already been held for 14 of the last 20 years and sentenced her to three years of hard labour, but her sentence was commuted to a new term under house arrest of up to 18 months. Her latest six-year term of house arrest expired in mid-May and thus the trial has been condemned as a strategy to keep her in detention to prevent her from contesting in the parliamentary election scheduled in Myanmar for next year. She was put on trial after an American intruder stayed at her house in May.

Source: <http://www.nytimes.com/2009/08/12/world/asia/12myanmar.html>

### **Afghanistan President passes law limiting women's rights**

The President of Afghanistan, Hamid Karzai passed an act that severely limits the rights of women by reinforcing gender roles. The law allows Shia men to deny their wives food and sustenance if they refuse to obey their husbands' sexual demands and gives the police a free hand to use any means to ensure that married women perform their sexual duties. The legislation also grants guardianship of children exclusively to their fathers and grandfathers, and requires women to get permission from their husbands to work. Islamic law experts and human rights activists say that although the language of the original law has been changed due to international pressure, many of the provisions are still repressive, for example the law calls for fulfillment of sexual duties by women in the name of granting men their 'Shariat rights'.

Source: <http://www.abcnews.go.com/International/Story?id=8327666&page=1>

## **Philippines President signs the Magna Carta of Women into law**

President of Philippines signed into law Republic Act 9710 (the Magna Carta of Women) that seeks to eliminate discrimination against women by recognising, protecting, fulfilling and promoting the rights of Philippino women in all spheres of society. The Magna Carta of Women contains provisions which promote women's rights, including the right to non-discrimination. The law defines discrimination against women as "any gender-based distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." The law aims at substantive equality between men and women as alongwith equal opportunities it also ensure women have equal access to resources and to positive outcomes of development initiatives. The Act, significantly, states that the rights of women would be drawn from international treaties signed by Philippines. It covers equal rights in all matters relating to marriage and family relations, including the right to choose the number and spacing of their children; as well as equality in the sphere of public life, work and citizenship. However, the rights stipulated under it remain contingent on the provisioning of State policies.

Direct Link to the Magna Carta:

[http://www.congress.gov.ph/download/billtext\\_14/hbt04273.pdf](http://www.congress.gov.ph/download/billtext_14/hbt04273.pdf)

Source:

<http://newsinfo.inquirer.net/breakingnews/nation/view/20090814-220278/Arroyo-signs-Magna-Carta-for-women>

## **Bangladesh High Court directs law enforcing agencies, Union Parishads and Paurashavas to take immediate measures to stop extra judicial penalties delivered by the Shalish**

Responding to a writ petition, the Bangladesh High Court has issued a Rule Nisi on the Government and the Inspector General of Police. The court stated that the writ petition filed jointly by the Bangladesh Legal Aid and Services Trust (BLAST), Bangladesh Mahila Parishad, Ain-o-Salish Kendra (ASK), BRAC and Nijera Kori brought to its notice that a section of people across the country have been imposing punishments by beating and lashing during the course of rural 'shalish', often in the presence of or with the active participation of Members or Chairmen of Union Parishads and the imposition of such punishments not being permitted by the Constitution nor by any law. The petitioners challenged the failure of the Government to prevent the imposition of such extra-judicial penalties, or to provide information to the public that such penalties are wholly without lawful authority. They sought urgent preventive measures as well as information to be issued to the public and to concerned bodies regarding their duties to prevent such incidents.

Source:<http://news.bbc.co.uk:80/2/hi/africa/8223736.stm>

## **President Refuses returns Women Rights Bill in Mali in the wake of protests by fundamentalist groups**

The President of Mali refused to give his assent to the Women Rights Bill and returned it to the Parliament for consideration for 'the sake of national unity'. Muslim groups have been protesting against the law, as it gives greater rights to women. For example, the proposed law does not require women to obey their husbands, instead it defines marriage as a secular institution where husbands and wives owe each other loyalty and protection. The law provides women with inheritance rights, stipulates 18 years as the minimum age for girls to marry. The passing of the bill by the Parliament led to angry protests by Muslim groups that considered the law against Islam. This was cited as the reason by the President for sending the bill back to the Parliament for review. Women's groups have been greatly disappointed as they had been pushing the bill for the past ten years.

