



PLD

# BI-MONTHLY LEGAL NEWS

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*Partners for Law in Development*

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## Updates from the U.N

### Margaret Sekaggya, Special Rapporteur on the Situation of Human Rights Defenders submits her third report to the UN Human Rights Council

Margaret Sekaggya, SR on the Situation of Human Rights Defenders has submitted her third report to the UN Human Rights Council. The report reaffirms that “women defenders are more at risk of suffering certain forms of violence and other violations, prejudice, exclusion, and repudiation than their male counterparts. This is often due to the fact that women defenders are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society.” The Rapporteur recommends that States publicly acknowledge the particular and significant role played by women defenders and those working on women’s rights or gender issues so as to prevent or reduce the risks they face.

Copy of the report is available at:

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-44.pdf>

### CEDAW Committee issues concluding observations on the sixth and seventh periodic report of Bangladesh

While examining the sixth and seventh periodic report of Bangladesh, the CEDAW Committee acknowledged that Bangladesh has adopted a number of policies, programmes and plans of action to promote gender equality and eliminate discrimination against women. However, it has expressed concern over the prevalence of violence against women and girls, including domestic violence, rape, acid throwing, dowry-related violence, fatwa-instigated violence, and sexual harassment in the workplace. The Committee however expressed concern that despite the High Court decision that the extra-judicial punishments fatwas are illegal, there were reports of illegal penalties still being enforced through shalish rulings to punish “anti-social and immoral behaviour.”

Full text of the report available at: [http://daccess-dds-](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/288/51/PDF/N1028851.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/N10/288/51/PDF/N1028851.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/288/51/PDF/N1028851.pdf?OpenElement)

### CEDAW Committee issues concluding observations on the combined fifth, sixth and seventh periodic report of Sri Lanka

While examining the combined fifth, sixth and seventh periodic reports, the CEDAW Committee observed that Sri Lanka is on track towards achieving goals two (achieving universal primary education), four (reducing child mortality) and five (improving maternal health) of the Millennium Development Goals, and it welcomed the enactment of the Prevention of Domestic Violence Act 2005. It also expressed concern over discriminatory provisions in the Muslim Personal Law, the Kandyan Law and the Tesawalamai Law. Further, the Committee also called attention to “the criminalization of same sex relationship results in women being completely excluded from legal protection.” It is also concerned about the information that the law enforcement officers are allowed to arbitrarily detain them.

Full text of the report available at:

<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-LKA-CO-7.pdf>

# International Development

## Asia

### Nepal adopts National Action Plan on UN SCR 1325 and 1820

On February 1, 2011 the Government of Nepal adopted its National Action Plan (NAP) on United Nations Security Council Resolutions 1325 and 1820. Nepal is the first country in South Asia and the second in Asia (the Philippines being the first), and the 24th country globally to adopt a NAP for UNSCR 1325. The NAP presents the contextual framework and analysis of the peace and security situation in Nepal, as well as provides insight into the impact of conflict on Nepali women. The NAP aims to contribute to the Nepali people's overall goal of achieving sustainable peace and establishing a just society. It is structured around five pillars, specifically, Participation, Protection and Prevention, Promotion, Relief and Recovery, and Resource Management, Monitoring and Evaluation.

Source: [http://www.wunrn.com/news/2011/02\\_11/02\\_07/020711\\_nepal.htm](http://www.wunrn.com/news/2011/02_11/02_07/020711_nepal.htm)

### Bangladesh clerics arrested after girl is whipped to death

In a case relating to the issuing of an illegal fatwa by the shalish, the Bangladesh Police arrested four Islamic clerics after a teenage girl accused of having a relationship with a married man was whipped to death. The girl collapsed after she was lashed with a bamboo cane 70 times in public. Following this incident, the High court ordered district officials to explain why they failed to protect the 14 year old. The court observed that infliction of brutal punishment including caning, whipping and beating at local *shalish* constitutes violation of constitutional rights. Fatwas are illegal in Bangladesh, but Islamic clerics sometimes preside over courts that use sharia law and issue fatwas to deal with issues such as extramarital relationships.

