

Bi-Monthly Legal News

Partners for Law in Development (PLD), Issue-8, April, 2009

INTERNATIONAL

UPDATES FROM THE UN

- ✚ A Critical Review of 15 years of UNSRVAV mandate released
- ✚ Special Rapporteurs present their reports to the Tenth Session of the Human Rights Council

INTERNATIONAL NEWS

- ✚ Reinstatement of the Chief Justice of Pakistan
- ✚ A global study affirms that anti-terror measures world-wide have seriously undermined international human rights law
- ✚ First woman in the Council of Ministers in Saudi Arabia

INTERNATIONAL LEGAL DEVELOPMENTS

- ✚ En route to Criminal Justice: developments in international criminal proceedings on crimes against humanity in Cambodia, Lebanon, Sudan and Rwanda
- ✚ Sharia law to be implemented in Pakistan's Swat Valley as a part of peace deal with Taliban group
- ✚ Nigeria proposes to criminalize gay marriage
- ✚ Italian decree against sexual violence and illegal immigration

NATIONAL

- ✚ Navanethem Pillay's (UN High Commissioner for Human Rights) visit to India
- ✚ Friends of Lotika Sarkar (FOLS) campaign to restore her property
- ✚ Women's organisations prepare a charter of demands ahead of the Lok Sabha Elections
- ✚ Practice directions issued by Delhi and Andhra Pradesh HCs for assistance to Protection Officers under the PWDVA
- ✚ Lawyers' strike in Madras obstructs delivery of justice
- ✚ Gujarat High Court launched the first model e-court

EVENTS

- ✚ Launch of Musawah at Kuala Lumpur, Malaysia during 13-17 February 2009
- ✚ Sixth State level Muslim women's Conference at Pudukkottai, Tamil Nadu on 7 March 2009
- ✚ National Consultation on SC/ST (Prevention of Atrocity) Act, 1989 in New Delhi during 20-21 March 2009
- ✚ National Consultation on the implementation of Concluding Observations of the CEDAW Committee in New Delhi during 25-26 March 2009

FORTHCOMING EVENTS

- ✚ Lok Sabha Elections 2009
- ✚ South Asia meeting on Marginalised Genders and Sexualities meet in Kathmandu, Nepal from 7-8 April 2009

NEW RESOURCES

- Working with the United Nations Human Rights Programme: A Handbook for Civil Society
- Global Report on Human Trafficking
- Two new resource books from Musawah: "Wanted: Equality and Justice in the Muslim Family" and "Home Truths: A Global Report on Equality in the Muslim Family"
- National Project on Preventing Torture in India: From Public Awareness to State Accountability – Annual Report on Torture 2007 for seven Indian states.

INTERNATIONAL

UPDATES FROM THE UN

A Critical Review of 15 years of UNSRVAW mandate released

The UN Special Rapporteur on Violence against Women, Its Causes and Consequences has released a critical review of the 15 years of the mandates work from 1994 to 2009. This review was initiated by the current mandate holder Yakin Ertürk (Turkey) with research support by Madhu Mehra, Executive Director of Partners for Law in Development (India) and Regional Council Member of the Asia Pacific Forum for Women, Law and Development (Thailand). The current mandate holder's term commenced in 2003 and concludes in 2009, the previous mandate holder Radhika Coomaraswamy (Sri Lanka), held office from 1994 - July 2003. The critical review consolidates 15 years of the valuable work undertaken and jurisprudence generated by the mandate. It sets out the background and evolving scope of the mandate, brings together the key areas of focus, the conceptual gains, issues of compliance, implementation and accountability in relation to VAW, in addition to highlighting the future potential and challenges of the mandate. The full text of the review is available at: <http://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf>. Details about the UNSRVAW can be accessed at: <http://www2.ohchr.org/english/issues/women/rapporteur/>

Special Rapporteurs present their reports to the Tenth Session of the Human Rights Council

At the Tenth Session of the Human Rights Council during January-February 2009, the following special procedure mandate holders presented their reports.

- Special Rapporteur on Freedom of Religion or Belief
- Special Rapporteur on Trafficking in Persons, Especially Women and Children
- Special Rapporteur on Right to Food
- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.