Source: <http://news.bbc.co.uk:80/2/hi/africa/8223736.stm>

## **Solomon Islands Parliament Strides Towards Gender Equality in Sexual Assault Law**

Solomon Islands Parliament has changed four legal practices in its Evidence Act 2009 making it gender sensitive. The changes also remove obstacles to successfully prosecuting offenders in sexual assault cases. The Act removed the corroboration rule which required evidence to corroborate women's testimony of sexual assault. This was based on the belief that women almost always lie about sexual matters. Secondly, the Act also prevents courts from inferring that a woman who delayed reporting sexual assault would be lying. Thirdly, the Act requires judicial permission before the women could be questioned on their past sexual history. Finally, in order to protect the victim and witnesses, the Act permits them to testify using modern technology.

Source: <http://apww.isiswomen.org/list/archive/msg00681.html>

# **NATIONAL**

## **NATIONAL NEWS**

### **The Right to Education Bill passed**

On July 21, the Parliament passed 'The Right of Children to Free and Compulsory Education Bill, 2009,' which envisages free and compulsory education to children in the age-group of 6-14. The Act ensures every child, the right to education, and the obligation of the government to impart it. The Act gives each child the right to free, compulsory and quality education by qualified teachers to be appointed by an academic committee. The Act proposes to ban capitation fees, admission interviews and private tuition. Upto the elementary level, education would be provided in the mother tongue of the child. It also fixed responsibility on schools to reserve at least 25% of their seats for children from the weaker and disadvantaged sections. The act is a significant step towards fulfillment of disability rights in India as disabled children have for the first time been included within the category of the 'weaker and disadvantaged sections'. Further the act makes it mandatory for all states to integrate the differently abled into the school systems.

Source:

<http://www.thehindu.com/2009/08/05/stories/2009080558780100.htm><http://ibnlive.in.com/news/education-bill-to-benefit-disabled-children-says-sibal/98575-3.html>

## **National Mission for Female Literacy launched**

The National Mission for Female Literacy was launched by the Prime Minister on the eve of International Literacy Day. The mission, earlier called the National Literacy Mission, aims to make all women functionally literate by 2012. The mission is part of the commitment made by the President (in her address to the joint session of Parliament on June 4) to promote gender equality in the country.

The Hindu, September 9

## **NCW seeks amendment to Prohibition of Indecent Representation of Women and Children Act 1986**

The NCW has sought an amendment in the Prohibition of Indecent Representation of Women and Children Act 1986. The proposed amendment includes the extension of the applicability of the Act to the visual media and the computer, including internet and satellite related communication as well as incorporating more stringent punishment for its violation. The proposal also calls for a redefinition of terms as 'advertising and electronic media'. According to the Chairperson of the Commission, the definition of indecent representation of woman would include 'the depiction in any manner of the figure of a woman, her form, her body or any part thereof in such a way as to have the effect of being indecent, derogatory or denigrating'.

The commission has also demanded that the Centre set up an authority to govern and regulate the manner in which the women are represented in any document, published, broadcast or telecast. The Authority would be headed by member secretary, NCW and should have representatives from Advertising Standards Council of India, Press Council of India, Ministry of Information and Broadcasting and a member experienced in working on women's issues.

The Hindu, September 7

## **NCW launches NRI Cell for married women**

The National Commission launched a special cell to deal with issues of women married to non residential Indians (NRI), on 24 September. The cell called the NRI cell will function under the chairperson of the NCW, has been set up to address the growing cases of desertion of wives by NRI men.

## **LEGAL DEVELOPMENTS**

### **Muslim woman wins right to alimony under Muslim Women (Protection of Rights on Divorce) Act, 1986**

The Delhi High Court granted Rs. 9 lakh in maintenance along with money worth 20 tolas of gold to a Muslim woman from her ex-husband under the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Act was enacted in May 1986 in the wake of the Shah Bano judgment with the aim of barring divorced Muslim women from claiming maintenance from ex-husbands under the Criminal Procedure Code. Despite enactment, it remains relatively less known and used, and many maintenance claims by divorced Muslim women continue to be filed under the Cr.P.C. In this case, not only was the 1986 Act used but it was applied in such a manner as to grant substantial alimony to the wife. The judgment held that the alimony to a divorced wife was not confined to the period of Iddat (the waiting period following the divorce within which a woman cannot remarry) under the Act, and a Muslim husband was legally bound to make provisions for the woman.