Source: <http://www.guardian.co.uk/world/2011/feb/03/bangladesh-clerics-arrested-after-girl-whipped>  
<http://www.thedailystar.net/newDesign/news-details.php?nid=172669>

### Margaret Sekaggya, SR on the Situation of Human Rights Defenders, issues statement after India visit

From 10 to 21<sup>st</sup> January 2011, Margaret Sekaggya, SR on the Situation of Human Rights Defenders carried out a fact-finding mission to assess the situation of human rights defenders in India, and travelled to New Delhi, Bhubaneshwar (Orissa), Kolkata (West Bengal), Guwahati (Assam), Ahmedabad (Gujarat), Jammu and Srinagar (Jammu and Kashmir). She expressed particular concern for the plight of human rights defenders working for the rights of marginalized people, i.e. Dalits, Adavasis (tribals) religious minorities and sexual minorities, who face particular risks and ostracism because of their activities. Amongst her other recommendations to the Central and State governments, the SR has stated that “the Armed Forces Special Powers Act and the Public Security Act be repealed and application of other security laws which adversely affect the work and safety of human rights defenders should be reviewed.”

Source:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10664&LangID=E>

## Silencing of opposition and debates on the blasphemy law in Pakistan

In a bid to silence all opposition to and debates on the blasphemy law, over the last few months Pakistan has witnessed a spate assassinations of those who have been at the forefront of the campaign to change these blasphemy laws. Among them was the Governor of the province of Punjab in Pakistan, Salman Taseer, who was gunned down by one of his own bodyguards. Taseer had publicly supported Aasia Bibi, a Christian woman, who has been sentenced to death for allegedly insulting the Prophet Muhammad. Bibi's case has triggered a fresh debate around the blasphemy laws, which human rights groups say are frequently abused to settle scores or target minorities. Religious groups staunchly oppose any change, and extremists preachers have offered a reward for the death of Aasia Bibi. Subsequently, Pakistan M.P, Sherry Rehman, who had spearheaded reform of the blasphemy law, has abandoned her struggle.

In a most recent incident, Shahbaz Bhatti, Minority Affairs Minister, was shot eight times by a group which warned against any changes in Pakistan's blasphemy law.

Source: <http://www.guardian.co.uk/world/2011/feb/03/pakistan-blasphemy-laws-sherry-rehman>  
<http://www.guardian.co.uk/world/2011/jan/04/punjab-governor-murder-pakistan>  
<http://www.indianexpress.com/story-print/757025/>

## *Beyond Asia*

### ECHR delivers judgement on right to abortion in Ireland on 'right to respect for private life'

In the case of *A, B and C vs. Ireland*, three applicants claimed that the impossibility of having an abortion in Ireland made the procedure unnecessarily expensive, complicated, and traumatic and that the Irish restrictions stigmatized and humiliated them, risked damaging their health, and, in the third applicant's case, her life. In a Grand Chamber Judgment, the Court found, in respect of the third applicant, a violation of Article 8 of the European Convention on Human Rights (right to private and family life) while declining to assert that the ECHR supports a right to abortion in contravention of national laws to the contrary. While in the case of the first and second applicant, the Court found that Ireland is entitled to an extra 'margin of appreciation' in its prohibitions on abortion, the Court noted that the third applicant suffered from a rare form of cancer, which might relapse as a result of her being pregnant. The Court considered that the establishment of any such risk to the applicant's life clearly concerned fundamental values and essential aspects of her right to respect for her private life, which are constitutionally protected in Ireland.

Source: [http://www.strasbourgconsortium.org/index.php?blurb\\_id=1106&page\\_id=9](http://www.strasbourgconsortium.org/index.php?blurb_id=1106&page_id=9)

### Issue of polygamy on trial in Canada

A Canadian judge has begun a special judicial inquiry to examine whether a Canadian anti-polygamy law violates protections of religious freedom or is still needed to protect women's rights and deal with a variety of social problems. The case was referred to the Judge by the Attorney-General after polygamy charges against two Mormon religious leaders in the

community of Bountiful were stayed in 2009. The Judge has decided television and web cameras will be allowed to film final arguments in the constitutional case. Professor Rebecca Cook, Co-Director of the International Reproductive and Sexual Health Law Programme at the University of Toronto's Faculty of Law provided expert testimony at the trial and she told the court that the practice of polygamy violates international human rights law, and that the number of nations that outlaw it is increasing. This is a controversial issue and is likely to end up at the Supreme Court of Canada.