- presented their reports. A gender perspective has also been integrated in these reports to bring out the situation of women in relation to these areas. Details about the Human Rights Council session as well as the reports can be accessed at:

<http://www2.ohchr.org/english/bodies/hrcouncil/10session/> and <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm> respectively.

INTERNATIONAL LEGAL DEVELOPMENTS

En route to Criminal Justice: developments in international criminal proceedings on crimes against humanity in Cambodia, Lebanon, Sudan and Rwanda

Developments in February-March 2009 indicate a growing affirmation of international criminal justice system. The most remarkable and unprecedented step was the issuing of an arrest warrant by the International Criminal Court against Sudan's president, Omar al-Bashir, on 4 March 2009 for crimes allegedly committed in Darfur. He thus becomes the first sitting head of state to be indicted. He narrowly escaped charges of genocide but has been accused of "intentionally directing attacks against an important part of the civilian population of Darfur, murdering, exterminating, raping, torturing and forcibly transferring large numbers of civilians and pillaging their property". A UN tribunal to investigate the 2005 assassination of Lebanon's former prime minister, Rafiq al-Hariri, opened hearing during the last week of February 2009. Similarly, on 17 February, the long-awaited UN-backed trial of a former Khmer Rouge leader in Cambodia opened at a Phnom Penh court, 30 years after the murderous regime fell. The accused was head of a notorious prison camp and is accused of presiding over the murder and torture of at least 15,000 inmates. Another UN war crimes court handed a 25-year jail sentence to a former Rwandan priest, Emmanuel Rukundo, for his role in the 1994 genocide on 27 February 2009. The court said that Rukundo monitored local Tutsis and was often accompanied by soldiers and militiamen during the violence. "The accused was found to have abused his moral authority and influence to promote the abduction and killing of Tutsi refugees," the UN court said. "Rukundo's acts were clearly part of the genocide," said Judge Joseph Asoka de Silva after the judgement had been delivered. "When he committed these crimes, he intended to completely or partially destroy the Tutsi ethnic group." The court also convicted him of the attempted rape of a young Tutsi woman.

Sources: <http://www.hindu.com/2009/03/04/stories/2009030455100900.htm>;
<http://www.timesonline.co.uk/tol/news/world/africa/article5847926.ece>;
<http://news.bbc.co.uk/go/em/-/1/hi/world/africa/7915388.stm> &
<http://news.bbc.co.uk/go/em/-/1/hi/world/asia-pacific/7893138.stm>

Sharia law to be implemented in Pakistan's Swat Valley as a part of peace deal with Taliban group

In February 2009, the Pakistan government signed a peace deal with a militant Taliban group in the North West Frontier Province. The Taliban insurgency in that area since 2007 has resulted in the destruction of many schools and educational institutions, mostly meant for girls. On 15 February 2009, the Chief Minister of North West Frontier Province Ameer Hussain Hoti announced a bill had been signed that would implement a new "order of justice" in the Malakand division, which includes Swat. The bill will create a separate system of justice for the whole region. Sharia law has been in force in Malakand since 1994 but appeal cases are heard in the Peshawar High Court, which operates under the civil code. As a result of the deal, there will be alterations to the appeals process - a point of contention often cited by the militants for their continued insurgency. The agreement will bind the provincial government to implement Sharia law

in the Malakand division, which comprises Swat and its adjoining areas. More than 1,000 civilians have died in shelling by the army or from beheadings sanctioned by the Taliban. Thousands more have been displaced. The Taliban now control the entire countryside of Swat, limiting army control to parts of the valley's capital, Mingora.