Source: <http://www.indianexpress.com/story-print/520469/>

### **High Court allows same gender adoption prohibited by Hindu Law**

In a landmark judgment, the Bombay High Court has ruled that Hindu parents would be allowed same gender adoptions even if the Hindu adoption law prohibits it. The verdict sought to harmonise the personal laws with secular legislation. In arriving at this verdict the Court drew upon the Juvenile Justice (Care and Protection of Children) Act of 2000 that enables rehabilitation of abandoned children through adoption, and held that its principles would prevail over the Hindu Adoption and Maintenance Act. The Hindu Personal law places stringent conditions and prohibits adoption of a child of the same gender where an adoptive father or mother already have a child living at that time. For example, if the adoption is of a daughter the adoptive parent must not have a Hindu daughter or a son's daughter living at the time of adoption. Similarly, while adopting a son, the adoptive parents must not have a Hindu son, a grandson or even a great-grandson alive. The Juvenile Justice Act, which was enacted in the year 2000, is vastly progressive as it provides a wider platform for the adoption of abandoned and destitute children.

Source: Times of India, September 22

### **Supreme Court grants reproductive rights to women with mental illnesses**

The Supreme Court has ordered that abortion cannot be performed without the consent of the woman even if she is 'mentally retarded' and not in a position to understand the consequences. The bench held that medical termination of pregnancy cannot be done on an adult woman without her consent even if she suffered from retardation. Performance of abortion without such a woman's consent would amount to a violation of 'equal protection before the law' as laid down in Article 14 of the Constitution. The Court also held that a woman's right to make reproductive choice was a dimension of 'personal liberty' as understood under Article 21. Thus, the state has to guarantee a woman her reproductive rights, which includes an entitlement to carry a pregnancy to its full term to give birth and to subsequently raise children.

Source: <http://www.thehindu.com/2009/08/30/stories/2009083060191100.htm>

## **Law Commission calls for a review of the Christian Divorce Act**

Law Commission Chairman, has asked the Central Government to review the 150-year old Christian divorce law stating, that Section 2 of the Divorce Act is not only not in tune with the present times but is also harsh upon Christian women in India. A Christian woman, according to the Christian divorce law, cannot file a petition before a court seeking divorce if her husband is not an Indian citizen. The law requires both parties to the divorce to be Indian citizens. The report demands that Indian courts be allowed to entertain such petitions where either of the parties have their residence in India.

Source: <http://in.christiantoday.com/articles/law-commission-wants-christian-divorce-law-to-be-amended/4541.htm>

## **Dowry Laws to apply in cases of co-habitation**

The Supreme Court dowry laws and anti-cruelty laws would apply to any man who lives, co-habits and exercises the 'authority' of a husband over any woman whether they are legally married or not. It has been generally observed that in cases in which dowry harassment has been alleged or a dowry death has occurred; men try to get off by claiming that they are not legally married to the woman.

Source: <http://dgroups.org/ViewDiscussion.aspx?c=88241b94-6078-4f5d-8712-a3b0b8eda0c8&i=f7eb12da-e21d-41c6-8cac-f43cca2c7470>

# **RESOURCES**

## **Compilation of Torture Laws - The Association for the Prevention of Torture**

The Association for the Prevention of Torture (APT) has developed a research tool, *Compilation of Torture Laws* that focuses on issues related to the criminalisation of torture, this tool compiles national laws of State Parties to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). The Compilation gives an overview of national laws of each State Party, such as Constitutions, Penal Codes, Criminal Procedure Codes, Anti-Torture Acts or other relevant laws. The document is accessible at [www.apr.ch/laws](http://www.apr.ch/laws)

## **Defending the Rights of Indigenous Women in Asia Pacific: Towards an Inclusive and Violence-free Future: APWLD**

APWLD has released its report on *Defending the Rights of Indigenous Women in Asia Pacific: Towards an Inclusive and Violence-free Future*. The report is the summary report of the Asia Pacific NGO Consultation with the United States Rapporteur on Violence Against Women, Its Causes and Consequences (UNSRVAW), Yakin Ertuk and the Special Rapporteur on Situation of Human Rights



and Fundamental Freedoms of Indigenous People (UNSRIP), S James Ananya. The Consultation was held on 15-16 October, 2008 in New Delhi. The report is available at [www.apwld.org](http://www.apwld.org)

## **The Right that Dares to speak its Name- A Primer on the Naz Foundation Case Decision: Alternate Law Forum**

Alternate Law Forum has produced a primer to explain the key aspects of the Delhi High Court judgment that read down section 377 of the IPC, to exclude consensual same sex sexual relations from its purview. It also contains a selected articles and commentaries that came in the wake of the judgment. Copies are available at ALF. For more details and to download a copy please visit: <http://www.altlawforum.org/announcement-of-new-publication-the-right-that-dares-to-speak-its-name>

## **Trade Union Protections for Sex Workers- Karnataka Sex Workers Union**

Karnataka Sex Workers Union has released a report, *Trade Union Protections for Sex Workers*. The report shares insights from a meeting held from January 30 to February 1, 2009 in Belém, Brazil, in conjunction with the World Social Forum. The report attempts at developing a common agenda with trade unions, grounded in the understanding that 'sex work is work'. It also defines strategies to mainstream sex workers within larger labour movements to help combat stigma and police violence, and lobby for legal change.