Source: <http://www.theprovince.com/news/Polygamy+subject+rights+Prof/4073897/story.html>

## Polish Parliament passes Gender Quota Bill

The Polish Parliament has approved of the Gender Quota Bill that aims at increasing women's participation in political life. According to the new legislation, at least 35 percent of all candidates on the lists of all parties running for seats in the 460-seat lower House of Parliament must be women. However, the rule does not apply to elections to the 100-seat upper House, the Senate. Under-representation of women in political life has been a concern for the CEDAW Committee that called upon Polish government to adapt temporary special measures to accelerate women's full and equal participation in elected positions.

Source: <http://www.karat.org/>

## Arab world witness mass protests against dictatorship regimes

Anti government protests have taken place over the last few months in Tunisia and Egypt. President Zine El Abidine Ben Ali fled to Saudi Arabia while the former Egyptian Dictator, Hosni Mubarak tried but comprehensively failed to stand his ground. These mass protests have led to the fall of dictatorship regimes in these countries in north Africa and have begun the process of democratisation in the region.

Over the last few weeks, the move towards democratisation spread to Libya, where an anti dictatorship struggle is presently ensuing. Protests in Libya have received international support from UN General Secretary Ban Ki Moon, while the Libyan Premier, Gaddafi, has responded with brutal repression.

# National

## Judgements/Orders

### Supreme Court dismisses appeal of accused in case involving the parading of a tribal woman

In the case of *Kailas and Ors vs. State of Maharashtra*, the Supreme Court dismissed an appeal of accused persons who beat a woman belonging to the Bhil tribe and then paraded her naked while beating and accusing her. The SC observed it felt the judgement of the High Court convicting the accused under the IPC and imposing fines was "too light considering the gravity of the offence." Further, the SC observed that adivasi groups are the most disadvantaged and marginalised in India, and the "mentality of our countrymen towards these tribals must change, and they must be given the respect they deserve as the original inhabitants of India."

While the SC expressed surprise that the conviction of the accused under the Scheduled Caste and Scheduled Tribe Prevention of Atrocities Act 1989 was set aside by the High Court on technical grounds, the SC did not reverse this part of the High Court judgement.

Source: <http://www.thehindu.com/news/states/other-states/article1035438.ece>

To read the judgement, please see <http://judis.nic.in/supremecourt/chejudis.asp>, date of judgement: 5<sup>th</sup> January 2011.

### Supreme Court changes the reason for awarding life term to Dara Singh in Staines murder case

Faced with criticism from civil society, the Supreme Court changed the reason for awarding a life sentence to Dara Singh, convicting of killing an Australian missionary, Graham Staines, and his two minor sons. The SC deleted the portion of its judgment which observed that Graham Staines was killed in Orissa in order to teach him a 'lesson' for converting poor tribals to Christianity. In a signed statement, eminent citizens took exception at the discourse of the Court. The reason for awarding life sentence instead of death penalty was subsequently changed to the length of the legal proceedings, specifically, 12 years having elapsed since the crime was committed.

Source: <http://www.hinduonnet.com/fline/stories/20110225280404900.htm>,

<http://timesofindia.indiatimes.com/india/SC-changes-reason-for-awarding-life-term-to-Dara-for-Staines-murder/articleshow/7362606.cms>

### Supreme Court holds that sex workers are entitled to a life of dignity under Article 21

The Supreme Court in *Budhadev Karmaskar Vs. State of West Bengal* held that it 'strongly felt' that the Central and State governments through Social Welfare Boards "...should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as prostitutes.." The SC further observed that prostitutes have a right to dignity under Article 21 of the Constitution and that if such women are granted the opportunity of availing of technical or vocational training, they would be able to earn their livelihood.