Source: http://news.bbc.co.uk/go/em/-/1/hi/world/south_asia/7891955.stm

Nigeria proposes to criminalize gay marriage

The public committee of the Nigerian National Assembly is discussing a new bill to outlaw same sex marriage. Gay sex is already criminalized there, and is in fact punishable with the death sentence in the Shariat ruled Islamic North. This new move seeks to criminalize cohabitation, and is also detrimental for human rights defenders of LGBTIs. The bill's sponsor, House of Representatives member Mayor Eze, said the bill was necessary to protect the family. The new law would mean prison sentences for gay people who live together, and anyone who "aids and abets" them, thus gay people need not necessarily be caught "in the act". Under the new law anyone who has "entered into a same gender marriage contract" would be liable to be jailed for three years, and defines a same sex marriage as gay people living together. Anyone who "witnesses, abet and aids the solemnization" of a same gender marriage would face five years in prison, or a fine – i.e. harsher punishment than even the gay people themselves. Church groups are in favour of the bill, saying that gay marriage risked "tearing the fabric of society". Gay rights activists in Nigeria have launched a protest against this proposed law and have also appealed to the National Assembly to not pass it. The law would make it easier for the police to arrest suspects, and criminalise anyone working in a human rights organisation that dealt with gay rights.

Source: <http://news.bbc.co.uk/go/em/-/1/hi/world/africa/7937700.stm>

Italian decree against sexual violence and illegal immigration

Italy's government issued a decree in February 2009 to crack down on sexual violence and illegal immigration after a spate of rapes blamed on foreigners. The decree sets a mandatory life sentence for the rape of minors or attacks where the victim is killed. This decree was prompted by three incidents of rape within the span of 2-3 days in mid-February. In all these cases, the accused are men from North Africa, Tunisia and Eastern Europe. The decree went into effect immediately though it needs to be passed by the Parliament within two months. It speeds up trials for sex offenders caught in the act, takes away the possibility of house arrest, and gives free legal assistance to victims. It also sets rules for citizen street patrols, in which officials said retired police and soldiers would play a major role. Critics say the measures could effectively legitimise vigilantism and xenophobia. The Vatican has warned against anything that turns innocent foreigners into convenient scapegoats. The government, on the other hand, has pointed to official statistics saying immigrants committed as many as 35% of crimes in Italy in 2007. The backlash against immigrants has had the most pronounced effect on Romanians who constitute the largest immigrant community in Italy and on the members of a gypsy community of Romas (many of whom are from Romania, but some Roma people belong to other Balkan countries).

Source: <http://news.bbc.co.uk/go/em/-/1/hi/world/europe/7902107.stm>

INTERNATIONAL NEWS

Reinstatement of the Chief Justice of Pakistan

After two years, the sacked Chief Justice of Pakistan, Iftikhar Choudhary was reinstated by the Zardari government in the wake of massive protests throughout the country, including the Long March call of 'Islamabad Chalo' by eminent Pakistani political leader Nawaz Sharif, who defied house arrest. The former President, General Pervez Musharraf, had suspended Justice Choudhary when he was deciding whether the military ruler could legally hold office. The delay in his reinstatement after the democratic government assumed power in Pakistan is attributed to the fact that Justice Choudhary is likely to hold a judicial review of the controversial amnesty that Musharraf granted Zardari, protecting him from possible corruption charges.

Source: <http://www.cbc.ca/world/story/2009/03/22/pakistan-chaudhry.html>

A global study affirms that anti-terror measures world-wide have seriously undermined international human rights law

On the basis of a three year long global study, the International Commission of Jurists (ICJ, a Geneva-based International NGO) has said that many states have used the public's fear of terrorism to introduce measures, which are often illegal and counter-productive. Such measures include detention without trial, illegal disappearance and torture. It also said that the UK and the US have "actively undermined" international law by their actions. The study has observed that the legal systems put in place after World War II were "well-equipped to handle current terror threats". It said countries should use civilian legal systems to try suspects and "not resort to ad-hoc tribunals or military courts to try terror suspects". The report's authors expressed concern at the lack of adequate safeguards in the use of control orders, the weakness of diplomatic assurances in relation to deportations and "excessive detention without charge". The ICJ report recommended an urgent review of counter-terrorism laws and policies to prevent serious and permanent damage to fundamental human rights principles. Some of the world's top international law experts served on the ICJ panel, including Mary Robinson, former president of Ireland and former United Nations Human Rights Commissioner, and Arthur Chaskelson, former President of the Constitutional Court of South Africa.