## **EVENTS**

### **South Asia Inter Governmental Peer Learning: Reporting and Implementation of CEDAW held from 26-28 August**

The Ministry of Women, Children and Social Welfare, Government of Nepal and UNIFEM, jointly hosted the South Asia Inter Governmental Peer Learning: Reporting and Implementation on CEDAW from 26-28 August 2009 in Kathmandu, Nepal. The workshop was attended by inter-ministerial government delegations from all SAARC Member States. The Member States drafted and agreed upon regional and national plans to continue the process of peer learning as a mechanism to advance compliance with CEDAW. Technical assistance to the workshop was provided by Partners for Law in Development along with a resource team of 3 current and previous CEDAW Committee members.

### **Government of India and UNIFEM organize IV Regional Workshop for State Governments on CEDAW Reporting and Implementation of CEDAW**

As part of its commitment to implement concluding observations in India by the CEDAW Committee, Ministry of Women and Child Development, Government of India and UNIFEM held the IV Regional Workshop for State Governments on CEDAW Reporting and Implementation of CEDAW from the 22-23 September 2009 for government officials from the Western Region states. The workshops for the Northern, Southern and Eastern and North Eastern Regions have already been held. In the first day of the workshop, the participants were oriented on CEDAW and its underpinning concepts, reporting obligations and concluding observations. The second day, focused on Gender Budgeting. Madhu Mehra from PLD was the resource person for the sessions on CEDAW. India will present its combined 4<sup>th</sup> and 5<sup>th</sup> Periodic report to the CEDAW Committee in August 2010.

The Ministry of Women and Child Development has initiated this learning process to facilitate contributions from the different States and line ministries in the preparation of the next periodic report by the Government. The announcement is available on the website of the MoWCD: <http://wcd.nic.in/>

### **Action India organizes four day workshop on Domestic Violence**

Action India organized a four day national workshop from 19-24 September in New Delhi, to discuss the implementation of the Protection of Women Against Domestic Violence Act, 2005. The workshop was aimed at creating a collective understanding among the stakeholders to take up the law for women who face violence on a daily basis.

### **Mumbai celebrates Queer Azadi March on 16 August**

The Queer Azadi March took place on 16 August, it was attended by thousands of supporters. The Delhi High Court judgment on Section 377 added enthusiasm and colour to the march. Mumbai began the tradition of celebrating the Queer Azadi March on the 16 August, a day after our Independence Day as a mark of protest that that despite achievement of independence from colonial rule, the LGBTQ were still bonded under the Section 377, an anti sodomy colonial penal provision.

### **Nirantar wins UNESCO Literacy prize 2009**

Nirantar has been awarded the UNESCO King Sejong Prize 2009 for Literacy for Khabar Lahariya. Khabar Lahariya is a newspaper, edited, illustrated, produced and marketed by women from marginalised Dalit, Kol and Muslim communities in Chitrakoot and Banda districts of Uttar Pradesh. The award also recognises Nirantar's 'well-structured method of training newly literate women as journalists and democratizing information production provides an easily replicated model of transformative education'.

## **FORTHCOMING EVENTS**

### **National Forum for Single Women's Rights to be launched on 7 and 8 October in New Delhi.**

The National Forum for Single Women's Rights will be launched in New Delhi on October 7-8, 2009 at the Indian Social Institute. This National Forum for Single Women's Rights is a growing movement of the organization of low-income single women (widows, separated and other single women). The movement started in Rajasthan and now involves women from 8 states. On the first day, the National Forum will be launched and the second day, there will be a Public Hearing of single women's voices.

### **National Conference of the Muslim Women's Rights Network- Asmita Collective**

Asmita Collective will be organizing the National Conference of the Muslim Women's Rights Network on 28-29 October, 2009 in Hyderabad.

For more information contact, [asmita.collective@gmail.com](mailto:asmita.collective@gmail.com)