Source: <http://www.hindu.com/2011/02/15/stories/2011021554410900.htm>

### Supreme Court orders Chhattisgarh government to vacate security forces from all educational institutions within four months

The Supreme Court has ordered the Chhattisgarh government to vacate security forces from all educational institutions within four months. The Court also recorded the consensus on the need for Salwa Judum camps to be disbanded and their inhabitants to be sent back to their villages. The Court recorded the Chhattisgarh government's statement that the State Relief and Rehabilitation Committee had compensated all victims of violence regardless of perpetrator, as well as the submission of the counsel for the petitioners that only victims of Naxalite violence were compensated. The State Committee is required to submit to the Court a report with regard to the details of compensation.

Source: <http://www.thehindu.com/news/national/article1100193.ece>

## All interventions filed in support of reading down section 377 accepted by the SC

The SC has allowed all the four intervention applications filed in support of reading down section 377 of the IPC. The applications filed by Teachers for Democracy, parents of LGBT children, psychiatrists and by film director, Shyam Benegal have been accepted. In contrast, the SC dismissed a plea by Suresh Kumar Kaushal, who submitted that the defence forces should be made a party to the matter as the Army chief had openly expressed his opinion against homosexual behaviour and had said that such behaviour would not be allowed in the forces. April 19<sup>th</sup> has been fixed as the next date for hearing.

Source: <http://economictimes.indiatimes.com/news/politics/nation/sc-refuses-to-implead-forces-in-gay-sex-case/articleshow/7448303.cms>,  
[http://www.tehelka.com/story\\_main48.asp?filename=Ws070211SUPREME.asp](http://www.tehelka.com/story_main48.asp?filename=Ws070211SUPREME.asp)

## Supreme Court holds in a gang rape case that the offence is compoundable

In the case of *Baldev Singh and Others vs State of Punjab* the Supreme Court directed each of the accused in a case of gang rape (section 376 IPC) to pay the victim rupees fifty thousand each. The court took into cognisance that the victim and the accused had entered a compromise and the case was an old one before passing this order. The Sessions Court had awarded 10 years imprisonment to the accused, and the Punjab and Haryana High Court had upheld this sentence. Section 376 is a non compoundable offence.

Source: <http://www.ndtv.com/article/india/court-frees-rapists-agrees-they-can-pay-victim-87242>

## Delhi court rules that wearing revealing dress constitutes ‘mental cruelty’

An Additional District Judge in Delhi accepted a husband’s plea that he suffered from ‘mental agony’ as his wife wore ‘vulgar’ (short) dresses regularly. The court rejected the woman's more serious contention that her husband and in-laws had leveled frivolous and baseless allegations against her as her parents failed to meet their demand for dowry.

Source: <http://www.thehindu.com/news/national/article1414300.ece>,  
<http://timesofindia.indiatimes.com/city/delhi/Divorce-sparked-off-by-short-dress/articleshow/7478785.cms>

## News

### Binayak Sen denied bail by Chhattisgarh High Court

In a disappointing development, the Chhattisgarh High Court rejected the bail application of human rights activist Dr. Binayak Sen. An appeal has been filed in the Supreme Court challenging the High Court’s decision. The Chhattisgarh Government had opposed his bail application on grounds of Dr Sen’s links with Maoists.

Source: <http://www.indianexpress.com/news/HC-rejects-Binayak-Sen-bail-plea/748766>

## Two incidents of discrimination against lesbian couples in India

Policemen from Mumbai and Delhi arrived at the home of an openly lesbian couple in Vasant Kunj, Delhi and tried to barge their way in while the two women kept the door bolted and stayed inside. As the family of one of the women had not come to terms with her sexuality, they had filed a complaint with the National Commission for Women who served a notice on the girls. Both claimed to have appeared before the NCW, expressed their views on the issue and asserted that they didn't wish to go back. Women's groups and members of Naz Foundation protested against the Delhi Police flouting rules and prevented the arrest of the girls.