Source: <http://news.bbc.co.uk/go/em/-/1/hi/world/7892387.stm>

First woman in the Council of Ministers in Saudi Arabia

King Abdullah appointed Noor al-Fayez as Prince Faisal's deputy for girls' education — the first time a woman has been appointed to the council of ministers. This appointment is part of a larger reform project launched by the Saudi King. In a bid to reform the religious establishment, Saudi King Abdullah on 14 February 2009 dismissed the head of the feared religious police (formally known as the Commission for the Promotion of Virtue and Prevention of Vice) and a hard-line cleric who issued an edict last year saying it was permissible to kill owners of satellite TV stations that show "immoral" content. However, some view the appointment of a woman as a deputy ministry as mere tokenism as the office of the deputy is a weak and subordinate to that of the Minister. Real according to this view would be symbolized by appointing a woman as a Minister.

NATIONAL

Navanethem Pillay's (UN High Commissioner for Human Rights) visit to India

The UN High Commissioner for Human Rights (UNHCHR), Navanethem Pillay visited New Delhi from 22-24 March 2009. She held meetings with various stakeholders – the government, the NHRI and the civil society groups working on human rights. She addressed a conference organised on 23 March 2009 by the National Human Rights Commission for the Chairpersons and Secretaries of State Human Rights Commissions, selected public functionaries, experts and NGOs concerned with Human Rights issues. In her presentation she highlighted the need for India to reject the legacy of colonial laws that grant immunity to state agencies from prosecution, including the Armed Forces (Special Powers) Act and the provisions that criminalize homosexuality. She recommended implementing the Sachar Committee Report through adoption of an Equal Opportunity Bill that operates through the structure of an ombudsman. She has also called upon India to live up to role as a regional and global leader by taking a lead at the Durban Review Conference to ensure the outcome is successful, given its commitment to fight caste discrimination, as well as play a lead role in promoting human rights in the sub-region, in respect of Sri Lanka and Burma.

She appreciated the advances made by the Supreme Court of India and legislative achievements in relation to Right to Information Act and the Domestic Violence Act. She however regretted that the Supreme Court of India and the National Human Rights Commission did not have a single women judge/ member. She emphasised that the progress made in relation to women's rights must be actively defended specially with reference to the backlash by anti secular forces, and noted that while marital rape was included within the scope of domestic violence law, the penal law on rape was yet to recognize it as an offence. She also cautioned that the current economic crisis should not become a pretext to set women back and force their withdrawal from the economic sphere. The need to ensure participation of women in economic sector and in policy making is paramount. The text of her statement to the NHRC on 23 March is available at <http://www.indianet.nl/docs/090323.doc>

Friends of Lotika Sarkar (FOLS) campaign to restore her property

Lotika Sarkar, an octogenerian pioneer in the field of women's studies and human rights, has been forced to leave her house in Hauz Khas which is currently under fraudulent occupation by Nirmal Dhoundiyal, a Bihar cadre IPS officer who claims that Lotika has gifted her house to him. Lotika Sarkar maintains that she has not done so and the question of any such does not arise since the house is her only source of survival in her old age. The matter is now in the Delhi High Court. Friends and well-wishers of Lotika Sarkar have launched a campaign expressing solidarity with her under the banner of "Friends of Lotika Sarkar". The group has drafted a petition which has been handed over to the Home Ministry for action against Nirmal Dhoundiyal. The option of bringing a

private members' bill in Parliament on legal safeguards for women in Lotika's situation is also a matter of discussion in the campaign. The petition has been endorsed by 152 individuals as well as 12 groups and institutions, including Partners for Law in Development (PLD). It is ironic that one of the authors of the landmark report of the Committee on the Status of Women in India – *Towards Equality* (published in 1974) – is homeless now and is fighting for justice at the dusk of her life.

Source: <http://www.thehindu.com/2009/03/17/stories/2009031754030400.htm>

Women's organisations prepare a charter of demands ahead of the Lok Sabha Elections

Several women's groups came together to draft a Charter of Demands for the political parties. Similarly, the National Alliance of Women [NAWO] have drafted a Women's Political Manifesto [2009] to ensure that their concerns are highlighted and the same become part of the mainstream political agenda in the coming Lok Sabha elections. The demands include the passage of the Women's Reservation Bill, legislation to stringently punish those guilty of communal violence and increase allocation for social welfare schemes, law to address honour killings and acid attacks, and special measures to provide financial support to victims of acid attacks. The charter wanted that the farm loan waiver scheme must benefit women farmers also, including those indebted to private money-lenders, and implementation of gender budgeting policy with one-third allocation of resources for women.