Source: <http://timesofindia.indiatimes.com/city/delhi/Lesbian-couple-hounded-in-city/articleshow/7531247.cms#ixzz1ESxPSbcY>

(Please contact Sangini Trust at sangini97@hotmail.com to extend support to the two women)

In another incident relating to violations of rights of sexual minorities, two lesbian girls committed suicide after being harassed and ostracised (one being married forcefully) in West Bengal. The families refused to accept and cremate their bodies because of the 'unnatural nature' of their acts. Sappho, a Kolkata-based NGO that works for the LGBT community, is in the process of conducting a fact-finding in the case.

Source: <http://www.indianexpress.com/news/punished-in-life-death/755565/0>

## Amendments to the Dowry Prohibition Act 1961 proposed and discussed

The National Commission for Women has drafted certain amendments to the Dowry Prohibition Act in order to make the Act more effective. The amendments seek to make changes in the definition of 'dowry' to exclude gifts given voluntarily to the bride and/or bridegroom – provided that where such gifts are made by or on behalf of the bride or any person related to the bride, such gifts are of a customary nature and not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given. The NCW draft proposes deletion of the phrase 'in connection with the marriage' in the definition of 'dowry' and retain the phrase 'before or at any time after the marriage' - as judges have used the phrase 'in connection with the marriage' to deny justice to victims of dowry harassment. However, the Ministry of Law has circulated a Bill containing amendments to the Act, which retain the phrase 'in connection with the marriage.'

A consultation to discuss these amendments was organised by the NCW on 17<sup>th</sup> February 2011, which was attended by a limited number of NGO's, advocates and academics.

NCW amendments available at <http://ncw.nic.in/>

For a copy of the Bill drafted by the Law Ministry, please contact PLD

## Special Godhra court awards death penalty to 11 people for burning of the Sabarmati Express

A special Godhra court set up to investigate the Gujarat riots of 2002 has observed the case fell into the 'rarest of rare' category and awarded death sentences to 11 accused for burning down coach S-6 of the Sabarmati Express. While 63 people have been let off, 20 other have been convicted and given life sentences for their role in the 2002 incident that left 58 kar sevaks dead and fuelled a pogrom against Muslims in the state. The defence will challenge the verdict in the Gujarat High Court. Two different panels had been appointed to probe into the incident – while

the Banerjee Commission appointed by the former Railway Minister had said the fire was accidental, the Nanavati Commission, appointed by the Gujarat government, concluded the fire was a pre-planned incident. The court gave its verdict according to the Nanavati report.

Source: <http://www.indianexpress.com/story-print/756263/>

### K.G. Kannabiran, senior advocate and eminent civil rights activist passes away

K.G Kannabiran, senior advocate, eminent civil rights activist and former President of PUCL passed away on December 30<sup>th</sup> 2010. Some of the prominent issues Kannabiran was associated with include legal challenges to the A.P Preventive Detention Act 1970, enacted by the government to crush revolutionary student activism, legal challenges to the imposition of the Emergency in 1975, and on encounter killings leading to a judgement by the Andhra Pradesh High Court recognising that encounter deaths are prima facie cases of culpable homicide.

## Resources

### Musawah, 'CEDAW and Muslim Family Laws: In Search of Common Ground' (2011)

The report is based on a Musawah research project on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that examined State parties' justifications for their failure to implement CEDAW with regard to family laws and practices that discriminate against Muslim women. The research project reviewed documents for 44 countries with Muslim majority or significant Muslim minority populations that reported to the Committee on the Elimination of Discrimination against Women ('CEDAW Committee' or 'the Committee') from 2005 to 2010. This report documents the trends identified in this review, along with responses from Musawah based on its holistic Framework for Action and recommendations to the CEDAW Committee for a deeper engagement and more meaningful dialogue on the connections between Muslim family laws and practices and international human rights law.

### New website on 'Muslim Marriage Contract' released

The 'Muslim Marriage Contract' website is now online at <http://muslimmarriagecontract.org/>. The website is designed for a UK audience, to provide much-needed information about laws, practices and classical jurisprudence about Muslim marriage contracts. It promotes equality between the spouses through a model marriage contract, and also seeks to encourage couples to enter into civil marriages which will ensure greater security for women than unregistered 'nikahs' alone. The model contract is a consensus document, developed through a lengthy process of community consultation.