Source: <http://www.hindu.com/2009/03/18/stories/2009031861111400.htm>

Practice directions issued by Delhi and Andhra Pradesh HCs for assistance to Protection Officers under the PWDVA

Lawyers' Collective and the Delhi government Social Welfare Board had approached the Chief Justice of the Delhi High Court to request him to issue Practice Direction for provision of assistance to the protection officer under the Protection of Women against Domestic Violence Act, 2005 at the time of issuing and service of notices. Such a move was triggered after a Protection Officer had to face violence at the house of a respondent where she had gone to serve notices. Following this, the Registrar of the Delhi High Court issued a practice direction to all the concerned Magistrates for assistance being provided to the Protection Officers at the time of serving notice, in December 2008. Women's groups in various states took a cue from this and began lobbying for similar directives in other states. In February 2009, the Andhra Pradesh campaign bore fruit and the Registrar of the Andhra Pradesh High Court also issued a Practice Direction on the same lines as that by the Delhi High Court. This is a very positive development and the campaign in other states must be intensified for similar provisions.

Lawyers' strike in Madras obstructs delivery of justice

The Madras High Court has been paralysed for most of this year, due to an agitation ostensibly meant to protest against the Sri Lankan military operations in Jaffna. The Chennai lawyers' violent clashes with police and apathy to suffering litigants have raised legitimacy about their commitment to justice. The lawyers intensified their strike after the unfortunate lathi charge by the police on agitating lawyers in the Madras High court

premises. The Chief justice of the Madras High court had expressed grave concern over the way the prolonged strike had held the justice system at ransom. The lawyers finally resumed work on 23 March 2009 after the Madras High Court ordered the suspension of two senior police officers for the violent incidents of 19 February 2009.

Source: <http://www.hindu.com/thehindu/holnus/000200903111922.htm>

Gujarat High Court launched the first model e-court

On 8 February 2009, Gujarat High Court became the first court in the country to implement the model e-court project on a pilot basis at the City Civil and Sessions Court in Ahmedabad. The objective of the model e-court is to provide tamperproof, authenticated audio-video recording of courtroom proceedings along with multipoint video conferencing facilities between the courtroom, central jail, police commissioner's office and the forensic science laboratory.

Source: <http://www.hinduonnet.com/businessline/blnus/28071920.htm>

EVENTS

Launch of Musawah at Kuala Lumpur, Malaysia during 13-17 February 2009

Musawah, a global movement for equality and justice in the Muslim family, was launched at a Global Meeting in Kuala Lumpur, Malaysia, from 13-17 February 2009. Approximately 250 scholars and activists from 47 countries gathered in Kuala Lumpur for the February 13-17 meeting, which featured UN Special Rapporteur on Violence against Women Yakin Ertürk as a keynote speaker. The Musawah Global Meeting opened with an inspirational video about how equality in the family is necessary and possible, and how reform of family laws has taken place over the last 50 years, also available at: <http://www.youtube.com/watch?v=G6J6k6k4pSY>. The Global Meeting closed with a video documenting the five day event: <http://www.youtube.com/watch?v=6fSrxo-9AtE>. Further information on the movement is available at: <http://www.musawah.org>.

Sixth State level Muslim women's Conference at Pudukkottai, Tamil Nadu on 7 March 2009

This was the sixth Tamil Nadu state level meeting with participation from about 500 persons including members of the all women's jamaat and leaders of various districts. The objective of the meeting was increase membership of the jamaat, discuss strategies to promote rights of Muslim women, give information about micro-credit programme, and distribute loans as a step towards empowering women.

National Consultation on SC/ST (Prevention of Atrocity) Act, 1989 at New Delhi during 20 - 21 March 2009

A two day National Consultation on SC/ST (Prevention of Atrocity) Act, 1989 was organised jointly by 14 Dalit organisations from all over India in New Delhi on 20-21, March 2009. The Consultation discussed the experience of implementation of the Act, and ways and means to strengthen it. Representatives of organization and activists from 15 states of India are likely to participate in the Consultation.