### Bringing Together Pleasure and Politics: Sexuality Workshops in Rural India by Jaya Sharma: Institute of Development Studies Practice Paper

The paper is based on learnings that emerged from a programme initiated by Nirantar, which builds perspectives on sexuality through intensive workshops with women from poor and rural communities. Through participatory exercises Nirantar introduced sophisticated and challenging ideas – for example, women's right to say 'yes' to sex and ask for what they wanted as well as to say 'no' and how the two are closely linked.

## Events

### Queer Azaadi Mumbai March Saturday, January 29, 2011

After Queer Pride Marches being celebrated in Delhi and Bangalore in November, Mumbai organized the Queer Azadi March on the 29th January, 2011 from August Kranti Maidan to Girgaum Chowpatty. The March was preceded by public events like book reading session, panel discussions, open mike sessions, street plays etc. to highlight issues of discrimination of sexual minorities like equal citizenship rights to transgender, forced marriages and targeted violence at public places and institutions.

### South Asian regional conference on ‘Legal Empowerment of the Poor’: MARG

The South Asian regional conference on ‘Legal Empowerment of the Poor’ hosted by MARG took place on the 25<sup>th</sup> and 26<sup>th</sup> of February 2011, at Surya Hotel in New Delhi. This conference is part of the regional initiative by BRAC, CHRI, and MARG in cooperation with the Open Society Justice Initiative.

### Advancing Women’s Rights in the Family and Community: PLD

PLD organised Consultations on Advancing Women’s Rights in the Family and Community in Ranchi (11 and 12 February); Bodhgaya (17 and 18 February); Bhubaneshwar (21 and 22 February). The State Consultation were dialogues between leaders of NGO’s, members of the State Women and Human Rights Commissions, senior human rights activists, state functionaries and the media on Expanding Women’s Rights in the Family (understanding rights for women in ‘relationships in the nature of marriage’) and Gender Based Violence in Community (witch hunting).

### XIII National Conference on Women’s Studies: IAWS

The Indian Association of Women’s Studies organised the XIIIth National Conference in Wardha, Maharashtra in collaboration with the Department of Women’s Studies, Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya. The theme of the conference was ‘Resisting Marginalizations, Challenging Hegemonies: Re-visioning Gender Politics.’ Simultaneous presentations on various sub themes, including ‘marginalisation and feminist concerns’, ‘engendering youth’, ‘challenges facing women in central India’ and ‘writing resistance’ took place. PLD presented a paper on ‘Revisiting the Family: Transcending Boundaries’ and facilitated an open discussion on the privileging of the ‘legal’ wife in law in the context of two recent Supreme Court judgments, *Velusamy vs. Patchiammal* and *Chanmuniya vs. V.K Singh*.

## Announcements/ Forthcoming Events

### South Asia Training of Trainers on CEDAW “Strengthening Application of CEDAW in South Asia”: 8-12 April 2011

Partners for Law in Development (PLD) supported by UN Women is organising a five day, residential South Asia Training of Trainers on CEDAW “Strengthening Application of CEDAW in South Asia” from 8-12 April 2011, in Nepal. The regional training of trainers is open to all

practitioners of the Convention for Elimination of All Forms of Discrimination against Women (CEDAW) from South Asia, and aims to strengthen the capacities of stakeholders in advancing application of CEDAW in local and national contexts. It seeks to refresh and deepen understanding of concepts, facilitate implementation in key contexts of gender inequality in South Asia, and familiarise with diverse applications of CEDAW, including the review processes.

**“Cultures, Traditions and Violence Against Women: Human Rights Challenges”:  
March 7, 2011**

The Global Campaign to Stop VAW in the name of ‘culture’ in partnership with PLD, IWRAW Asia Pacific and AWID: “Cultures, Traditions and Violence Against Women: Human Rights Challenges.” The event will take place on March 7, 2011 from 1-3 p.m at Room XXIV, Building E, Palais des Nations, Geneva.