National Consultation on the implementation of Concluding Observations of the CEDAW Committee in New Delhi during 25-26 March 2009

The National alliance of Women (NAWO) jointly organised a two day National Consultation on the implementation of Concluding Observations of the CEDAW Committee in New Delhi on the 25-26 March 2009, with the Ministry of Women and Child Development, Govt. of India. The key note address was given by Ms. Shanthi Dairiam, former Expert Committee Member of the UN CEDAW from Malaysia. The Joint Secretary, Ministry of Women and Child participated in the opening discussion and Dr Sayeed Hamid, member of Planning Commission as well as Ms. Indira Jaisingh, Senior Advocate, Supreme Court of India and present UN CEDAW Committee Member participated as guest speakers.

FORTHCOMING EVENTS

Lok Sabha Elections 2009

The general elections for the 15th Lok Sabha would be held in a phased manner across India during 16 April – 13 May 2009. The elections will be held in five phases on April 16, 23, 30, May 7 and 13 and the new Union government will take office on 2 June 2009. This is the time when the much celebrated “largest democracy in the world” goes to polls and PLD appeals to all Indian citizens to exercise their right to vote. All information regarding voter registration, poll dates for specific constituencies and other aspects of the election can be accessed at the website of the Election Commission of India at: <http://eci.nic.in/>

South Asia meeting on Marginalised Genders and Sexualities meet in Kathmandu, Nepal from 7-8 April 2009

A meeting will be held at Kathmandu, Nepal from 7-8 April 2009 of LGBTI activists from South Asia to discuss the potential of documenting human rights violations of the communities in the region and explore the establishment of a South Asia Human Rights Commission for Marginalised Genders and Sexualities.

NEW RESOURCES

Working with the United Nations Human Rights Programme: A Handbook for Civil Society

"Working with the United Nations Human Rights Programme: A Handbook for Civil Society" released by the Office of the High Commissioner for Human Rights. The PDF version can be accessed at:

<http://www.ohchr.org/EN/AboutUs/Pages/NgoHandbook.aspx>

Global Report on Human Trafficking

The Global Report on Trafficking in Persons has been launched by the United Nations Office on Drugs and Crime (UNODC) within the framework of UNGIFT. According to the Report, the most common form of human trafficking (79%) is sexual exploitation. The victims of sexual exploitation are predominantly women and girls. The second most common form of human trafficking is forced labour (18%), although this may be a misrepresentation because forced labour is less frequently detected and reported than trafficking for sexual exploitation. Worldwide, almost 20% of all trafficking victims are children. However, in some parts of Africa and the Mekong region, children are the majority (up to 100% in parts of West Africa).

For details about the report, visit: <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>

Two new resource books from *Musawah*: “Wanted: Equality and Justice in the Muslim Family” and “Home Truths: A Global Report on Equality in the Muslim Family”

Musawah, the newly launched global movement for equality and justice in the Muslim family has brought out two very informative resource books –

- ✚ *Wanted: Equality and Justice in the Muslim Family*, edited by Zainah Anwar, brings together analysis from a broad range of disciplines to support rights-based reform of Muslim family laws and the protection of existing rights. The disciplines include: Qur'anic exegesis, *fiqh* or jurisprudence, socio-legal history and analysis, international human rights law, gender studies, political science, sociology and economics. Available at: http://www.musawah.org/background_papers.asp
- ✚ *Home Truths: A Global Report on Equality in the Muslim Family* is a compilation of reports submitted by national level organisations and activists in 30 countries on why equality in the family is necessary in their contexts and the opportunities available that make equality in the family possible. Available at: http://www.musawah.org/national_profiles.asp

National Project on Preventing Torture in India: From Public Awareness to State Accountability – Annual Report on Torture 2007 for seven Indian states

People’s Watch under the aegis of the National Project on Preventing Torture in India: From Public Awareness to State Accountability, brought out the Annual Report of 2007 for seven Indian States – Andhra Pradesh, Bihar, Karnataka, Orissa, Rajasthan, Uttar Pradesh and West Bengal. Further details on the project as well as the texts of all these reports are available at: <http://www.pwtn.org/eupttallstates.htm>